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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued January 24, 2025 Decided April 17, 2026

No. 22-1071

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION,
PETITIONER

V.

KC TRANSPORT, INC. AND FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,
RESPONDENTS

On Remand from the
Supreme Court of the United States

Susannah M. Maltz, Attorney, U.S. Department of Labor, argued the cause for petitioner. With her on the briefs was *Emily Toler Scott*, Counsel for Appellate Litigation.

Harold Craig Becker was on the brief for *amicus curiae* American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in support of petitioner.

James P. McHugh and *Aditya Dynar* argued the causes for respondents. With them on the briefs were *Christopher D. Pence* and *Damien M. Schiff*. *Thaddeus Jason Riley* entered an appearance.

Thomas Berry and *Ilya Shapiro* were on the brief for *amici curiae* Manhattan Institute and Cato Institute in support of respondents.

J. Marc Wheat was on the brief for *amici curiae* Advancing American Freedom, et al. in support of respondents.

John B. McCuskey, Attorney General, Office of the Attorney General for the State of West Virginia, *Michael R. Williams*, Solicitor General, *Treg Taylor*, Attorney General, Office of the Attorney General for the State of Alaska, *Steve Marshall*, Attorney General, Office of the Attorney General for the State of Alabama, *Tim Griffin*, Attorney General, Office of the Attorney General for the State of Arkansas, *James Uthmeier*, Attorney General, Office of the Attorney General for the State of Florida, *Chris Carr*, Attorney General, Office of the Attorney General for the State of Georgia, *Raul Labrador*, Attorney General, Office of the Attorney General for the State of Idaho, *Theodore E. Rokita*, Attorney General, Office of the Attorney General for the State of Indiana, *Brenna Bird*, Attorney General, Office of the Attorney General for the State of Iowa, *Liz Murrill*, Attorney General, Office of the Attorney General for the State of Louisiana, *Lynn Fitch*, Attorney General, Office of the Attorney General for the State of Mississippi, *Andrew Bailey*, Attorney General, Office of the Attorney General for the State of Missouri, *Michael T. Hilgers*, Attorney General, Office of the Attorney General for the State of Nebraska, *Drew Wrigley*, Attorney General, Office of the Attorney General for the State of North Dakota, *Dave Yost*, Attorney General, Office of the Attorney General for the State of Ohio, *Gentner Drummond*, Attorney General, Office of the Attorney General for the State of Oklahoma, *Alan Wilson*, Attorney General, Office of the Attorney General for the State of South Carolina, *Marty Jackley*, Attorney General, Office of the Attorney

General for the State of South Dakota, *Jonathan Skrmetti*, Attorney General and Reporter, Office of the Attorney General for the State of Tennessee, and *Ken Paxton*, Attorney General, Office of the Attorney General for the State of Texas, were on the brief for *amici curiae* State of West Virginia and 19 Other States in support of respondents.

Before: WILKINS, WALKER, and PAN, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WILKINS.

Concurring Opinion filed by *Circuit Judge* PAN.

Dissenting Opinion filed by *Circuit Judge* WALKER.

WILKINS, *Circuit Judge*: Congress affirmed the importance of regulating effective health and safety standards within the mining industry when it enacted the Federal Mine Safety and Health Amendments Act of 1977 ("Mine Act"), Pub. L. No. 95-164, 91 Stat. 1290 (codified as amended at 30 U.S.C. §§ 801-966). The Mine Act reaches every "coal or other mine" (hereinafter, "mine"), which the statute defines as coal extraction sites; the roads appurtenant to those sites; and the places, "facilities," and things "used in, or to be used in, or resulting from," mining activity. 30 U.S.C. § 802(h)(1). This dispute concerns how broadly we construe the last category.

KC Transport is an independent trucking company that provides various hauling services for mining and other companies. When the events at issue occurred, KC Transport operated a maintenance facility for its haul trucks about a mile from one of its client's active mines. A Mine Safety and Health Administration ("MSHA") inspector visited the facility, after having inspected a nearby mine, and observed two of KC

Transport's trucks undergoing maintenance. Both trucks were raised and unblocked from motion, and one truck had a person standing underneath it. Because the trucks' conditions violated federal safety standards, the MSHA inspector cited KC Transport.

In an administrative proceeding, KC Transport contested the citations, arguing that MSHA had no jurisdiction over its maintenance facility or the trucks parked there. An administrative law judge ("ALJ") held that MSHA had jurisdiction because KC Transport's facility is a mine and the trucks, at least while parked at the facility, are equipment "used in" mining-related activity and thus are "mine[s]" under the Mine Act. KC Transport appealed to the Federal Mine Safety and Health Review Commission ("Commission"), which held that no facility or truck used in mining is a "mine" under the Mine Act unless it is located at an extraction site or a road appurtenant thereto. Because neither the cited trucks nor the facility where they were parked were located on land where mineral extraction occurs or on roads appurtenant to such land, the Commission held that none constituted a "mine" and vacated the citations.

The Secretary of Labor ("Secretary"), acting through MSHA, petitioned our Court for review of the Commission's decision. *See* 30 U.S.C. § 816(b). The Secretary submits that KC Transport's facility and trucks are mines because they were "used in" mining activity. *See id.* § 802(h)(1)(C); Pet. Br. 42-44.[1]

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[1] KC Transport also argued before the Commission that it was not an "operator" under the Mine Act. In 2023, we held that the Commission lacked jurisdiction to consider that question, which KC Transport had not pressed before the ALJ. *Sec'y of Lab. v.*

In an opinion issued in 2023, we held that the term "mine" under the Mine Act was ambiguous and recognized that such ambiguity generally would warrant deference to the Secretary's reasonable interpretation under *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984). *Sec'y of Lab. v. KC Transp., Inc.*, 77 F.4th 1022, 1025, 1028 (D.C. Cir. 2023). But because the Secretary's position failed to grapple with several textual clues undermining her position, we vacated and remanded the Commission's decision, permitting the Secretary an opportunity to interpret the statute's ambiguous text. *Id.* at 1025, 1028-33.

KC Transport sought Supreme Court review. Petition for Writ of Certiorari, *KC Transp., Inc. v. Su*, 144 S. Ct. 2708 (2024) (mem.) (No. 23-876), 2024 WL 645391. Shortly after, the Supreme Court overruled *Chevron*. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411-12 (2024). The Supreme Court then granted KC Transport's petition, vacated our judgment, and remanded the case for further consideration in light of *Loper Bright*. *KC Transp., Inc.*, 144 S. Ct. at 2708.

We now reconsider the Secretary's petition in accordance with the mandate to "exercise [our] independent judgment," employing "the traditional tools of statutory construction . . . to resolve statutory ambiguities" and determine "whether an agency has acted within its statutory authority." *Loper Bright*, 603 U.S. at 401, 412. Reviewing the statute *de novo* and without deference, we conclude that KC

KC Transp., Inc., 77 F.4th 1022, 1025, 1033-34 (D.C. Cir. 2023). When KC Transport petitioned for certiorari, it did not raise this issue. *See generally* Petition for Writ of Certiorari at i., *KC Transp., Inc. v. Su*, 144 S. Ct. 2708 (2024) (mem.) (No. 23-876), 2024 WL 645391, at *i. Accordingly, whether KC Transport is an operator is not before us on remand.

Transport's facility is a mine within the meaning of the Mine Act.

I.

A.

The Mine Act provides for mandatory health and safety standards that govern the mining of coal, metals, and nonmetals.[2] *See Sec'y of Lab. v. Excel Mining, LLC*, 334 F.3d 1, 3 (D.C. Cir. 2003) (discussing 30 U.S.C. § 961(a)). In it, Congress affirmed that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner." 30 U.S.C. § 801(a). Congress also aimed "to provide more effective means and measures for improving the working conditions" in American mines and "to prevent death[,] . . . serious physical harm, and . . . occupational diseases." *Id.* § 801(c).

Under the Mine Act's regulatory scheme, the Secretary "develop[s]" and "promulgate[s] . . . improved mandatory health or safety standards for the protection of life" in mines. *Id.* § 811(a). MSHA enforces these standards by conducting regular inspections and issuing citations for any discovered violations. *See id.* §§ 813(a), 813(g), 813(k), 815(a). Violations are subject to civil penalties that the Secretary is authorized to assess and assign. *Id.* § 820(a).

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[2] For a brief history of the catastrophic injuries and fatalities that prompted federal regulation of mine safety, see Patrick C. McGinley, *With a Wink and a Nod: How Politicians, Regulators, and Corrupt Coal Companies Exploited Appalachia*, 57 U. Rich. L. Rev. 899, 905-08 (2023).

The Commission "is an independent agency charged with adjudicating disputes under the Mine Act." *Sec'y of Lab. v. Twentymile Coal Co.*, 456 F.3d 151, 152 (D.C. Cir. 2006); 30 U.S.C. §§ 815, 823. It is a multi-member body[3] "appointed by the President by and with the advice and consent of the Senate." 30 U.S.C. § 823(a). The Commissioners serve staggered six-year terms and are removable only for "inefficiency, neglect of duty, or malfeasance." *Id.* § 823(b). The Commission may appoint ALJs to hear disputes arising under the Mine Act in the first instance. *See id.* § 823(d)(1). Anyone aggrieved by an ALJ's decision may seek the Commission's discretionary review, *id.* § 823(d)(2)(A)(i), and any person aggrieved by an order of the Commission may obtain review in this Court, *id.* § 816(a)(1). The Secretary is also authorized to seek review or enforcement of any final order of the Commission in this Court. *Id.* § 816(b).

Whether a facility is subject to the Mine Act's obligations depends upon whether the facility constitutes a "mine." Under the Mine Act, a "mine" is defined as:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways,

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[3] By statute, the Commission "shall consist of five members." 30 U.S.C. § 823(a). But Congress provided that it may delegate all of its powers to a group of "three or more" Commissioners. *Id.* § 823(c). At the time this dispute was before the Commission, there were three Commissioners.

> shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

Id. § 802(h)(1). In short, the statute's jurisdiction over "mine[s]" covers: (1) extraction sites; (2) the "private ways and roads appurtenant" thereto; and (3) a list of items and places, *including "facilities,"* that are "used in," "to be used in," or "resulting from" mining-related activity. *Id.* (emphasis added).

B.

The material facts are undisputed. *See* J.A. 4-13 (Joint Stipulations). KC Transport is an independent trucking company that provides hauling services to various businesses for different materials (*e.g.*, coal, earth, and gravel) and operates truck maintenance and storage facilities. The at-issue events took place at KC Transport's facility located in Emmett, West Virginia.

One of KC Transport's clients is a coal mine operator known as Ramaco Resources ("Ramaco"), which maintains five mines near the Emmett facility. Ramaco's representatives informed KC Transport that it could use the facility for maintenance, as

Ramaco had no plans to operate a coal mine there. Thereafter, KC Transport began using the facility as its "maintenance area/shop." J.A. 7.

At the time in question, the facility included only a parking area and two maintenance shipping containers. The facility was a "convenient centralized maintenance facility . . . for KC Transport," J.A. 7, and KC Transport used it to operate about 35 trucks. Ramaco's coal processing plant—the Elk Creek Preparation Plant—is about one mile away; its deep mines are about four to five miles away; and its strip mines are about six miles away. An estimated "60% of the [facility's] services" supported Ramaco's five nearby mines, and the remaining 40% of services aided other companies, like "American Electric Power . . . and other coal operators." *Id.* The types of trucks at the facility were a mix of (1) off-road trucks, providing haulage for Ramaco's five nearby mines; and (2) on-road trucks used in earth, coal, and gravel haulage for non-Ramaco customers.

The only way to access the facility is by entering through a gate on Right Hand Fork Road, which is located just off the haulage road that runs past Elk Creek Plant and dead ends on the other side of the facility. The facility is about 1,000 feet from the haulage road, and while the road leading "into the KC Transport facility is not a coal haulage road[,] [it] does branch off from a haulage road." J.A. 6. While part of the haulage road is public, everything past the gate is reserved for authorized persons. On the day the trucks were cited, the gate was open because it was broken.

On March 11, 2019, an MSHA coal mine inspector visited Ramaco's nearby Elk Creek Plant.[4] Upon completing the Elk Creek Plant inspection, the inspector went "looking for trucks" that MSHA had previously cited, with the intent to terminate those citations. J.A. 5; *see* 30 U.S.C. § 814(e)(3). The inspector traveled over a mile along the haulage road, turned onto Right Hand Fork Road, continued for about 1,000 feet, and reached the facility.

Upon arriving, the inspector observed KC Transport's trucks undergoing maintenance. According to MSHA safety regulations, "[r]epairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments." 30 C.F.R. § 77.404(c) (2019). Two of KC Transport's trucks, however, were unblocked. Notably, because these particular trucks "were not licensed to haul products over public roads," they were "only being operated on private land," J.A. 10, and were "regularly used to haul coal from the five Ramaco mines to the Elk Creek prep plant," J.A. 8. At the time of inspection, the first truck was "jacked up with the wheels and tires off both back axles," and "[w]ork [was] being preformed [sic] on the brakes located on the back axles of the truck." J.A. 53. The second truck was raised and a miner was underneath it, "standing on the frame of the truck." J.A. 55; *see also* J.A. 58. Because neither of the two trucks were "blocked against motion," the inspector found KC

[4] Although MSHA had never inspected or attempted to inspect KC Transport's trucks at the facility, MSHA regularly inspected KC Transport's trucks at the Elk Creek Plant and along the haulage road.

Transport in violation of 30 C.F.R. § 77.404(c), and issued Citations Nos. 9222038 and 9222040.

C.

KC Transport contested the two citations, and both the Secretary and KC Transport filed cross-motions, requesting summary decision. The ALJ rejected the parties' interpretations of subsection (C) but ultimately ruled in the Secretary's favor, upholding the two citations as a proper exercise of the Mine Act's jurisdiction. In the ALJ's view, the facility and the mining-related equipment (here, the trucks) located therein were too connected to the mining process to be excluded from the Mine Act's jurisdiction. Thus, the ALJ held that the facility constituted a "mine" under subsection (C)'s plain meaning, "and because the trucks were used in mining and parked at the facility," they qualified as "equipment" under subsection (C). J.A. 84.

On appeal, a divided Commission reversed the ALJ's finding of jurisdiction and vacated the two contested citations. According to the majority, 30 U.S.C. § 802(h)(1) unambiguously limits the "mine" definition to extraction sites and lands appurtenant thereto. Thus, the Commission 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 subsection 3(h)(1)(A) is not a mine within the meaning of section 3(h) of the Mine Act." J.A. 168. One commissioner dissented, taking an even broader view than the ALJ, and argued that regardless of the facility, the trucks constituted mines as they were "used in" mining and are "essential and integral" to that process. J.A. 176.

The Secretary petitioned for review of the Commission's decision. 30 U.S.C. § 816(b).

II.

This case turns on whether the facility or the trucks constituted a "mine" under 30 U.S.C. § 802(h)(1)(C) of the Mine Act, such that MSHA had jurisdiction to cite KC Transport for violating safety regulation 30 C.F.R. § 77.404(c). If the Mine Act applies, the parties agree both citations should be upheld and KC Transport owes a penalty fee of $3,908 regarding citation No. 9222038, and $4,343 regarding citation No. 9222040. J.A. 12-13. Because we hold that the facility is a mine, we do not reach whether the trucks were also independently jurisdictional "mines" at the time they were cited.

A.

Before reaching the merits, we address the threshold issue of justiciability.

KC Transport argues that resolving this dispute "necessitate[s] a course of action that violates the Vesting, Take Care, and Opinion Clauses of Article II." Resps. Third Suppl. Br. 10. We construe KC Transport 's attack based on Article II as a structural constitutional objection seeking to preserve the separation of powers between the three branches. *See Freytag v. Comm'r*, 501 U.S. 868, 878-79 (1991) (resolving an Appointments Clause challenge). These types of challenges are "nonjurisdictional" and "thus not subject to the axiom that jurisdiction may not be waived." *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 574 F.3d 748, 756 (D.C. Cir. 2009) (citations omitted). Indeed, the Secretary agrees that KC Transport's Article II attack—raised nearly three

years after it filed its opening brief—is non-jurisdictional and forfeited. Pet. Supp. Br. 2, 11. Had this Court not invited briefing on the Article II issue through its own motion, we would likely agree. But given that KC Transport raised this dilatory argument at our request, we exercise our discretion to resolve it. *See Freytag*, 501 U.S. at 878-79.

1.

As a practical matter, calling this petition an intra-Executive dispute is more theoretical than real. The Secretary named KC Transport as the lead respondent, and KC Transport has been the only real litigant participating in the proceeding as an adversary to the Secretary. Granted, the Secretary also listed the Commission as a respondent as ostensibly required by Federal Rule of Appellate Procedure 15 ("Rule 15"), *see* Fed. R. App. P. 15(a)(2)(B), but after the Secretary filed his opening brief in our Court, the Commission notified us that "[p]ursuant to the Commission's discretionary policy in appellate court proceedings involving review of its decisions, the Commission will not be participating as an active litigant in the proceeding." Commission Letter, Dkt. No. 1963198 (Sept. 12, 2022). Rather than litigate, the Commission announced that it "will stand on the decision it issued in its adjudicative capacity." *Id.* In sum, the Commission bowed out of this dispute even before seeing KC Transport's brief in opposition to the Secretary, and we have not heard from it since in any substantive capacity. Thus, this is an intra-Executive dispute in name only. The real adversaries litigating this petition are the Secretary and KC Transport.

One would think that if our resolution of this dispute truly intrudes upon the prerogatives of the "unitary Executive," then the Executive would say so. But the Commission has said nothing at all, and the Secretary denies that there is any constitutional problem whatsoever. According to the Secretary, "[i]n all relevant constitutional respects, this proceeding is an ordinary civil enforcement action between the Secretary and a regulated entity. Such an enforcement action does not implicate Article III's jurisdictional limits or Article II's provision of authority to the President." Pet. Supp. Br. 1.

To put a finer point on the matter, the present statutory scheme does not undermine the unitary Executive because it does not prevent the President from resolving the alleged intra-branch dispute if he so desired. As explained by the Secretary,

> [O]n the merits, the critical point for Article II purposes is that the President must have the option of resolving disputes among his subordinates. He is not required, however, to exercise that authority in every circumstance, and, when he chooses not to resolve a particular dispute, his subordinates may act according to their own independent authorities. Congress's choice to permit the Secretary to seek judicial review in such a circumstance does not offend Article II, because that option does not effectively preclude the President from exercising his supervisory authority if he so chooses.
>
> * * *

> The Secretary's option of seeking judicial review does not preclude the President from exercising his supervisory authority; for example, if the President agreed with the Commission's understanding of the Secretary's jurisdiction, he could have directed the Secretary not to pursue judicial review. But in the face of the President's choice not to review the dispute, the Secretary's availing herself of the statutory right to seek judicial review does not violate Article II.

Pet. Supp. Br. 2-3, 13.

One might say that "[c]onsequently, the specific legal issue the [dissent] chooses to address is, at this time, nothing more than a tempest in a teapot." *See Nat'l Cable & Telecommunications Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. 327, 348 (2002) (Thomas, J., dissenting).

As the Supreme Court has observed, "[t]he mere assertion of a claim of an 'intra-branch dispute,' without more, has never operated to defeat federal jurisdiction; justiciability does not depend on such a surface inquiry." *United States v. Nixon*, 418 U.S. 683, 693 (1974). Looking beyond the surface, we see that enforcement of the Mine Act is the sole duty of the Secretary, so the Secretary is the party that is actually adverse to the mine company. The adjudicatory Commission simply does not have a stake in the dispute. *See Cuyahoga Valley Ry. Co. v. United Transp. Union*, 474 U.S. 3, 7 (1985) ("The [analogous Occupational Safety and Health Review] Commission's function is to act as a neutral arbiter and determine whether the Secretary's citations

should be enforced over employee or union objections."). Without true adversity between the Secretary and the Commission, the justiciability challenge is without merit. Article III of the Constitution implicates only "actual controversies arising between adverse litigants," and "no case or controversy exists" between a litigant and the judges (here, the commissioners) adjudicating the dispute. *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39-40 (2021) (citation modified); *see also id.* at 40-41 (noting that all members of the Court agree that state court judges are not proper parties to a challenge to a state law). We therefore hold that the Commission's role in this litigation as merely a nominal respondent does not create a case or controversy sufficient to implicate Article III justiciability concerns.

2.

Even if we are incorrect that the Commission's role as a nominal respondent is sufficient to foreclose the justiciability challenge, we alternatively hold that the separation of powers objection is strongly rebutted by our constitutional history and our precedent. Indeed, several actions taken by the First, Second, Third, and Fourth Congresses powerfully refute it.

One of the first laws enacted by the First Congress was the Collection Act. In it, the First Congress authorized the Comptroller of the Treasury to sue customs surveyors for the amount of their bond "upon any breach" of the condition of "faithful discharge" of their duties. An Act to Regulate the Collection of the Duties, ch. 5, § 28, 1 Stat. 29, 44 (1789). The First Congress expanded this provision the next year, by authorizing the Comptroller to "put in suit" the performance bonds of customs collectors, naval

officers, and surveyors who breach their duties. An Act to Provide More Effectually for the Collection of the Duties, ch. 35, § 52, 1 Stat. 145, 171 (1790). When adjudicating cases over payments of these performance bonds, Executive officers ended up on both sides of disputes. *See*, *e.g.*, *Sthreshley v. United States*, 8 U.S. 169, 169 (1807) (describing "an action of debt, brought by the United States in the district court of Kentucky district for the penalty of an official bond given by Sthreshley, with Obannon as his surety"); *United States v. Giles*, 13 U.S. 212, 213 (1815) ("It was an action of debt brought by the United States against Giles, late marshal of the district of New York, and his sureties, upon his official bond . . . ."). The Supreme Court never questioned the justiciability of these early intra-Executive bond lawsuits authorized by the First Congress.

Continuing the trend, the Second Congress authorized additional intra-Executive lawsuits. When establishing the Post Office, the Second Congress provided that if deputy postmasters or others failed to render their accounts, "it shall be the duty of the Postmaster General, to cause a suit to be commenced against the person or persons so neglecting or refusing." An Act to Establish the Post-Office and Post Roads Within the United States, ch. 7, § 24, 1 Stat. 232, 238-39 (1792).

The trend continued in the Third Congress. When it passed more extensive legislation expanding and regulating the Post Office, the Third Congress retained the provision requiring the Postmaster General to sue deputy postmasters and other officials who failed to render their documentation in a timely fashion. *See* An Act to Establish the Post-Office and Post-Roads Within the United States, ch. 23, § 24, 1

Stat. 354, 364-65 (1794). In similar fashion, the Third Congress enacted legislation authorizing the Comptroller of the Treasury, "at [his] discretion," to sue "any person who has received monies for which he is accountable to the United States" and fails to render account statements and vouchers in a timely manner. An Act for the More Effectual Recovery of Debts Due from Individuals to the United States, ch. 48, §1, 1 Stat. 441, 441 (1795).

Similarly, the Fourth Congress provided that if revenue officers failed to remit receipts, "it shall be the duty of the comptroller, and he is hereby required to institute suit for the recovery of the same." An Act to Provide More Effectually for the Settlement of Accounts Between the United States, and Receivers of Public Money, ch. 20, § 1, 1 Stat. 512, 512 (1797).

None of these early statutes distinguished between current and former executive officials in their text—either were subject to suit. *Contra* Dissenting Op. 25-27 (suggesting that these early statutes only applied to former officials). In *Walton v. United States*, 22 U.S. 651, 655 (1824), the Court described the Comptroller of the Treasury legislation as providing for "an impartial trial. . . [,] and if the Court and jury, before whom the cause is tried, should be of the opinion that any item of [the revenue officer's] account has been improperly rejected, it is restored to his credit." In other words, the Third Congress provided that a court and a jury, rather than the President, should settle the disagreements between a receiver of public monies and the Auditor and Comptroller. Similarly, in *Postmaster General of the U.S. v. Early*, 25 U.S. 136 (1827), the reporter described the lawsuit brought under the Postmaster legislation as an action "in the name of the Post Master General of the United

States," and when referring to the lead defendant, it said "Eleazer Early . . . *is* Post Master at Savannah." 25 U.S. at 136 (emphasis added).

Postmaster General v. Early is significant for another reason: the Court rejected an Article III jurisdictional challenge to the statute. Mr. Early challenged the jurisdiction of the Court, arguing that Article III, Section 2 applied to "controversies to which The United States is a party," while the statute required the lawsuit to be brought in the name of the Postmaster General, rather than in the name of the United States. 25 U.S. at 137-39. Writing for the Court, Chief Justice Marshall rejected the argument, explaining that even though the suit was brought in the name of the Postmaster General, the United States was the real party in interest. *Id*. at 146. The Court noted that prior versions of the statute specified that these lawsuits were to be brought in the name of the United States, and that the 1810 amendment directing the naming of the Postmaster General should not be construed as an intent to "relinquis[h]" the jurisdiction of the federal courts. *Id*. As the Court put it, "[t]hat construction[,] which will produce a consequence so directly opposite to the whole spirit of our legislation, ought to be avoided, if it can be avoided without a total disregard of those rules by which Courts of justice must be governed." *Id*. Thus, just as we held above, the Court rejected an Article III challenge based on the identity of the nominal party by identifying the real party in interest. *See supra* at 14. Even more importantly, the Court held that the jurisdiction of a lawsuit by the Postmaster General against another Executive official "is unquestionable." *Id*. at 147.

The actions of these early Congresses are compelling authority that intra-Executive suits authorized by Congress do not contradict the Framers' understanding of the separation of powers. As the Supreme Court has explained,"[w]hat is . . . decisive as to th[e] intent in the Constitution is the action on it by the second Congress, only a few years after, and of which some were members who aided in framing the Constitution itself." *Luther v. Borden*, 48 U.S. 1, 73 (1849); *see also Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 57 (1884) ("The construction placed upon the constitution by the first act of 1790 and the act of 1802, by the men who were contemporary with its formation, many of whom were members of the convention which framed it, is of itself entitled to very great weight . . . ."); *United States v. Watson*, 423 U.S. 411, 420 (1976) (using acts of the Second Congress to interpret the scope of the Fourth Amendment).

The dissent relies upon some early correspondence written by then-Chief Justice John Jay and then-Attorney General Edmund Randolph to argue that intra-Executive lawsuits are unconstitutional because a President cannot "delegate his decisions to the federal Judiciary." *See* Dissenting Op. 13-16. However, we respectfully submit that the force of the dissent's citations pale in comparison to the authoritative heft of the multiple pieces of *actual legislation* referenced above, passed by both chambers of the early Congresses, signed into law by George

Washington and John Adams,[5] and construed favorably by the Supreme Court.

In addition to the actions of these early Congresses, we have helpful precedent from the Supreme Court regarding more modern-era statutes. Significantly, the Court has held that a suit by the United States against the Interstate Commerce Commission and intervenor railroads was justiciable. *See United States v. ICC*, 337 U.S. 426, 430-31 (1949). Our dissenting colleague claims that *ICC* is off point because the Secretary was merely in the position of a regulated party. Dissenting Op. 19-21. While this characterization of the Secretary's role is accurate, it is not dispositive of the question before us. After all, the intra-Executive lawsuits authorized by the early Congresses did not involve Executive officials occupying the same role as regulated parties.

Furthermore, while the Cabinet Secretary was a regulated party in *ICC*, the Court later found justiciability in a dispute between a Cabinet Secretary and a commission acting in an adjudicatory capacity, where the Secretary's interest was not as a regulated party, but as a party with a special interest—recognized by Congress—in ensuring the proper interpretation and implementation of a statute. *See Udall v. Fed. Power Comm'n*, 387 U.S. 428, 439-40 (1967). *Udall* originated in our Court due, in part, to a petition filed by the Secretary of the Interior for review of orders of the Federal Power Commission. *See Washington Pub. Power Supply Sys. v. Fed. Power*

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[5] *See generally*, Christine Kexel Chabot, *Interring the Unitary Executive*, 98 Notre Dame L. Rev. 129, 133 (2022) (analyzing the unitary executive theory "[b]y scouring every public act passed by the First Congress").

Comm'n, 358 F.2d 840, 848 (D.C. Cir. 1966), *rev'd and remanded sub nom. Udall v. Fed. Power Comm'n*, 387 U.S. 428 (1967). Our Court denied the Secretary's petition. When reversing our Court and granting the Secretary's petition, the Supreme Court explained that "the Secretary . . . comes to the Federal Power Commission with a special mandate from Congress, a mandate that gives him special standing to appear, to intervene, to introduce evidence on the proposed river development program, and to participate fully in the administrative proceedings." *Udall v. Fed. Power Comm'n*, 387 U.S. at 439-40.

In sum, while the Court has cautioned that it would be "inappropriate" to "put the federal courts into the regular business of deciding intrabranch and intraagency policy disputes," *Dir., Off. of Workers' Comp. Programs v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 129 (1995), the Court has nonetheless recognized that Congress possesses the authority to designate an agency official as a "party aggrieved" that has standing to challenge the action of another Executive official, *id.* at 127-30. Thus, "*without benefit of specific authorization to appeal*, an agency, in its regulatory or policy-making capacity" will *not* generally be considered to be a party "'adversely affected' or 'aggrieved'" with standing to sue under the Administrative Procedure Act or other statutory review provisions. *Id.* at 127 (emphasis added). Thus, in *Newport News*, the Court held that the Director of the Office of Worker's Compensation Programs did not have standing to appeal a decision of the Labor Department's Benefit Review Board because the judicial review provision, 33 U.S.C. § 921(c), was "silen[t]" regarding the Director's authorization to appeal, and thus did not confer

standing. *Id*. at 129-30. However, in doing so, the Court distinguished 29 U.S.C. § 660(b), which expressly grants the Secretary of Labor authority to seek review of orders by the Occupational Safety and Health Review Commission, an adjudicatory body, and the Court held up that statute as an example of Congress designating an agency official as a "party aggrieved" in a statute. *Id*. at 130.

Indeed, the Court in *Newport News* went so far as to state that "Congress *could* have conferred standing upon the Director without infringing Article III of the Constitution"—it just did not do so. *Id*. at 133 (emphasis in original). In other words, the Court explained that Congress can confer standing upon an Executive official to sue another Executive official pursuant to its authority to prescribe the "judicial Power" of the inferior courts, U.S. Const. art. III, § 1, and "the judicial Power . . . extend[s] to all Cases . . . arising under . . . the Laws of the United States . . . [and] to Controversies to which the United States shall be a Party," *id.* § 2.

Two years later, the Court adopted the reasoning of *Newport News* in a jurisdictional holding in *Ingalls Shipbuilding, Inc. v. Dir., Off. of Workers' Comp. Programs*, 519 U.S. 248 (1997). In that case, Ingalls filed a petition for review of a decision by the Benefits Review Board, in which the Board ruled that the widow of a shipfitter was entitled to death benefits under the Longshore and Harbor Workers' Compensation Act. *See generally* 33 U.S.C. § 901, *et seq*. After the Director of the Office of Workers' Compensation Programs ("Director") appeared and filed a brief defending the award, Ingalls moved to strike the brief, arguing that the Director did not have an interest in the dispute and therefore lacked

standing. *See Ingalls Shipbuilding, Inc. v. Dir., Off. of Workers' Comp. Programs, U.S. Dep't of Lab.*, 65 F.3d 460, 463 n.2 (5th Cir. 1995), *aff'd sub nom. Ingalls Shipbuilding, Inc. v. Dir., Off. of Workers' Comp. Programs, Dep't of Lab.*, 519 U.S. 248, (1997). The court of appeals rejected the challenge. *Id.* Ingalls renewed the standing argument in the Supreme Court, where the Court also rejected it. As the Court explained, "[w]here there is already a case or controversy between parties properly before a court, as there is in this case between Ingalls and Mrs. Yates who properly appear pursuant to 33 U.S.C. § 921(c), that court's jurisdiction is not extended by the inclusion of *an additional party whose presence is also consistent with Article III*." *Ingalls Shipbuilding*, 519 U.S. at 266 (emphasis added).

As part of the basis for its holding in *Ingalls Shipbuilding* that the Director's "presence" in the case as a respondent does not violate Article III, the Court reiterated that "[a]s we stated in *Newport News*, although the Director had no statutory authorization to petition the Court of Appeals [to challenge a decision of an agency benefits review board], 'Congress could have conferred standing upon the Director without infringing Article III of the Constitution.'" 519 U.S. at 264 (emphasis removed) (quoting *Newport News*, 514 U.S. at 133). Thus, while an agency or Executive official "acting in [their] governmental capacity" will not ordinarily be considered a party aggrieved with an injury sufficient to establish Article III standing, the Court explained that Congress can nonetheless expressly confer such standing without "[a]ny impediment . . . of [a] constitutional origin." *Id.* at 263-64 (quoting *Newport News*, 514 U.S. at 130). Because this reasoning from

Newport News undergirds the Article III holding in *Ingalls Shipbuilding*, it is binding upon us. *See Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 67 (1996) ("When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound."); *United States v. Duvall*, 740 F.3d 604, 609 (D.C. Cir. 2013) (Kavanaugh, J., concurring in the denial of rehearing *en banc*) ("[O]nce a rule, test, standard, or interpretation has been adopted by the Supreme Court, that same rule, test, standard, or interpretation must be used by lower courts in later cases.")

Like its decision in *Postmaster General v. Early*, the Court in *Ingalls Shipbuilding* acknowledged Congress's power to define the "cases and controversies" subject to Article III jurisdiction by specifying which Executive officers or agencies may appear as parties. Accordingly, we are duty-bound to follow the statements and reasoning in *Newport News* and *Ingalls Shipbuilding*.

The statements in *Newport News* relating to a petition brought pursuant to the Occupational Safety and Health Act ("OSH Act") are particularly apt, since "the Mine Act's review process was written to conform to the review process of the OSH Act." *Sturm, Ruger & Co. v. Chao*, 300 F.3d 867, 873 (D.C. Cir. 2002); *see also Twentymile Coal Co.*, 456 F.3d at 161 & n.12 (citing cases describing the similarities between the Mine Act and the OSH Act). Hence, the *Newport News* citation to 29 U.S.C. § 660(b) in the OSH Act as an example of an instance when Congress has appropriately conferred standing on the Secretary of Labor to challenge an adjudicatory commission provides strong support in favor of justiciability here.

That is so because the language of Section 660(b) and of 30 U.S.C. § 816(b), the Mine Act's judicial review provision, is identical in all material respects. That is more than sufficient to settle the issue.[6]

Despite the observations of our dissenting colleague about tenure protections of agency commissioners, *see* Dissenting Op. 22-24, none of this is contingent upon the soundness of the holding of *Humphrey's Executor*. *See Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935). The reasoning of the early Congresses, *Postmaster General v. Early*, *Newport News*, and *Ingalls Shipbuilding* had nothing to do with whether either Executive official involved in an intra-Executive lawsuit had tenure protection or other indicia of "independence" from the President. Instead, the reasoning was based on the text and original understanding of Article II and Article III.

The dissent and KC Transport invite us to reject the understanding of several early Congresses and express Supreme Court guidance. We decline.

3.

But that is not all. Even if we are incorrect in holding that the Commission's presence in this case as

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[6] Using similar reasoning, our Court held long ago that the Department of Justice, on behalf of the United States, had standing to challenge an order of the Federal Maritime Commission, and that such a dispute was justiciable. *See United States v. Fed. Mar. Comm'n*, 694 F.2d 793, 794-95 (D.C. Cir. 1982) (en banc) (per curiam) (reinstating the standing and justiciability sections of the panel opinion); *see also id*. at 810 (reproduction of panel opinion) ("Assuming arguendo that the real parties in interest are the Department [of Justice] and the Commission, as intervenors contend, we hold that *United States v. Nixon,* 418 U.S. 683 (1974) disposes of this issue in favor of the Department." (citation modified)).

a nominal respondent is insufficient to establish an Article III justiciability challenge, and even if we are incorrect in holding that any such justiciability challenge fails, we hold that it would be appropriate to obviate the constitutional issue by removing the Commission as a respondent in this appeal. We therefore strike the Commission as a respondent to the petition.

We followed this course of action in the analogous case of *Oil, Chemical & Atomic Workers International Union v. Occupational Safety & Health Review Commission ("OCAW")*, 671 F.2d 643 (D.C. Cir. 1982). In OCAW, the labor union, pursuant to the OSH Act, 29 U.S.C. § 660(a), petitioned this Court to review a decision of the Occupational Safety and Health Review Commission ("OSHRC"). The labor union named OSHRC a respondent pursuant to Rule 15(a), but we held that OSHRC is an adjudicatory agency and could not participate in judicial proceedings before this Court. *Id.* at 652. We thus granted the union's motion to amend the petition and struck OSHRC from the caption, leaving the regulated entity (the employer) as "the proper respondent." *Id.* at 653. We noted that OSHRC, like the Commission here, is an adjudicator that "settle[s] disputes between" private parties "and the Secretary of Labor over citations issued by the Secretary's inspectors"; and that it "has no enforcement power," "no duty or interest in defending its decision on appeal," and "no stake in the outcome of the litigation." *Id.* at 652. That reasoning applies equally in this case, and therefore we strike the Commission from the caption, leaving the Secretary of Labor and KC Transport as the adverse parties to the appeal. *See id.*; *see also Hinson v. NTSB*, 57 F.3d 1144, 1147 n.1 (D.C. Cir.

1995) (extending *OCAW* to the National Transportation Safety Board and removing the Board as a respondent because "the Board's role is purely adjudicatory, and there is sufficient adversity between the real parties in interest to ensure proper litigation of all the issues"). Though no party here moved to strike the Commission from the caption, we have *sua sponte* reformed a caption before. *See Brown v. NHTSA*, 673 F.2d 544, 544 n.* (D.C. Cir. 1982) (*per curiam*). Furthermore, as we noted above, striking the Commission as a respondent has no real practical effect, because the Commission has not participated substantively in this action.

Our dissenting colleague argues that the relevant statute requires the Secretary to name the Commission as a respondent. Dissenting Op. 10. However, no such explicit mandate appears in the text. The statute provides: "The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in the Court of Appeals for the District of Columbia Circuit, and the *provisions of subsection (a) shall govern such proceedings to the extent applicable*." 30 U.S.C. § 816(b) (emphasis added). The provision does not specify who, if anyone, *must* be named as a respondent when the Secretary files a petition for review. Congress knows how to be specific. For instance, the Hobbs Act, the most broadly applicable agency review statute, provides that in petitions to review filed in a court of appeals, "[t]he action shall be against the United States." 28 U.S.C. § 2344. In the Administrative Procedure Act, Congress specified that "[i]f no special statutory review proceeding is applicable, the

action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer." 5 U.S.C. § 703; *see also* 5 U.S.C. § 7703(a)(2) (regarding judicial review of Merit Systems Protection Board in the courts of appeals, "[t]he Board shall be named respondent in any proceeding brought pursuant to this subsection"). No such explicit language about who must be named as a respondent appears in 30 U.S.C. § 816(b), the judicial review provision relied upon by the Secretary in this case.

The best that the dissent can do is point to subsection (a) of the statute, which pertains to petitions filed by a "person," other than the Secretary, who is "adversely affected or aggrieved" by an order of the Commission. Dissenting Op. 10, n.38. Subsection (a) contains language implying that the Commission is a party to a proceeding pursuant to such a petition for review filed in a court of appeals. *See* 30 U.S.C. 816(a) ("A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties . . . ."). Even if this language is best interpreted to mean that the Commission can be considered a party to such a judicial review proceeding, nothing in the text says that the Commission *must be named as a respondent in every single instance*, unlike the Hobbs Act and the other statutes noted above.

Further, and even more to the point, subsection (a) is only applicable to petitions for review filed by the Secretary "to the extent applicable." 30 U.S.C. § 816(b). Thus, even if the best reading of subsection (a) were that the Commission must be named as a respondent when a party other than the Secretary files a petition, the exception in subsection (b),

combined with the doctrine of constitutional avoidance, compels us to construe subsection (b) to hold that any requirement to name the Commission as a respondent in subsection (a) is "not applicable" when the Secretary is the petitioner. Just as the Court in *Postmaster General v. Early*, we do not believe that Congress intended to defeat federal court jurisdiction when it created a system of review *in the federal courts*, and we find it appropriate to construe the statute to prevent that anomalous result. *See* 25 U.S. at 146. *See also Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 577 (1988) ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.").[7] In addition, to the extent that Rule 15 requires the Commission to be named as a respondent when the Secretary files a petition, *see* Fed. R. App. P. 15(a)(2)(B), we can, on our "own . . . motion, . . . suspend any provision of these rules in a particular case and order proceedings as [we] direct[]" for "good cause." Fed. R. App. P. 2(a); *see also Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 314 (1988) ("More broadly, Rule 2 gives courts of appeals the power, for 'good cause shown,' to 'suspend the requirements or

[7] The same result would obtain if we found that subsection (a) clearly required the Secretary to name the Commission as a respondent and that such a result violated the Constitution, because we would employ the Act's severability clause to strike the language in subsection (b) that makes subsection (a) applicable to petitions filed by the Secretary. *See* 30 U.S.C. § 801 historical note (describing the severability provision of the Federal Coal Mine Health and Safety Act of 1969, which was untouched by the 1977 amendments and is still in effect).

provisions of any of these rules in a particular case on application of a party or on its own motion.'"); *United States v. Mitchell*, 216 F.3d 1126, 1130 (D.C. Cir. 2000) ("Insofar as the failure of the appellant to make application to the district court creates any obstacle, we note that under Federal Rule of Appellate Procedure 2, we have the authority to 'suspend any provision of' the Rules of Appellate Procedure, including Rule 22(b)(1) except in limited instances not here relevant. We therefore exercise that authority and proceed."). We find good cause to suspend any requirement in Rule 15 to name the Commission as a respondent here, to the extent any such naming creates a justiciability issue. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 842 (1999) (adopting a limiting construction of Federal Rule of Civil Procedure 23 to "avoid[] serious constitutional concerns"); *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 510 (1989) (construing Federal Rule of Evidence 609 to avoid due process concerns, "[n]o matter how plain the text of the Rule may be"); *see also* 28 U.S.C. § 2072(b) (providing that the federal rules of procedure "shall not abridge, enlarge or modify any substantive right").

Lastly, this Court has held that the Secretary's interpretation of the Mine Act takes precedence over any interpretation by the Commission. *See, e.g.*, *Sec'y of Lab. v. Excel Mining, LLC*, 334 F.3d 1, 6 (D.C. Cir. 2003) (citing *Sec'y of Labor, ex rel. Bushnell v. Cannelton Indus., Inc.*, 867 F.2d 1432, 1435 (D.C. Cir. 1989); *RAG Cumberland Res. LP v. Fed. Mine Safety & Health Rev. Comm'n*, 272 F.3d 590, 596 (D.C. Cir. 2001); *Sec'y of Lab. v. Fed. Mine Safety & Health Rev. Comm'n*, 111 F.3d 913, 920 (D.C. Cir. 1997)). The Mine Act itself demonstrates that Congress intended that the Secretary should have the power to challenge

the Commission's interpretations. *See* 30 U.S.C. § 816(b). Therefore, it makes no sense to construe the Mine Act to require that the Commission be named as a respondent if the result of such a construction is to prevent the Secretary from obtaining judicial review of the Commission's interpretation of the Mine Act. Otherwise, there would be no way to adhere to Congress's intent and our precedent that the Secretary's interpretation should have preference, because the Secretary could never bring such a challenge. Even if we are no longer compelled to give deference to the Secretary's interpretation, *see Loper Bright*, 603 U.S. at 411-12, we decline to construe the Mine Act in a way that altogether prevents the Secretary from advancing its position in court, particularly where the Secretary's position should have preference over the Commission's position.

B.

As to the merits, we review the Commission's legal conclusions *de novo*. *See Peabody Midwest Mining, LLC v. Sec'y of Lab.*, 70 F.4th 602, 607 (D.C. Cir. 2023). We begin with the statute's text, affording the words their "ordinary meaning at the time Congress adopted them." *Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021). But we do not interpret statutes "in a vacuum." *Torres v. Lynch*, 578 U.S. 452, 459 (2016) (quoting *Abramski v. United States*, 573 U.S. 169, 179 (2014)). Instead, we zoom out and consider the text "in the context of the entire statute." *Noble v. Nat'l Ass'n of Letter Carriers*, 103 F.4th 45, 50 (D.C. Cir. 2024). Finally, we may consider the text in light of its statutory and legislative history. *Id.*; *United States v. Hite*, 769 F.3d 1154, 1160 (D.C. Cir. 2014). Employing this comprehensive perspective and applying "all the

textual and structural clues" pertinent to the task, *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 283 (2018), we seek to ascertain the text's "best meaning," *Loper Bright*, 603 U.S. at 400.

Recall that § 802(h)(1) defines a "mine" as: (1) an extraction site, under subsection (A); (2) any "private ways and roads appurtenant to" that extraction site, under subsection (B); and (3) the places, "facilities," and items "used in," "to be used in," or "resulting from" the work of extraction, milling, or preparation of minerals, under subsection (C). This case concerns the jurisdictional reach of subsection (C).

The bulk of the parties' arguments turn on how much, if at all, location matters. The Secretary argues that subsection (C)'s reach depends primarily on function—*i.e.*, whether the place or thing is "used in, or to be used in, or resulting from" mining activities is all that matters, and there is thus no locational limit whatsoever. KC Transport and the dissent argue that the Secretary has jurisdiction over a subsection (C) facility only when it is "located at an extraction site, processing plant, or an appurtenant road at the time the violation occurs." Resps. Second Suppl. Br. 23-24; *see* Dissenting Op. 33-40. We conclude that the dissent and KC Transport's proposed construction is not the best reading of subsection (C). Rather, the Secretary's proposed construction is more aligned with the text, though we need not reach the question of whether subsection (C) has no locational limit whatsoever.

1.

We begin with the statutory text of subsections (A) through (C), which state that the following are considered a "mine":

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, *facilities*, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, *used in, or to be used in, or resulting from, the work of extracting such minerals* from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1) (emphases added).

This case concerns whether KC Transport's "facilit[y]" was "used in, or to be used in, or resulting from" mining activities. The statute does not define this phrase, so we typically adopt "its ordinary meaning." *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). Though the word "use" is "variously defined," it is "most sensibly read to mean active employment . . . and not merely a passive, passing or past connection." *Jones v. United States*, 529 U.S. 848, 855 (2000) (citation modified); *Use (v.)*, Black's Law Dictionary (4th rev. ed. 1968) ("To make use of, to convert to one's service, to avail one's self of, to employ.").

2.

Read in isolation, then, subsection (C) might reach "facilities" actively employed in the process of extracting, milling, or preparing minerals. But accounting for "*to be* used in" and "resulting from," 30 U.S.C. § 802(h)(1)(C), the ordinary meaning stretches to potentially gargantuan lengths that could lead to absurd results. For instance, according to the Secretary, a subsection (C) item that has not been used for mining for the past thirty years but is "to be used" for mining five years from now would be a mine. That limitless reach is belied by the "context" of subsection (C)'s "overall statutory scheme," *see Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)), which focuses on protecting persons presently engaged in mining activities, *see* 30 U.S.C. § 801.[8] The dissent agrees that the Secretary's position that there is only a functional limit is untenable, and for the dissent, this alone is enough to import an overly narrow geographical limit into subsection (C). *See* Dissenting Op. section III.A. But such a narrow locational restriction is also belied by the context of subsection (C)'s overall statutory scheme, as we describe below.

3.

"Construing statutory language is not merely an exercise in ascertaining the outer limits of a word's definitional possibilities"; it demands we seek to distill

[8] We have no need to resolve the outer bounds of "used in, or to be used in, or resulting from" in this case, because there is no dispute that the trucks and repair facility at issue were actively used to support extraction at the time of the inspection.

the meaning that "produces a substantive effect that is compatible with the rest of the law." *Sackett v. EPA*, 598 U.S. 651, 676 (2023) (citation modified); *see also Sturgeon v. Frost*, 577 U.S. 424, 438 (2016) ("Statutory language cannot be construed in a vacuum." (citation modified)). With that in mind, we consider whether the plain meaning of a subsection (C) "mine" comports with § 802(h)(1) as a whole.

Looking at all three subsections, KC Transport urges us to follow the Sixth Circuit in discerning from subsections (A) and (B) a locational limit that requires any subsection (C) item to be "adjacent to []or part of a working mine." Resps. Second Suppl. Br. 7 (quoting *Maxxim Rebuild Co. v. Fed. Mine Safety & Health Rev. Comm'n*, 848 F.3d 737, 739 (6th Cir. 2017)). To KC Transport, a "working mine" includes only the area of extraction, any roads appurtenant to that land, and any preparation site. We disagree. The text of subsection (C) imposes no strict adjacency or "on location" restriction. For its part, the dissent marshals a series of canons of interpretation, *i.e.*, the *noscitur* canon, the whole act rule, the rule against surplusage, and the absurdity canon, *see* Dissenting Op. 35-40, to create a veneer of textualism, yet in reality a locational limit simply does not exist in the text of subsection (C).

It cannot be the case that a subsection (C) facility is a mine only when it is located on or adjacent to an extraction site because such a reading would fail to give independent effect to subsection (C). Consider one type of place that appears in both subsections (A) and (C): "land." 30 U.S.C. § 802(h)(1). Reading subsection (C) "lands" to be mines only when such lands are located on or adjacent to an extraction site duplicates the coverage of subsection (A), which

defines a "mine" as "an area of land from which minerals are extracted . . . ." *Id.* Such redundancy violates the rule against surplusage. *See Williams v. Taylor*, 529 U.S. 362, 364 (2000) ("[It is a] cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute."); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 174 (2012) ("If possible, every word and every provision is to be given effect . . . . None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.").[9] The dissent argues that "an item in subparagraph (C) must be at an extraction site or processing plant." Dissenting Op. 43. However, the dissent's construction does not persuasively explain why subsection (C) applies to items *only* when located at an extraction site or processing plant, when Congress included within that subsection "lands . . . or other property . . . *used in, or to be used in, or resulting from*, the work of extracting such minerals . . . [or] the milling of such minerals, or the work of preparing coal or other minerals." 30 U.S.C. § 802(h)(1)(C) (emphasis added). Land and property can "be used in" extraction or "result from" extraction even when that land or property is not located at an extraction site, a milling site, or a processing plant.

Application of the rule against surplusage gives clear meaning to the "lands" covered in subsection (C): Those lands that are "used in, . . . to be used in, or resulting from" mining activity are mines, even if they

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[9] We suppose that defining "mine" to include "facilities" that are "adjacent" to an extraction site eliminates some surplusage, but the word "adjacent" appears nowhere in the text of statute.

are not located on the "area of land" where extraction or preparation occurs, or on roads appurtenant to such land. If that is true for "lands" defined by subsection (C), it must also be true for the "facilities" defined by subsection (C). *See S.D. Warren Co. v. Me. Bd. of Env't Prot.*, 547 U.S. 370, 378 (2006) ("A word is known by the company it keeps . . . ." (citation modified)); *Beecham v. United States*, 511 U.S. 368, 371 (1994) ("That several items in a list share an attribute counsels in favor of interpreting the other items as possessing that attribute as well."). We thus understand the text to permit MSHA to exercise jurisdiction over facilities even when those facilities are not located on an area of extraction, any roads appurtenant to that land, or a preparation site.

4.

Legislative history further confirms[10] that subsection (C) covers more than facilities "adjacent to []or part of a working mine." Resps. Second Suppl. Br. 7 (quoting *Maxxim*, 848 F.3d at 739). Congress enacted the Mine Act's predecessor, the Federal Coal Mine Health and Safety Act of 1969 ("Coal Act"), with the purpose of "improv[ing] mandatory health or safety standards to protect the health and safety of the Nation's coal miners." Pub. L. No. 91-173, § 2(g), 83 Stat. 742, 743. As our nation's use of mines accelerated, so too did the occurrence of mining-

[10] Though "legislative history is not the law," it can be helpful in confirming or reinforcing what the text shows. *Azar v. Allina Health Servs.*, 587 U.S. 566, 579 (2019) (citation modified); *Delaware v. Pennsylvania*, 598 U.S. 115, 138-39 (2023) (recognizing "that clear evidence of congressional intent may illuminate ambiguous text" (quoting *Milner v. Dep't of the Navy*, 562 U.S. 562, 572 (2011))).

related incidents. For example, 226 miners tragically died from unexpected mine explosions in West Virginia, Ohio, and Pennsylvania in 1940 alone. J. Davitt McAteer, *The Federal Mine Safety and Health Act of 1977: Preserving a Law that Works*, 98 W. Va. L. Rev. 1105, 1113 (1996). Additional incidents also took the lives of 119 miners in Illinois in 1951; 78 miners in West Virginia in 1968; 91 miners in Idaho in 1972; and 26 miners in Kentucky in 1976. *Id.*

Because several forms of mine-related property were not enumerated in the Coal Act's mine definition, incidents like the collapse of a retention dam left confusion as to whether the Coal Act's protections applied. This uncertainty put the Act's jurisdictional bounds in question, prompting congressional action. Indeed, upon enacting the more comprehensive 1977 Mine Act, Congress cited the 1972 collapse of the Buffalo Creek, West Virginia retention dams—"result[ing] in a large number of deaths, and untold hardship to downstream residents"—as a reason to amend the "mine" definition. S. Rep. No. 95-181, at 14 (1977) ("[T]he Committee [was] greatly concerned that at th[e] time [of the 1972 dam incident], the scope of the authority of the Bureau of Mines to regulate such structures under the Coal Act was questioned.").

The Coal Act's jurisdiction turned on location alone, and Congress intended to change that with the Mine Act. The Coal Act applied to "an area of land *and* all structures, facilities, . . . and other property . . . placed upon, under, or above the surface of *such land*." 30 U.S.C. § 802(h)(2) (1976) (emphases added); *see also* J.A. 161-62 ("[T]he coverage reached and applied only to personal or real property related to extracting coal *in that land*." (emphasis in original)).

In order to clarify its intention to more broadly protect miners, Congress replaced the location requirement in the Coal Act—where property is placed—with a function requirement in the Mine Act—how property is used. The Coal Act did not specifically extend to "lands, excavations, shafts, slopes, and other property, including impoundments, retention dams, and tailings ponds." S. Rep. No. 95-181, at 14. So, in the Mine Act, Congress added subsection (C) to reach those items and "express [its] intention that . . . [subsection (C) items] be included in the definition of mine and subject to regulation under the Act." *Id.*

By reaching outside the location-limited boundaries in the Coal Act, the Mine Act's boundaries are less predictable than the Coal Act's. But where doubts concerning the Secretary's jurisdiction arose, Congress expressed an "intention that what is considered to be a mine and to be regulated under this Act be given the broadest possibl[e] interpretation," and "that doubts be resolved in favor of inclusion of a facility within the coverage of the Act." *Id.* The Committee was "greatly concerned" that the authority to regulate the dams at Buffalo Creek, West Virginia was questioned prior to the 1972 collapse of the three dams, and the Committee made clear that such dams should be within the Mine Act's jurisdiction. *Id.* Notably, the closest of the three failed Buffalo Creek dams was over 0.6 miles from the coal preparation plant which fed them with wastewater. *See* Staff of S. Subcomm. on Lab. of the Comm. on Lab. & Pub. Welfare, 92d Cong., Buffalo Creek (W. Va.) Disaster, 1972 at 50 (Comm. Print 1972).

This history further supports our conclusion that subsection (C) was necessary—at least in part—to ensure the Mine Act's jurisdiction extended to places

that may not be located at (or even adjacent to) an extraction, milling, or processing site, even though they are necessarily connected with the use and operation of a mine. Limiting jurisdiction in the manner the Commission did would exclude the very facilities, such as the Buffalo Creek retention dams, that Congress expressly intended to cover.

The dissent gives lip service to this legislative history, agreeing that retention dams and tailings ponds fall within the definition of a mine under the Mine Act. *See* Dissenting Op. 37-38 & n.147. But our dissenting colleague nonetheless remains steadfast that nothing, including a retention dam or a tailings pond, can be a "mine" unless it is located "at" an extraction site or a processing plant. *Id.* at 33-40. That is so, even though there is no textual basis in the Mine Act to treat retention dams and tailings ponds any differently than the "facilities," "tools," "lands" or other items listed in subsection (C), and the dissent concedes that retention dams and tailings ponds are covered by the Mine Act, even when located miles away.[11] The dissent therefore tries to reconcile its

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[11] Retention dams and tailings ponds are often located several miles away from the nearest processing plant. *See Coeur Alaska, Inc. v. Se. Alaska Conservation Council*, 557 U.S. 261, 267 (2009) (proposed tailings pond was "located some three miles from the mine"); *Chevron Mining Inc. v. United States*, 863 F.3d 1261, 1268-69 (10th Cir. 2017) (mine tailings transported to tailings ponds nine miles away from the open-pit mine); *Molycorp, Inc., Site In New Mexico Proposed To Federal Superfund List*, 2000 WL 34430085 (tailings pond was six miles west of the mine); Michael R. Lee v. Genesis, Inc., 32 FMSHRC 1392, 1394, 2010 WL 4037727, at *2 (distance from mill to tailings pond was "several miles"); Sec'y of Labor, Mine Safety and Health Administration v. Fred Chismar, 22 FMSHRC 81, 82, 2000 WL

narrow, location-specific construction of the Act with the fact that retention dams and tailings ponds are usually miles away from extraction or processing sites. To do so, the dissent rationalizes that retention dams and tailings ponds are mines within the meaning of subsection (C) because they can be construed as part of a "unified mineral processing operation." Dissenting Op. 38, n.147 (quoting *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1551 (D.C. Cir. 1984)).

The dissent's reliance on *Carolina Stalite* to salvage its strained interpretation gives away the game. In that case, we relied on the facility's "physical proximity and operational integration" with the extraction site to find that the facility was part of a "unified mineral processing operation" and thus a mine within the meaning of subsection (C). *See Carolina Stalite*, 734 F.2d at 1551. The *Carolina Stalite* "physical proximity and operational integration" test looks a lot more like our construction of the statute: a facility is a mine when it is "necessarily connected with the use and operation of extracting, milling, or processing coal," *see infra* Section III, than the dissent's interpretation: a facility is a mine only when it is "at" an extraction, milling or processing site, *see* Dissenting Op. 36-37.

III.

Construing 30 U.S.C. § 802(h)(1) as a whole, we conclude that the best reading of the statute based on its text, structure, context, and history defines a "facility" as a "mine" under subsection (C) when it is

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235729, at *1 (tailings pond was "about two and a half miles outside the main gate of the mine").

necessarily connected with the use and operation of extracting, milling, or processing coal and other minerals. KC Transport and the dissent offer a parade of horribles about trucks located hundreds of miles from an extraction site or equipment that has not been used for mining in years, but we are not compelled to define the outer limit of the definition of "mine" with respect to movable objects or items used long ago to decide this case.

The parties stipulated that the trucks at issue were inspected while located at a "facility," and the parties further agreed that the trucks being inspected were used to haul coal from nearby mines to a nearby coal preparation plant. *See* J.A. 5-8. Though there may be tough calls on the margins, these and other stipulated facts make this one easy. The facility is located less than 1,000 feet from Ramaco's private haul road, about a mile from its coal processing plant, and less than five miles from its nearest extraction site. *Id.* at 6, 9. The facility was constructed there at Ramaco's permission. *Id.* at 7. Sixty percent of the services KC Transport provided at the facility were for Ramaco. *Id.* Those trucks servicing Ramaco exclusively operated on Ramaco's haul road, extraction sites, and preparation plant. *Id.* at 10. The cited trucks were actively being used to haul coal from the Ramaco extraction site to the preparation plant. *Id.* In fact, MSHA had previously inspected the cited trucks while they were at the extraction sites and preparation plant. *Id.* Under the best reading of the statute, a facility that is this close to extraction sites and a preparation plant and used to service trucks that routinely haul coal between those locations, and which is built specifically for this purpose is a "mine." Indeed, KC Transport's facility is closer to an

extraction site and a preparation plant than some retention dams and tailings ponds. *See supra* at 39-40. Such a facility, particularly when the majority of its services are for trucks used by a coal mining company, is necessarily connected with extracting and preparing coal; it is a "facilit[y] . . . used in . . . the work of extracting . . . [and] preparing coal." 30 U.S.C. § 802(h)(1)(C).

Admittedly, the statute's text does not provide a framework from which regulated parties can perfectly predict the scope of MSHA's jurisdiction with respect to all movable objects that are, have been, or could be used in mining. While that may be frustrating for KC Transport and similar businesses servicing mines, we have no need to reach all of those questions today. "Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations." *Sec. & Exch. Comm'n v. Chenery Corp.*, 332 U.S. 194, 202 (1947). Further, it is not our job to question the prudence of Congress's statutory scheme. *Feliciano v. Dep't of Transp.*, 145 S. Ct. 1284, 1296 (2025). We must enforce statutes as they are written. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). So doing, we hold that KC Transport's facility is a mine pursuant to 30 U.S.C. § 802(h)(1)(C).

* * *

For the foregoing reasons, we vacate the Commission's decision and affirm the Secretary's citations.

So ordered.

PAN, *Circuit Judge*, concurring:

I join the majority opinion in full. I write separately to express my view that a purely adjudicatory body — like the Federal Mine Safety and Health Review Commission (the "Commission") — is not a proper party when this court reviews one of its decisions. I also note that, because the court strikes the Commission from the case caption here, the jurisdictional arguments raised by the dissent are largely academic.

I begin with what should be common ground: A court generally is not a proper party when a litigant seeks review of one of its decisions.[1] That is because "[j]udges sit as arbiters without a personal or institutional stake on either side of the [underlying] controversy." *In re Justs. of Sup. Ct. of P.R.*, 695 F.2d 17, 21 (1st Cir. 1982) (Breyer, J.). Because Article III of the Constitution limits our jurisdiction to actual cases or controversies, and adversity does not exist for a party with no interest in the outcome of the proceedings, a district court may not appear before us to defend a judgment that it has entered. *Cf. Pulliam v. Allen*, 466 U.S. 522, 538 n.18 (1984) (stating that there is "no [Article III] case or controversy between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute").

That logic extends to other purely adjudicatory entities. As the Supreme Court has explained, "[t]o

[1] Narrow exceptions exist when a party seeks extraordinary relief from a judge's allegedly unlawful actions, *see Ex parte Fahey*, 332 U.S. 258, 259-60 (1947) (writs of mandamus), or when a court fills a nonadjudicatory role, *see Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 736 (1980).

require [an executive-branch] adjudicator to appear before the courts of appeals" to defend its decisions "makes little sense because that adjudicator has no more interest or stake in defending its orders in the courts of appeals than does a district court." *Ingalls Shipbuilding, Inc. v. Dir., Off. of Workers' Comp. Programs, Dep't of Lab.*, 519 U.S. 248, 268 (1997). Similarly, we have held that the purely adjudicatory Occupational Safety and Health Review Commission ("OSHRC") cannot appear before us as a party because it, "like a district court, has no duty or interest in defending its decision on appeal." *Oil, Chem. & Atomic Workers Int'l Union v. OSHRC* ("*OCAW*"), 671 F.2d 643, 652 (D.C. Cir. 1982).

Like OSHRC, the Commission has a function that is exclusively adjudicatory. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 215 (1994) ("[The Commission was] established exclusively to adjudicate Mine Act disputes."). In the Federal Mine Safety and Health Act of 1977 (the "Act"), "Congress place[d] adjudicatory authority" in the Commission, and housed it "outside the agency charged with administering and enforcing the statute." *Ingalls*, 519 U.S. at 267. Under that statutory scheme, the Secretary of Labor, "acting through" the Mine Safety and Health Administration ("MSHA"), administers and enforces the Act; and the Secretary and MSHA appear as parties before the Commission and before courts of appeals in their enforcement capacity. *Sec'y of Lab., MSHA v. Westfall Aggregate & Materials, Inc.*, 69 F.4th 902, 906 (D.C. Cir. 2023). The Commission, meanwhile, fulfills its adjudicatory function by "settl[ing] disputes between [private parties] and the Secretary." *OCAW*, 671 F.2d at 652. The Commission, like OSHRC, "has no stake in the

outcome" of petitions for review of its decisions, and, accordingly, it "may not participate in this court [upon] review [of its] decision as a party respondent in proceedings initiated by any party to [its] hearing." *Id.* Our reasoning in *OCAW* applies here and confirms that the Commission "should never be considered a proper statutory respondent under" the Act. *Id.*; *accord Jeroski v. FMSHRC*, 697 F.3d 651, 653 (7th Cir. 2012) (Posner, J.) ("The [Commission] is the equivalent of a court.").

Despite the holdings of *Ingalls*, *OCAW*, and *Jeroski*, it is not uncommon to find the Commission listed as a party in case captions, like the one at bar. Perhaps some litigants have treated the Commission as a party because they believe they must do so under 30 U.S.C. § 816 (the judicial-review provision of the Act) and Federal Rule of Appellate Procedure 15(a)(2)(B). But in my view, neither provision requires petitioners to name the Commission as a respondent.

30 U.S.C. § 816 enumerates the procedures through which parties can seek review of Commission decisions. Under § 816(a), once a party petitions a court to review a Commission order, the clerk of the court must transmit "[a] copy of such petition . . . to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in [28 U.S.C. § 2112]." My dissenting colleague reads "to the Commission and to the other parties" as implying that the Act considers "the Commission to be a party." Dissenting Op. 10. He argues that "[t]hose parties would not be '*other* parties' if the Act did not require the Commission to be a party." *Id.* (emphasis in original).

But that is not the most natural reading of § 816(a). When that provision requires the clerk to transmit a copy of the petition "to the Commission and to the other parties," the word "other" differentiates between the party that filed the petition for review, and the other parties to the case. Admittedly, that meaning would have been clearer if Congress had drafted § 816(a) differently, *e.g.*, by directing the clerk to provide copies "to the other parties and to the Commission." But the text's meaning is illuminated by the way in which § 816(a) and the cross-referenced § 2112 describe the Commission's role. Those two sections do not treat the Commission as a party, but instead assign it tasks that should fall to a neutral arbiter, such as requiring the Commission to "file in the court the record in the proceeding," 30 U.S.C. § 816(a); enabling limited remands for the Commission to engage in further factfinding, *see id.*; and empowering the Commission to coordinate with the judicial panel on multidistrict litigation, *see* 28 U.S.C. § 2112(a)(3).

Rule 15(a)(2)(B), meanwhile, instructs that a petition for review of an agency decision "name the agency as a respondent." The dissent contends that this rule "requires the Commission to participate in this suit" as a respondent. Dissenting Op. 31. But our case law forecloses that argument. Here, we consider a "split-function regime" in which "Congress place[d] adjudicatory authority outside the agency charged with administering and enforcing the statute." *Ingalls*, 519 U.S. at 267; *see also* 30 U.S.C. §§ 811, 823. The Commission's purely adjudicatory role in a split-function statutory scheme distinguishes it from agencies in which "a single entity wears the hats of adjudicator and litigator/enforcer," and for which the

application of Rule 15(a) is therefore "straightforward." *Ingalls*, 519 U.S. at 267. By contrast, we held in *OCAW* that when a party petitions for review of an adjudicator's decision in a split-function regime, "[t]he rationale of Federal Rule of Appellate Procedure 15(a) which mandates that each petition for review of an agency order shall name the agency as respondent is inapplicable." 671 F.2d at 652-53. That holding binds us, especially given the Supreme Court's express decision to withhold judgment on that very issue in *Ingalls*. *See* 519 U.S. at 267-68.[2]

The erroneous inclusion of the Commission as a named party does not always require us to take corrective action. *See, e.g.*, *Otis Elevator Co. v. Sec'y of Lab.*, 921 F.2d 1285 (D.C. Cir. 1990) (Thomas, J.) (adjudicating a case in which a private petitioner named the Commission and the Secretary as respondents). When a private petitioner seeking review under § 816(a) includes the Commission as a respondent alongside the Secretary, MSHA, and/or an intervenor-respondent, an Article III case or controversy exists between that petitioner and the

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[2] I respectfully disagree with my dissenting colleague, who asserts that *OCAW*'s logic is "in tension with recent Supreme Court precedent." Dissenting Op. 11 n.41. The cases he cites did not address the propriety of naming an exclusively adjudicatory body as a respondent: *Garland v. Ming Dai* held only that the word "appeal" in the Immigration and Nationality Act does not cover a "petition for review" in a court of appeals. 593 U.S. 357, 366-67 (2021). And *United States v. Arthrex, Inc.* simply analyzed the constitutional source of executive-branch adjudicatory authority. *See* 594 U.S. 1, 17 (2021). Because neither of the cited cases discussed the issue at hand or even mentioned the scope of Rule 15(a) in this or any other context, those decisions did not undermine the holding in *OCAW*.

other listed respondents. Under such circumstances, the Commission's nominal — albeit wrongful — inclusion in the case caption does not eliminate the requisite adversity of interests. While a court may choose to strike or dismiss the Commission, *see, e.g.*, *Jeroski*, 697 F.3d at 653, it need not do so under those circumstances.

As for § 816(b) petitions — *i.e.*, petitions filed by the Secretary/MSHA — I agree with the court's holding that the Secretary and MSHA do not violate the Constitution by naming the Commission as a nominal respondent alongside a private respondent. Where no party objects to such an arrangement — and where true adversity exists between the Secretary and the private respondent — a court need not implement corrective measures. *See, e.g.*, *Westfall*, 69 F.4th 902; *Sec'y of Lab., MSHA v. Knight Hawk Coal, LLC*, 991 F.3d 1297 (D.C. Cir. 2021); *Sec'y of Lab., MSHA v. Consolidation Coal Co.*, 895 F.3d 113 (D.C. Cir. 2018); *Sec'y of Lab., MSHA v. FMSHRC*, 111 F.3d 913 (D.C. Cir. 1997); *Sec'y of Lab., MSHA ex rel. Bushnell v. Cannelton Indus., Inc.*, 867 F.2d 1432 (D.C. Cir. 1989) (R.B. Ginsburg, J.).

But where, as here, a party argues that the presence of executive-branch entities on opposite sides of a case raises constitutional questions, the court can cure the captioning deficiency — and thus entirely avoid those questions — by striking or dismissing the Commission. And we can take that step either upon a party's motion, *see, e.g.*, *OCAW*, 671 F.2d at 653; *Hinson v. NTSB*, 57 F.3d 1144, 1147 n.1 (D.C. Cir. 1995), or *sua sponte*, *see, e.g.*, *Brown v. NHTSA*, 673

F.2d 544, 544 n.* (D.C. Cir. 1982).[3] By striking the Commission from the case caption here, the court has eliminated the theoretical constitutional concerns addressed by the dissent.

WALKER, *Circuit Judge*, dissenting:

The Executive Branch's history is replete with internal conflict. Think Jefferson versus Hamilton.[1]

Or Calhoun versus Eaton.[2]

Or Seward versus Chase.[3]

Or Stimson versus Morgenthau.[4]

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[3] Rare situations may require other fixes. If, for example, a petitioner names the Commission as the sole respondent, a court must add the proper respondent (and may strike or dismiss the Commission) to maintain a case or controversy. *See OCAW*, 671 F.2d at 653.

[1] Re: France; Debt; Federalism. *See* John Ferling, *Jefferson and Hamilton: The Rivalry That Forged a Nation* 246 (2013) (France); Ron Chernow, *Alexander Hamilton* 326-31 (2004) (federal assumption of state debts); Stanley Elkins & Eric McKitrick, *The Age of Federalism* 4 (1993) (federalism).

[2] Re: Eaton's wife. *See* John F. Marszalek, *The Petticoat Affair: Manners, Mutiny, and Sex in Andrew Jackson's White House* 66, 179 (1997) (controversy over Secretary of War John Eaton's wife led to dissolution of Andrew Jackson's cabinet).

[3] Re: Chase's ego. *See* Shelby Foote, *The Civil War: A Narrative: Fredericksburg to Meridian* 110 (Vintage Books 1986) (1963) ("In general [Seward and Chase] were diametrically opposed. . . . Chase, who was jealous of Seward's position as the President's chief advisor, wanted not only the seat closest to the one at the head of the table, but also, as time would show, the principal seat itself.").

[4] Re: Germany. *See* David McCullough, *Truman* 403 (1992) (debate over Morgenthau's proposal to de-industrialize Germany after World War II).

Or Marshall versus Clifford.[5]

Or Kissinger versus Rumsfeld.[6]

Or Baker versus Meese.[7]

Or Rubin versus Reich.[8]

Or Powell versus Rumsfeld (back again).[9]

Or Biden and Gates versus Panetta.[10]

The intra-Executive Branch dispute in today's case is hardly the stuff of history. A century from now, no "Team of Rivals" tale will recount the Secretary of Labor's conflict with the Mine Safety and Health Review Commission over whether an obscure auto shop in West Virginia is somehow a "mine." But

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[5] Re: Israel. *Recognition of Israel*, Harry S. Truman Library & Museum (accessed Aug. 1, 2025), https://perma.cc/SN5X-4RW3 (disagreement over whether to recognize Israel).

[6] Re: Détente. *See* Donald Rumsfeld, *Known and Unknown: A Memoir* 215-16 (2011).

[7] Re: Conservatism. *See* H. W. Brands, *Reagan: The Life* 241-43 (2015) (pragmatism versus philosophical consistency).

[8] Re: Liberalism. *See* Robert E. Rubin, *In an Uncertain World* 152-53 (2003) (disagreement over the direction of the Democratic Party after the 1994 election).

[9] Re: Iraq. *See* Rumsfeld, *supra*, at 650 (disagreement over military strategy).

[10] Re: Killing bin Laden. *See* Barack Obama, *A Promised Land* 686 (2020) ("Joe also weighed in against the raid."); Zeke J. Miller, *Biden Contradicts Earlier Account of Bin Laden Raid*, Time (Oct. 20, 2015), https://perma.cc/AGL2-YAE3 (Gates "weighed in . . . in opposition and . . . Panetta in favor"). Of course, Gates and Biden had their own disagreements. *See* Robert Gates, *Duty: Memoirs of a Secretary at War* 288 (2015) (On Biden: "I think he has been wrong on nearly every major foreign policy and national security issue over the past four decades.").

though history is unlikely to dwell on that dispute, the Constitution limits who can resolve it.

Under our Constitution, the resolution of an intra-Executive Branch dispute belongs to the one "who alone composes" the entire Executive "branch" — the President.[11] Sure, he can delegate to subordinates when he lacks the time or inclination to make a decision. But as a general matter, he cannot delegate decisions with the force of law to anyone outside the Executive Branch, especially not to an Article III court.[12]

Those courts can decide only "Cases" and "Controversies" between adverse parties. So Pepsi might sue Coca-Cola, but Pepsi cannot sue Pepsi. Likewise the Executive might sue Coca-Cola, but the Executive cannot sue the Executive.[13]

Today's suit pits the Executive Branch against itself. That is not a "Case" or "Controversy." It therefore has no place in a federal court.

I. Background

KC Transport is not a coal company. It does not mine coal, mill coal, or process coal. Rather, KC contracts with Ramaco Resources to haul coal for Ramaco in and around Emmett, West Virginia.

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[11] *Trump v. United States*, 603 U.S. 593, 610 (2024) (quoting *Trump v. Mazars USA, LLP*, 591 U.S. 848, 868 (2020)).

[12] *SEC v. FLRA*, 568 F.3d 990, 997 (D.C. Cir. 2009) (Kavanaugh, J., concurring) ("legal or policy disputes between two Executive Branch agencies are typically resolved by the President or his designee — without judicial intervention").

[13] There are narrow exceptions established by precedent inapplicable here for the reasons discussed in Part II.C below.

Ramaco lets KC use a patch of land off a private road near the mines to maintain KC's trucks. KC built a parking lot on the land and installed two shipping containers and two service trucks to use as a repair shop. The shop is more than a mile away from Ramaco's coal-processing plant and about four or five miles away from Ramaco's nearest extraction site.

The trucks KC services at the shop transport more than Ramaco's coal. KC also uses the trucks for other customers that don't mine coal (or anything else). For instance, KC has a "large earth moving project" for a different company.[14]

On March 11, 2019, Inspector John M. Smith, a coal-mine inspector from the Mine Safety and Health Administration, a subagency within the Department of Labor responsible for enforcing the Federal Mine Safety and Health Act, was inspecting Ramaco's coal-processing plant. After finishing the inspection, Inspector Smith wandered more than a mile along a haulage road, down another road, across a creek, and through an open gate, until he ended up at KC's repair shop. Thereupon, Inspector Smith launched into the Mine Safety and Health Administration's first-ever inspection related to KC's facility — despite the fact that if the facility were a "mine," there should have been at least two inspections a year.[15] During that inspection, Inspector Smith concluded that KC had not taken sufficient precautions to prevent two trucks

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[14] JA 7.

[15] 30 U.S.C. § 813(a); *see also* JA 85 n.9.

from moving during maintenance.[16] So he fined KC twice, once for each truck.

Rather than pay the fines, KC challenged them before the Mine Safety and Health Review Commission, a separate Executive Branch agency charged with reviewing citations issued by the Mine Safety and Health Administration. To oversimplify a bit, KC argued that its repair shop is not a "mine," and the Mine Safety and Health Administration can fine only "an operator of a coal or other mine."[17] The initial administrative law judge who heard the dispute rejected KC's challenge, concluding that the repair shop was a "mine."

On petition for discretionary review to the Commission, the Commission reversed the administrative law judge. Because KC's shop was "distant from a mine site, owned by an independent company, and used for parking and repairing its vehicles," the Commission said that KC's shop was not a "mine."[18] So the Commission concluded that the Mine Safety and Health Administration lacked jurisdiction to issue the two citations.

That decision created a conflict within the Executive Branch. The Secretary of Labor thought KC's shop was a mine. The Commission thought it was not.

1. The Secretary of Labor, acting through the Mine Safety and Health Administration, could

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[16] 30 C.F.R. § 77.404(c) ("Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments.").

[17] *Id.* § 814(a).

[18] JA 164.

have stood down and allowed the Commission to block KC's fine.

2. The Commission could have reconsidered.
3. Least likely of all, the President could have intervened to resolve the intra-branch conflict.[19]

Instead, the Secretary of Labor and the Mine Safety and Health Administration invited this court to resolve the intra-Executive Branch dispute.

This court (sort of) accepted that invitation. It held that the term "mine" was ambiguous, even though no party thought that it was.[20] Then, instead of determining the best reading of the Mine Act, the court remanded for the Secretary to "reconsider its position" in light of the Mine Act's ambiguity and to "adopt[ ] a reasonable interpretation of" the Mine Safety and Health Administration's jurisdiction.[21]

I dissented. I did not — and do not — believe that KC's repair shop is a "mine" as defined in the Mine Act.[22] In passing, as then-Judge Kavanaugh and Judge Rao had said in similar cases, I observed that a "'constitutional quandary is raised by a federal court resolving a lawsuit,' like this one, 'between two

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[19] The nature of that intervention could have taken any number of forms, limited by any number of practical considerations. Despite those practical limitations, it is unlikely that any legal impediment would have ultimately prevented the President from resolving the conflict. *Cf. infra*, at 22-24 (explaining that the Commission's removal protections are likely unconstitutional).

[20] *Secretary of Labor v. KC Transport, Inc.*, 77 F.4th 1022, 1029 (D.C. Cir. 2023).

[21] *Id.* at 1035.

[22] *See id.* (Walker, J., dissenting); *see also infra*, Part III.

Executive Branch agencies.'"[23] "'Such disputes do not appear to constitute a case or controversy for purposes of Article III,' because 'agencies involved in intra-Executive Branch disputes are not adverse to one another (rather, they are both subordinate parts of a single organization headed by one CEO).'"[24] But like Judges Kavanaugh and Rao, I understood "[o]ur precedents" to "allow such suits to proceed," at least in the circumstances at hand.[25]

KC sought certiorari. After that, the Supreme Court decided *Loper Bright Enterprises v. Raimondo*, which held that courts deciding a case or controversy may not defer to agencies "when faced with a statutory ambiguity," but must instead independently "determine the best reading of the statute."[26] In light of *Loper Bright*, the Supreme Court granted cert, vacated this court's judgment, and remanded for us to reconsider the petition for review.[27]

We asked for supplemental briefing on the effect of *Loper Bright*. After that, we held an oral argument, which included some questioning about the petition's justiciability. We then requested briefing on justiciability, among other things.

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[23] *KC Transport*, 77 F.4th at 1036 n.1 (Walker, J., dissenting) (quoting *USPS v. Postal Regulatory Commission*, 963 F.3d 137, 143 (D.C. Cir. 2020) (Rao, J, concurring)) (cleaned up); *see also SEC*, 568 F.3d at 997 (Kavanaugh, J., concurring).

[24] *KC Transport*, 77 F.4th at 1036 n.1 (Walker, J., dissenting) (quoting *SEC*, 568 F.3d at 997 (Kavanaugh, J., concurring)) (cleaned up).

[25] *Id.*; *see also SEC*, 568 F.3d at 998; *Postal Regulatory Commission*, 963 F.3d at 144.

[26] 603 U.S. 369, 400 (2024).

[27] *KC Transport, Inc. v. Su*, 144 S. Ct. 2708 (2024).

II. This Intra-Executive Branch Dispute Is Not Justiciable

"Before turning to the merits, we must assure ourselves of our jurisdiction."[28] Article III limits our jurisdiction to "Cases" and "Controversies."[29] That means the plaintiff or petitioner must demonstrate an "actual controvers[y] arising between adverse litigants."[30]

In today's case, one part of the Executive Branch — the head of an agency (the Secretary of Labor) and a subagency (the Mine Safety and Health Administration) — has challenged the decision of another part of the Executive Branch (the Mine Safety and Health Review Commission). That makes this an intra-Executive Branch dispute, not a conflict between adverse litigants.

We should therefore dismiss the petition for review. As a general matter, an intra-Executive Branch dispute is not a justiciable case or controversy in which the plaintiff or petitioner has standing to sue. Though I once read our precedents to preclude a dismissal on that ground, those precedents can and should be distinguished.

A. This Is an Intra-Executive Branch Dispute

Despite the presence of an executive agency on opposing sides of this case's caption, the Secretary of Labor argues that this suit "is not properly considered

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[28] *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 198 (2023).

[29] U.S. Const. art. III, § 2.

[30] *Muskrat v. United States*, 219 U.S. 346, 361 (1911).

an intra-Executive Branch dispute."[31] She makes two arguments. Neither persuades.

First, the Secretary argues that this case "is in substance a dispute between the Secretary and KC Transport," so "the nominal presence" of the Commission as a respondent "does not deprive the courts of Article III jurisdiction."[32]

But it was the Commission, not KC, that enjoyed the legal authority to stop the Secretary from citing KC. So the Secretary's actual dispute is with the Commission, not KC. In standing terms, the Secretary's asserted injury of being unable to enforce the Mine Act as she sees fit — the injury that a judgment "modifying" or "setting aside" the Commission's order would most naturally redress[33] — is "fairly traceable" to the Commission's decision, not to any "challenged action" taken by KC.[34]

Second, the Secretary argues that "the Commission is likely not a proper respondent in this proceeding" at

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[31] Secretary Second Supplemental Br. 2.

From here on, for simplicity, I will say "the Secretary" when I refer to the Secretary of Labor and the Mine Safety and Health Administration in the context of their mutual legal arguments.

[32] *Id.* at 6, 8; *cf. United States v. ICC*, 337 U.S. 426, 430 (1949) ("courts must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented").

[33] 30 U.S.C. § 815(a)(1) ("Upon" the "filing" of a petition for review of the Commission's order, "the court . . . shall have power to make and enter . . . a decree affirming, modifying, or setting aside . . . the order of the Commission . . . ."); *id.* § 815(b) ("The Secretary may also obtain review . . . of any final order of the Commission . . . .").

[34] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (cleaned up).

all.[35] She relies on *Oil, Chemical and Atomic Workers International Union v. Occupational Safety and Health Review Commission*.[36] In that case applying the Occupational Safety and Health Act, this court held that the Occupational Safety and Health Review Commission was not a proper respondent during judicial review of its orders.[37]

Oil Workers dealt with a different statute and does not control this case. To be sure, the Occupational Safety and Health Act and the Mine Act are similar, but there are good reasons not to extend *Oil Workers* to the Mine Act. For one thing, the Mine Act's plain text refers to "the Commission" when describing who will participate in judicial review.[38] It instructs the relevant circuit court clerk to transmit a filed petition "to the Commission and to the other parties."[39] Those parties would not be "*other* parties" if the Act did not require the Commission to be a party.[40] For another,

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[35] Secretary Second Supplemental Br. 10.

[36] 671 F.2d 643 (D.C. Cir. 1982).

[37] *Id.* at 651-53.

[38] 30 U.S.C. § 816(a)(1).

[39] *Id.*

[40] *Id.* (emphasis added).

The Article III adversariness problem this causes does not grant us permission to re-write this statute under the guise of severability doctrine and pretend the Mine Act doesn't make the Commission a party. *But see* Maj. Op. 29 n.7. Statutory provisions often result in a lack of constitutional jurisdiction. *See, e.g.*, *Hayburn's Case*, 2 U.S. (2 Dall.) 408, 410 n.† (1792). That doesn't mean we get to rewrite those statutes to give ourselves jurisdiction. *See Muskrat*, 219 U.S. at 350, 360-61 (failing to use severability analysis to confer jurisdiction upon itself when a statute created adversity problems). Instead, we dismiss. *Cf. Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869)

the Federal Rules of Appellate Procedure require petitioners to "name the agency as a respondent."[41]

("Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause."). Thus, the Supreme Court has done just that when faced with mandatory-joinder rules that lead to jurisdictional problems. *See Minnesota v. United States*, 305 U.S. 382 (1939) (dismissing for lack of jurisdiction a suit brought against several individuals because the United States was a mandatory party and possessed sovereign immunity). That is the proper course here.

[41] Fed. R. App. P. 15(a)(2)(B). To be sure, in *Oil Workers*, this court said that the "rationale" for Rule 15(a) was "inapplicable" to judicial review of Occupational Safety and Health Review Commission orders. 671 F.2d at 652-53. And upon motion of a party, it dismissed the OSHRC and struck it from the caption. *Id.* at 653; *see also Hinson v. National Transportation Safety Board*, 57 F.3d 1144, 1147 n.1 (D.C. Cir. 1995) (striking a similar agency's brief upon motion by the petitioner). But *Oil Workers* doesn't govern on this point either.

We should read *Oil Workers* in light of its distinctive context. After all, the logic of *Oil Workers* is in tension with recent Supreme Court precedent. In *Oil Workers*, our court reasoned that Rule 15 was "inapplicable" because "requir[ing] the OSHRC to appear as a party would parallel requiring a district court to appear and defend its decision upon direct appeal." *Id.* at 653. But that logic has been undermined by two strands of precedent: First, the Supreme Court has now made clear that even if Rule 15 treats "collateral judicial review of executive action as 'an appeal,' . . . that does not make it an 'appeal' akin to that taken from the district court to the court of appeals." *Garland v. Ming Dai*, 593 U.S. 357, 367 (2021). That is true even when decisions of adjudicatory bodies, like the Board of Immigration Appeals in *Ming Dai* or the Commission here, are "appeal[ed]" to a federal court. *Id.* Second, even if "[t]he activities of" the Commission "may take . . . 'judicial' forms, . . . they are exercises of — indeed, under our constitutional structure they *must be* exercises of — the 'executive Power,' for which the President is ultimately responsible." *United States v. Arthrex, Inc.*, 594 U.S. 1, 17 (2021)

If anyone is an unlikely respondent, it's KC. When petitioners (like the Secretary and the Mine Safety and Health Administration) seek review of an agency action (like the Commission's), the agency responsible for the reviewable action ordinarily appears as the respondent, and only after the suit is filed do affected third parties ordinarily have the opportunity to intervene.[42] Here, KC's role is analogous to a third-party intervenor, whose presence is not typically required.

In short, the Secretary's "beef in this Court" is with the Commission, not KC.[43] Therefore, this petition presents an intra-Executive Branch dispute.

B. Intra-Executive Branch Disputes Are Traditionally Nonjusticiable

Intra-Executive Branch lawsuits violate "the long-recognized general principle that no person may sue himself."[44] Here, the Secretary of Labor, the Mine Safety and Health Administration, and the Mine Safety and Health Review Commission are "subordinate parts of a single organization headed by

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(cleaned up). So I would not read *Oil Workers* to render Rule 15 inapplicable here. And so I would decline to exercise the majority's amorphous sua-sponte-party-dismissal-and-caption-reformation power.

[42] *See, e.g.*, *Center for Biological Diversity v. FERC*, 67 F.4th 1176 (D.C. Cir. 2023) (environmental groups as petitioners, FERC as respondent, and pipeline developer as intervenor); *Alphabet Workers Union-Communication Workers of America, Local 9009 v. NLRB*, 134 F.4th 1217 (D.C. Cir. 2025) (union as petitioner, NLRB as respondent, and employers as intervenors).

[43] KC Second Supplemental Br. 6.

[44] *ICC*, 337 U.S. at 430.

one CEO" — the President.[45] Put another way, because the President *is* the Executive Branch,[46] and those who serve in the Executive Branch serve only as his "alter ego[s],"[47] this dispute is in constitutional contemplation just *President v. President*. Therefore, the parties — or really the *party* — "are not adverse to one another," and their dispute over how to interpret the Mine Act does not "constitute a case or controversy for purposes of Article III."[48]

"This analysis is uncontroversial" in most contexts.[49] For example, no one expects a federal court to resolve a foreign-policy conflict between the Secretary of State and the Secretary of Treasury — if only because the Supreme Court disclaimed jurisdiction over exactly that shortly after the Founding.[50]

In that dispute, George Washington's cabinet disagreed about the best response to "late-eighteenth-century European hostilities that had spilled into North America."[51] Secretary of State Thomas Jefferson thought that certain treaties obligated the

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[45] *SEC*, 568 F.3d at 997 (Kavanaugh, J., concurring).

[46] *Trump v. United States*, 603 U.S. at 610.

[47] *Myers v. United States*, 272 U.S. 52, 133 (1926).

[48] *SEC*, 568 F.3d at 997 (Kavanaugh, J., concurring).

[49] *Id.*

[50] *Cf. Sprint Communications Co., LP v. APCC Services, Inc.*, 554 U.S. 269, 274 (2008) ("history and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider").

[51] William Baude, Jack Goldsmith, John F. Manning, James E. Pfander, & Amanda Tyler, *Hart & Wechsler's The Federal Courts and the Federal System* 66 (8th ed. 2025).

United States to aid France.[52] Conversely, Secretary of Treasury Alexander Hamilton thought that France's subsequent revolution provided grounds to suspend the treaties.[53]

Washington decided to call on the Supreme Court for assistance. At Washington's direction, Jefferson sent a letter to Chief Justice John Jay requesting the Court's opinion on twenty-nine legal questions.[54]

In the famed *Correspondence of the Justices*, Jay declined to "extrajudicially decid[e] the questions alluded to."[55] In a letter to Washington, Jay explained that a judicial advisory opinion would violate "[t]he lines of separation drawn by the Constitution between the three Departments of Government."[56] He added that "the Power given by the Constitution to the President of calling on the Heads of Departments for opinions, seems to have been *purposely* as well as expressly limited to *executive* Departments."[57]

Since then, intra-Executive Branch disputes usually get resolved in one of three ways.

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[52] Thomas Jefferson, *Opinion on the Treaties with France* (April 28, 1793), https://perma.cc/BPA7-6YZ6.

[53] Alexander Hamilton, *Enclosure: Answer to Question the 3d. Proposed by the President of the UStates* (May 2, 1793), https://perma.cc/M6HW-SGEK.

[54] *See Hart & Wechsler*, *supra*, at 67-68.

[55] Letter from the Justices of the Supreme Court to President George Washington (Aug. 8, 1793), https://perma.cc/D3MW-NP5X.

[56] *Id.*

[57] *Id.*

1. The President decides the question.[58]
2. The President designates someone else in the Executive Branch to decide the question, subject to the President's supervision.[59]
3. The President defers any definitive resolution of the dispute.[60]

What the President generally cannot do is what Chief Justice Jay read Article II and Article III of the Constitution to proscribe — delegate his decisions to the federal Judiciary. That's because Article II vests *all* of the "executive Power" in the President, and Article III limits courts' jurisdiction to the "Cases" and "Controversies" of adverse parties.[61]

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[58] Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* 335-37, 340 (2005) (Lincoln siding with cabinet officials who wanted to resupply Fort Sumter over cabinet officials who didn't want to); *cf.* Secretary Second Supplemental Br. 13 ("if the President agreed with the Commission's understanding of the Secretary's jurisdiction, he could have directed the Secretary not to pursue judicial review").

[59] Exec. Order No. 12,146, *Management of Federal Legal Resources*, 44 Fed. Reg. 42657, 42658 (July 18, 1979) ("Whenever two or more Executive agencies are unable to resolve a legal dispute between them, including the question of which has jurisdiction to administer a particular program or to regulate a particular activity, each agency is encouraged to submit the dispute to the Attorney General."); 28 U.S.C. § 512 ("The head of an executive department may require the opinion of the Attorney General on questions of law arising in the administration of his department."); 28 C.F.R. § 0.25(a) (The Office of Legal Counsel is responsible for "[p]reparing the formal opinions of the Attorney General" and "rendering informal opinions and legal advice to the various agencies of the Government.").

[60] David Halberstam, *The Best and the Brightest* 350 (Fawcett 1973) (1972) ("he did not want to rush too quickly, to split his Administration unnecessarily").

[61] U.S. Const. art. II, § 1, cl. 1; *id.* art. III, § 2.

C. No Exception Renders This Dispute Justiciable

Against this backdrop, courts have found intra-Executive Branch disputes justiciable only in narrow circumstances. Beginning primarily in the mid-twentieth century, courts began hearing intra-Executive Branch disputes (1) when an agency asserts an interest in its corporate, rather than sovereign, capacity, or (2) when Congress has purported to provide the agency with independence from the President. That second exception is a relic of the *Humphrey's Executor* era when the administrative state haunted American public law as a "headless Fourth Branch"[62] — an era that has not survived the Supreme Court's decisions in *Free Enterprise Fund*,[63] *Seila Law*,[64] *Collins*,[65] and *Trump v. United States*,[66] to name just a few.

In today's case, the first exception does not apply because no agency is asserting an interest in its corporate capacity. And even if the second exception has survived the Supreme Court's recent cases, it does not apply here because the Secretary has forfeited any argument that any agency in this case is independent of the President. That forfeiture is understandable in

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[62] *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868, 921 (1991) (Scalia, J., concurring in part and concurring in the judgment); *see also Humphrey's Executor v. United States*, 295 U.S. 602 (1935).

[63] *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010).

[64] *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020).

[65] *Collins v. Yellen*, 594 U.S. 220 (2021).

[66] 603 U.S. at 610 ("The President" is "the only person who alone composes a branch of government.").

light of the current administration's position that *Humphrey's Executor* was wrongly decided.[67]

1. Nongovernmental Interest

Precedents allow courts to adjudicate some intra-Executive Branch disputes when the plaintiff-agency asserts a nongovernmental interest — for example, if it sues in its capacity as a regulated entity[68] or as a market participant.[69] In these types of cases, the plaintiff-agency acts "as a private party would" — that is, as "a beneficiary of [a] regulatory scheme" and not as a sovereign attempting to enforce the law against private parties.[70] When acting in this "corporate

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[67] Letter from Sarah M. Harris, Acting Solicitor General, to Richard J. Durbin, Ranking Member, Senate Committee on the Judiciary, *Re: Restrictions on the Removal of Certain Principal Officers of the United States* (Feb. 12, 2025), https://perma.cc/LE2W-4MFT.

[68] *See e.g.*, *IRS v. FLRA*, 494 U.S. 922 (1990) (IRS challenge to FLRA order requiring IRS to bargain with union); *Postal Regulatory Commission*, 963 F.3d at 138 (Postal Service challenge to regulator's order requiring "disclosure of certain financial information").

[69] *ICC*, 337 U.S. at 428 (challenge to railroad shipping rates charged to government); *United States v. FCC*, 707 F.2d 610, 612 n.2 (D.C. Cir. 1983) (challenge on behalf of several executive agencies in their "consumer interests" to AT&T's telephone rates).

[70] Michael Herz, United States v. United States*: When Can the Federal Government Sue Itself?*, 32 Wm. & Mary L. Rev. 893, 959-60 (1991); *see also Director, Office of Workers' Compensation Programs, Department of Labor v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 128 (1995) (intra-Executive Branch suits may be permissible when an agency sues in "its nongovernmental capacity — that is, in its capacity as a member of the market group that the statute was meant to protect").

capacity," agencies have been permitted to assert a nongovernmental "interest against another agency."[71]

By contrast, when an agency sues another agency in its "status . . . as [a] regulator or administrator," it asserts a sovereign interest.[72] Because "[t]here is but one federal sovereign," there can be but one sovereign interest.[73] So "[i]f both sides assert an interest as a sovereign," then they "are asserting the same interest, and there is no controversy."[74]

No doubt, agencies may disagree about how to exercise the United States's sovereign powers in enforcing the law against third parties. But those

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[71] Joseph W. Mead, *Interagency Litigation and Article III*, 47 Ga. L. Rev. 1217, 1258 (2013).

[72] *Newport News*, 514 U.S. at 128.

[73] Mead, *supra*, at 1260.

[74] *Id.* at 1255.

The distinction between the Government's capacity as a sovereign and as a marketplace participant is recognized in other areas of the law. For example, the Foreign Sovereign Immunities Act protects foreign governments from suits related to their sovereign activities, but not related to their activities as market participants. 28 U.S.C. § 1605(a)(2) ("A foreign state shall not be immune . . . in any case . . . in which the action is based upon a commercial activity carried on in the United States by the foreign state . . . ."). Similarly, the antitrust state-action doctrine contemplates that states may not be immune from federal antitrust laws when acting as market participants, even though the antitrust laws generally do not cover state regulatory actions. *See City of Columbia v. Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 379 (1991) ("with the possible market participant exception, *any* action that qualifies as state action is *ipso facto* exempt from the operation of the antitrust laws" (cleaned up)). And finally, the Dormant Commerce Clause permits states to discriminate against out-of-state businesses when acting as market participants but not when acting as regulators. *See Reeves, Inc. v. Stake*, 447 U.S. 429, 436-37 (1980).

disputes are for the President to resolve. To involve the federal courts would be to ask them to decide "intra-branch and intra-agency policy disputes — a role that would be most inappropriate."[75]

The Secretary's principal authority, *United States v. ICC*, does not help the Secretary. Instead, it provides a paradigmatic example of the nongovernmental-interest exception and shows why this case does not fit into that exception.

ICC involved railroad tariffs charged to the War Department during World War II.[76] After the Government took control of piers in Norfolk, Virginia, it took responsibility for transporting goods between railcars and piers.[77] But the Government alleged that the railroads continued to charge for that service even though they were no longer providing it.[78] So it filed a complaint with the Interstate Commerce Commission seeking to recover the alleged overcharges.[79] The Commission denied relief, and the Government brought an action in federal court challenging the unfavorable order.[80]

Although the United States was on opposing sides of the caption, the Supreme Court held that the case was justiciable because the Government had challenged the ICC order in its capacity as a market

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[75] *Newport News*, 514 U.S. at 128-29.

[76] 337 U.S. at 428; *see also United States v. ICC*, 78 F. Supp. 580, 581 (D.D.C. 1948).

[77] *ICC*, 337 U.S. at 428.

[78] *Id.*

[79] *Id.* at 428-29.

[80] *Id.* at 429.

participant.[81] According to the Court, "the Government" was "not less entitled than *any other shipper* to invoke administrative and judicial protection" to determine whether it was overcharged.[82]

The Secretary reads *ICC* for the proposition that "[w]here there is an actual case or controversy between a federal agency and private party, the nominal presence of another federal agency does not deprive the courts of Article III jurisdiction."[83] But that reading is contrary to the Supreme Court's understanding of its own precedent. As that Court has explained, the key takeaway from *ICC* is that "the status of the Government as a statutory beneficiary or market participant must be sharply distinguished from the status of the Government as regulator or administrator."[84] Thus, *ICC*'s justiciability turned not on "the presence of the railroads" as private parties, but on "the presence of a nongovernmental interest on the part of the United States."[85]

This court, too, has heard intra-Executive Branch disputes involving nongovernmental interests. For example, in *United States v. FCC*, executive agencies challenged the "rate of return" set by the FCC for

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[81] *Id.* at 430; *see also Newport News*, 514 U.S. at 128 (explaining that *ICC* dealt with a suit by the Government "in its capacity as a member of the market group that the statute was meant to protect").

[82] *ICC*, 337 U.S. at 430 (emphasis added).

[83] Secretary Second Supplemental Br. 8.

Even if this understanding of *ICC* were correct, it wouldn't help the Secretary because the Commission's presence isn't "nominal" in any sense of the word. *See supra*, Part II.A.

[84] *Newport News*, 514 U.S. at 128 (discussing *ICC*, 337 U.S. 426).

[85] Herz, *supra*, at 959.

AT&T's interstate and international telephone services.[86] The Department of Justice brought the challenge on behalf of the "Department of Defense, the General Services Administration, and other federal executive agencies" to vindicate their "consumer interests."[87] In other words, the agencies sued the FCC in their corporate capacities as telephone ratepayers, not in their sovereign capacities as enforcers of the law.

This petition is not like *ICC* or *FCC*. The Secretary has not challenged the Commission's order as a market participant or as a regulated entity. Instead, the Secretary is suing "as [a] regulator or administrator"[88] seeking to vindicate its sovereign interest "in [the] enforcement of the laws."[89] So this suit does not fall under the nongovernmental-interest exception.

2. Presence of an "Independent Agency"

Courts have also held that intra-Executive Branch disputes involving so-called independent agencies — that is, agencies whose heads purport to enjoy removal protection — are justiciable.[90] The theory

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[86] 707 F.2d at 612; *see also In the Matter of American Telephone & Telegraph Co.*, 86 F.C.C.2d 257, 258 (1981).

[87] *FCC*, 707 F.2d at 612 n.2.

[88] *Newport News*, 514 U.S. at 128.

[89] Secretary Second Supplemental Br. 2.

The Secretary also asserts an interest in collecting a civil penalty from KC. *Id.* Although money is at stake, the Secretary here is not acting as a market participant seeking to recoup overcharges, unlike in *ICC*. Instead, the Secretary seeks to collect the civil penalty in her sovereign capacity, and any penalty collected would "accrue to the United States" "for deposit into the Treasury." 30 U.S.C. § 820(j).

[90] *SEC*, 568 F.3d at 997 (Kavanaugh, J., concurring).

goes that because independent agencies "operate with some (undefined) degree of substantive autonomy from the President in a kind of extra-constitutional Fourth Branch," they "can be sufficiently adverse to a traditional executive agency to create a justiciable case."[91]

That theory might have made sense on the logic of *Humphrey's Executor*, which upheld removal restrictions on members of the Federal Trade Commission in 1935 on the grounds that the FTC "occupie[d] no place in the executive department" at all.[92] Under that logic, there would not even be an intra-branch dispute if an independent agency is involved.

Today, *Humphrey's Executor* is a shell of itself.[93] The Supreme Court has emphasized that *Humphrey's Executor*'s "conclusion that the FTC did not exercise executive power has not withstood the test of time."[94]

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[91] *Id. United States v. FMC*, 694 F.2d 793 (D.C. Cir. 1982), is best understood as falling within this category. *See SEC*, 568 F.3d at 997 (Kavanaugh, J., concurring) (reading *FMC* that way). To be sure, the majority's opinion in *FMC* obscured more than it illuminated. Just 10 days after it was written, another panel explained that *FMC* held the dispute at issue justiciable simply because it "raise[d] issues that courts traditionally resolve and the setting assure[d] . . . concrete adverseness." *United States v. FMC*, 655 F.2d 247, 252 (D.C. Cir. 1980). That's not much of an explanation. So in making *FMC* fit with the entire body of precedent, the best reading would seem to be that the dispute ensured "sufficient adversity" for the reason the Department of Justice in that case suggested: the Commission was "an independent agency." *FMC*, 694 F.2d at 810.

[92] *Humphrey's Executor*, 295 U.S. at 627-28.

[93] *See Harris v. Bessent*, 160 F.4th 1235, 1248 (D.C. Cir. 2025) ("[V]ery little remains of *Humphrey's Executor*.").

[94] *Seila Law*, 591 U.S. at 216 n.2.

And the Court has interpreted the decision as a narrow exception to the baseline rule that the President may remove executive officers at will.[95] Under the modern Court's rule, removal restrictions are permissible only for the heads of "a multimember body of experts, balanced along partisan lines, that perform[s] legislative and judicial functions" and that does "not wield substantial executive power."[96]

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[95] *Id*. at 216-17; *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025) (the President "may remove without cause executive officers who exercise that power on his behalf, subject to narrow exceptions recognized by our precedents" (citing *Seila Law*, 591 U.S. at 215-18)); *see also Severino v. Biden*, 71 F.4th 1038, 1050 (D.C. Cir. 2023) (Walker, J., concurring) ("[L]ittle to nothing is left of the *Humphrey's* exception to the general rule that the President may freely remove his subordinates.").

[96] *Seila Law*, 591 U.S. at 216, 218.

The Supreme Court has also upheld restrictions on the President's power to remove "inferior officers with limited duties and no policymaking or administrative authority," *id.* at 218, such as the independent counsel in *Morrison v. Olson*, 487 U.S. 654 (1988). Unlike the FTC in *Humphrey's Executor*, the independent counsel in *Morrison* was understood to be part of the Executive Branch. *See Morrison*, 487 U.S. at 691-92; *Seila Law*, 591 U.S. at 217-18. But like the FTC, the independent counsel was still deemed, well, *independent*. *See Morrison*, 487 U.S. at 691-92. That lies in tension with the Court's more recent teaching that the President "alone composes" the entire executive "branch." *Trump v. United States*, 603 U.S. at 610. Still, while *Morrison* remains on the books, it may mean that intra-Executive Branch disputes involving independent counsel investigations cannot be properly characterized as *President v. President*. *Cf. SEC*, 568 F.3d at 997 (Kavanaugh, J., concurring) (explaining that intra-Executive Branch disputes have been treated as permissible when "Presidents cannot (or at least do not) fully control" the Executive Branch officials). Accordingly, they may present sufficient adversity to be justiciable. *See United States v. Nixon*, 418 U.S. 683, 692-97 (1974).

The Secretary has not argued that the Commission satisfies that test. Nor has the Secretary argued that this petition is justiciable based on the Commission's status as an independent agency. Therefore, the Secretary "forfeited reliance on" any independent-agency exception, and we need not "consider it."[97]

In any event, I doubt that the Commission's removal protections are constitutional.[98] For one thing, the Commission may represent itself in court, even if it sometimes elects not to substantively participate in litigation. It may petition courts to enforce its subpoenas, including by holding individuals in contempt.[99] And it exists as a permanent body.[100] These are likely among the reasons that one member of the Supreme Court has already concluded that the Commission "exercis[es] substantial executive authority,"[101] which disqualifies it from the *Humphrey's Executor* exception to the President's power to remove principal officers at will.[102]

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[97] *Clevinger v. Advocacy Holdings, Inc.*, 134 F.4th 1230, 1235 (D.C. Cir. 2025).

[98] *See* 30 U.S.C. § 823(b)(1) (commissioners removable "by the President for inefficiency, neglect of duty, or malfeasance in office").

[99] *Id.* § 823(e).

[100] *Cf. Wiener v. United States*, 357 U.S. 349, 350 (1958) ("The Commission was to wind up its affairs not later than three years after the expiration of the time for filing claims . . . .").

[101] *PHH Corp. v. CFPB*, 881 F.3d 75, 173 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting).

[102] *See Seila Law*, 591 U.S. at 218 (*Humphrey's Executor* exception applies only "for multi-member expert agencies that do not wield substantial executive power.").

In short, the Secretary does not assert, and the Constitution, even under current Supreme Court precedent, likely does not allow, the Commission to exist outside of Article II in a supposed "Fourth Branch" of government.[103] It is a subordinate Executive Branch agency. So it is not legally adverse to other parts of the Executive Branch — just as the Chief Executive is not legally adverse to himself.

D. The Majority's Counterarguments

The majority offers three main counterarguments. It argues (1) intra-Executive Branch disputes are justiciable because early congresses blessed that practice; (2) my two purported exceptions are too narrow, because Supreme Court precedent establishes that adversity exists between the President and himself whenever Congress says so; and (3) this case does not need to be an intra-Executive Branch dispute at all, because Federal Rule of Appellate Procedure 2(a) lets us disregard Federal Rule of Appellate Procedure 15's requirement that the Commission be joined as respondent. All three fail.

1. Early Congressional Practice

The majority starts by pointing to a few statutes from the first four congresses. But these statutes don't mean what the majority thinks they mean.

The majority's own cases prove as much. *Walton v. United States*, for example, was not an early intra-Executive lawsuit because it involved a suit against an apparent *former* government official.[104] So, naturally, the suit was "against [Walton] in his

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[103] *SEC*, 568 F.3d at 997 (2009) (Kavanaugh, J., concurring).

[104] *See* 2 U.S. (9 Wheat.) 651, 652 (1824).

individual capacity," not his official capacity.[105] So too with *Sthreshley v. United States*, another suit brought against an individual who no longer even occupied the office.[106]

This all makes sense if one just zooms out a bit. The whole point of the statutes the majority cites was that the United States would receive money when certain officials failed to uphold their legal responsibilities.[107] Thus, the suits brought under these statutes must have been brought against private individuals. If it were otherwise, judgment would have run against the office, meaning the Government would have had to pay itself — a

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[105] *Id.* at 653; *see also id.* at 651, 656.

[106] 8 U.S. (4 Cranch) 169, 171 (1807).

[107] *E.g.*, An Act to Establish the Post-Office and Post Roads Within the United States, ch. 7, § 24, 1 Stat. 232, 238-39 (1792) (providing that the Postmaster General should "cause a suit to be commenced" against "any deputy postmaster or other person," who "refuse[d] to render his accounts, and pay over to the Postmaster General, the balance by him due, at the end of every three months" and if he failed to do so, "the balances due from every such delinquent" would "be charged to, and recoverable from the Postmaster General"); *see also* Mead, *supra*, at 1236 (discussing this law); *Postmaster-General of the United States v. Early*, 25 U.S. (12 Wheat.) 136, 144-45 (1827) (discussing this law and its successors); *id.* at 145 ("The suit is brought for money due to the United States . . . ."). To the extent any of the remaining statutes authorized suits for something other than money, they authorized suits only against private individuals. For example, the Act for the More Effectual Recovery of Debts Due from Individuals to the United States authorized "suits" to "be commenced" against either "any person" or "the executor or administrator of such person, if he be deceased." Ch. 48, § 1, 1 Stat. 441, 441 (1795). It did not authorize suit against any office, nor provide for suit against an officer's successor-in-office after the old officer left. *Id.*

pointless enterprise, even by government standards. Moreover, the claims alleged that the defendants had failed to uphold their duties under federal law. But "when a government official exceeded his legal authority, he did not act in his official capacity, but as a private individual."[108] Thus, he was liable to suit just as was any other individual.[109] In other words, the suits weren't intra-branch at all.

2. Supreme Court Precedent

Next, the majority points to three Supreme Court cases, claiming they show adversity exists so long as Congress authorizes the President to sue himself. That is wrong.

First, *Udall v. Federal Power Commission*.[110] The majority claims that *Udall* held an intra-Executive Branch dispute justiciable. It did not. *Udall* just recounted that an executive official, the Secretary of the Interior, had been granted by statute "special standing to appear, to intervene, to introduce evidence on [a] proposed river development program, and to participate fully in the *administrative proceedings*."[111] So, sure, the Secretary of the Interior had special "standing" to raise his concerns before the Federal Power Commission. But that tells us nothing about the adversariness requirement of Article III.

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[108] Thomas Koenig & Christopher D. Moore, *Of State Remedies and Federal Rights*, 75 Cath. U. L. Rev. (forthcoming) (manuscript at 10), https://ssrn.com/abstract=4462807.

[109] *Little v. Barreme*, 6 U.S. (2 Cranch) 170, 179 (1804); *see also Philadelphia Co. v. Stimson*, 223 U.S. 605, 619-20 (1912).

[110] 387 U.S. 428 (1967).

[111] *Id.* at 439-40.

Second, *Newport News*. The majority notes that *Newport News* said Congress can "confer[] standing upon" agencies to sue other agencies "without infringing Article III of the Constitution."[112] But in context, the Court was just explaining the power of an executive official to sue to vindicate "the public's interest," not the power of the Executive Branch to sue itself.[113] Thus, the Court pointed to four precedents, none of which spoke to intra-Executive Branch suits.[114] So *Newport News* may say something about the sorts of interests the Executive may sue over. But it says nothing about whom the Executive may sue.

To make matters worse, this statement from *Newport News* was dictum. That matters. For more

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[112] Maj. Op. 22 (quoting *Newport News*, 514 U.S. at 133).

[113] *Newport News*, 514 U.S. at 132.

[114] The first was a suit by the United States against two grantees "to cancel" some "conveyances of allotted lands" on behalf of Indian tribes. *Heckman v. United States*, 224 U.S. 413, 415-16 (1912); *see also Newport News*, 514 U.S. at 133. The second included a singular dictum in a suit by some Indian tribes and their members against two Montana county sheriffs that the United States "would have" had "standing" to bring a "pre-emption claim on behalf of the" tribes, too. *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 474 n.13 (1976); *see also Newport News*, 514 U.S. at 133 (explaining that this statement was dictum); *Confederated Salish and Kootenai Tribes of Flathead Reservation, Montana v. Moe*, 392 F. Supp. 1297, 1300 (D.Mont. 1974). The third was a suit by some high school students in California and their parents against the Pasadena Unified School District "and several of its officials," in which the United States intervened. *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 427 (1976). The fourth was a suit by the Equal Employment Opportunity Commission against a telephone company, its subsidiary, and a union. *See General Telephone Co. of the Northwest v. EEOC*, 446 U.S. 318, 320-21 (1980).

than 200 years, courts have recognized that dicta should "be respected," but they "ought not to control the judgment."[115] True, our court has at times said that "carefully considered language of the Supreme Court, even if technically dictum, generally must be treated as authoritative."[116] But we have never said that every single word in more than 600 volumes of the U.S. Reports binds us. If so, we would be in trouble. As Justice Jackson explained almost 300 volumes ago, "some printed judicial word" could "be found to support almost any plausible proposition."[117] Recognizing that, we have said that "the Supreme Court 'does not decide important questions of law by cursory dicta inserted in unrelated cases.'"[118] And we have refused to treat "expansive dicta in decisions from the Supreme Court," like the dicta in *Newport News*, as binding authority.[119]

Third and finally, *Ingalls Shipbuilding, Inc v. Director, Office of Workers' Compensation Programs, Department of Labor*.[120] The majority mistakenly claims that *Ingalls* ties our hands because it quoted the dictum from *Newport News*.

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[115] *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821) (Marshall, C.J.); *see also* Pierre N. Leval, *Judging Under the Constitution: Dicta About Dicta*, 81 N.Y.U. L. Rev. 1249, 1250 (2006).

[116] *Sierra Club v. EPA*, 322 F.3d 718, 724 (D.C. Cir. 2003).

[117] Robert H. Jackson, *Decisional Law and Stare Decisis*, 30 A.B.A. J. 334, 334 (1944).

[118] *United States v. Askew*, 529 F.3d 1119, 1148 (D.C. Cir. 2008) (en banc) (Griffith, J., concurring) (quoting *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 775 (1968)).

[119] *United States v. Burwell*, 690 F.3d 500, 505 (D.C. Cir. 2012) (en banc).

[120] 519 U.S. 248 (1997).

In *Ingalls*, the Benefits Review Board awarded Maggie Yates, the widow of a former employee of Ingalls Shipbuilding, Inc., certain benefits under the Longshore and Harbor Workers Compensation Act after her husband died.[121] Ingalls filed a petition for review in the Fifth Circuit.[122] The Director of the Office of Workers' Compensation Programs in the Department of Labor joined Yates as a respondent.[123] The case made its way to the Supreme Court, where the parties were Ingalls (private party) versus the Director (agency) and Yates (private party).[124] The Supreme Court explained that no "constitutional" "impediment" blocked "the Director's appearance as a respondent."[125] As support, it relied on the statement in *Newport News* that "Congress *could* have conferred standing upon the Director without infringing Article III of the Constitution."[126] Thus, "Article III . . . pose[d] no bar to the Director's participation as a respondent."[127]

In context, then, all these statements in *Ingalls* can stand for is the proposition that Article III adversity exists when a private party sues the Executive

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[121] *Ingalls Shipbuilding, Inc. v. Director, Office of Workers' Compensation, Department of Labor*, 65 F.3d 460, 461-62 (5th Cir. 1995).

[122] *Id.* at 462.

[123] *Id.*

[124] *See* Petition for Writ of Certiorari, *Ingalls Shipbuilding, Inc. v. Director, Office of Workers' Compensation Programs*, No. 95-1081, 1996 WL 33413828. Ingalls was joined by American Mutual Liability Insurance Co. *See id.*

[125] *Ingalls*, 519 U.S. at 264.

[126] *Id.* (quoting *Newport News*, 514 U.S. at 133).

[127] *Id.*

Branch. I agree. But I do not see what that has to do with the Executive Branch suing itself.

3. Rule 2(a)

Failing all that, the majority claims we need not treat this as an intra-Executive Branch dispute at all. Even though Rule 15 requires the Commission to participate in this suit, the majority argues, we should suspend that requirement under Rule 2(a). I disagree. Rule 2(a) provides that the court, "[o]n its own or a party's motion, . . . may — to expedite its decision or for other good cause — suspend any provision of these rules in a particular case and order proceedings as it directs." I would not invoke that provision here.

For starters, I see no reason to exercise our discretionary power under Rule 2 to "suspend" Rule 15. As Rule 2's text makes clear, we "*may*" suspend a provision like Rule 15, but we need not.[128] I would not exercise our discretion to suspend Rule 15 when the primary use of Rule 2(a)'s good-cause provision has long been "to relieve litigants of the consequences of default where manifest injustice would otherwise result."[129]

In comparison, the majority's use of Rule 2 is out of the ordinary. First, I doubt any manifest injustice would result to the Secretary if she were left to take up her disagreement with another agency. For

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[128] Fed. R. App. P. 2(a) (emphasis added); *see also Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 533 (1994) ("The word 'may' clearly connotes discretion.").

[129] Fed. R. App. P. 2(a) advisory committee's note to original rule (1967); *see also* Charles Alan Wright et al., *16A Federal Practice and Procedure Jurisdiction* § 3948 (5th ed.) (relieving litigants of the consequences of default has long been the primary use of Rule 2(a)).

centuries, such disputes have been left to the Executive Branch to settle internally. And I doubt that the entire history of Executive Branch (and federal court) practice reflects a never-ending series of injustices wrought against the heads of the departments. Second, there was no "default."[130] The Secretary complied with Rule 15.

Of course, just because Rule 2(a) typically serves to forgive errors like default does not mean that is all it does. Still, it makes sense to restrict Rule 2(a)'s "good cause" language to errors like default (which depend on the particular facts of particular cases) rather than read "good cause" to mean we can suspend a rule for any reason that strikes us as sensible (including apparently that the rule has consequences we don't like across a class of cases). After all, Rule 2(a) provides for suspension only "in a particular case."[131] It "does not authorize any general suspension of any rules as applied to all cases or any class of cases."[132]

That "contrast[s] with Rule 2(b)," which authorizes wholesale suspension of a rule across a class of cases.[133] But on the majority's logic, we shouldn't just suspend Rule 15's application in this case. We should suspend it across a whole class of cases dealing with the Secretary and the Commission. Rule 2(a) doesn't appear to be an appropriate vehicle for that type of suspension.

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[130] Fed. R. App. P. 2(a) advisory committee's note to original rule (1967).

[131] Fed. R. App. P. 2(a).

[132] Wright, *supra*, at § 3948.

[133] *Id.*; *see also* Fed. R. App. P. 2(b)(5)(A).

To sum up, this petition presents an intra-Executive Branch dispute. As a general matter, that precludes judicial review. And the Secretary has not met her burden of showing that an exception applies.[134]

To be clear, I express no view as to whether the Government may be able to establish jurisdiction on occasion in different, future intra-Executive Branch disputes involving these or other agencies. But because the Secretary has not done so here, I would dismiss the petition as nonjusticiable.

III. KC's Auto Shop Is Not a "Mine"

This court lacks jurisdiction because the Secretary's petition presents a nonjusticiable intra-Executive Branch dispute. But even if this court had jurisdiction, I would deny the petition.

The Mine Safety and Health Administration's authority extends only to a "mine." The Mine Act generally limits a "mine" to extraction sites and processing plants. Because KC Transport's repair shop is located at neither of those places, the Mine Safety and Health Administration has no authority over the repair shop.

A. The Mine Act's Definition of "Mine" Has Geographic Limits

The Mine Act tasks the Secretary of Labor with setting health-and-safety standards for mines.[135] To enforce those standards, the Mine Safety and Health Administration must "make frequent inspections and

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[134] *Cf. Lujan*, 504 U.S. at 561 ("The party invoking federal jurisdiction bears the burden of establishing" standing.).

[135] 30 U.S.C. § 811.

investigations" of "mines."[136] It may issue citations to mine operators that fail to meet the agency's safety standards.[137]

Because the Mine Safety and Health Administration may inspect and cite only "mines," its jurisdiction depends on the Mine Act's definition of "coal or other mines." Here, we must decide if a repair shop that sometimes fixes mining trucks is a "mine."

To count as a "mine," a facility must meet the criteria in at least one of these three subparagraphs:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground,
>
> (B) private ways and roads appurtenant to such area, and
>
> (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, **facilities**, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, **used in**, or to be used in, or resulting from, the work of **extracting** such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the **milling** of such minerals, **or** the work of **preparing** coal or other **minerals**,

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[136] *Id.* § 813(a); *see* 29 U.S.C. § 557a.

[137] 30 U.S.C. § 814; *id.* § 802(d) (a mine "operator" "operates, controls, or supervises a . . . mine").

> and includes custom coal preparation facilities.[138]

Though the Mine Act's definition of "mine" has no express geographic limit, the statute's "carefully calibrated scheme" confirms that one exists.[139] Two subparagraphs have express geographic limits: subparagraph (A) extends only to excavation sites, covering "area[s] of land from which minerals are extracted," and subparagraph (B) includes "roads appurtenant to such area[s]."[140]

That leaves us with subparagraph (C). It's a catch-all list of additional things that may count as mines if they are "used in" "extracting," "milling," or "preparing."[141] That list breaks down into three categories:

1. *Structures found at excavation sites*: "excavations, underground passageways, shafts, slopes, tunnels and workings."
2. *Structures found at processing plants*: "impoundments, retention dams, and tailings ponds."[142]

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[138] *Id.* § 802(h)(1) (emphases added); *see Secretary of Labor v. National Cement Co. of California, Inc.*, 573 F.3d 788, 795 (D.C. Cir. 2009) (each subprovision independently defines "mine").

[139] *Cf. Turkiye Halk Bankasi AS v. United States*, 598 U.S. 264, 273 (2023) (looking to the statutory scheme to cabin the reach of a seemingly broad statutory provision); Antonin Scalia, *A Matter of Interpretation* 24 (1997) ("the good textualist is not a literalist").

[140] 30 U.S.C. § 802(h)(1).

[141] *Id.* § 802(h)(1)(C).

[142] "Tailings" are a waste product generated by coal processing. They are a "residue separated in the preparation of various products (such as grain or ores)." Tailing (def. 1), *Merriam-*

3. *Generic items*: "lands, . . . structures, facilities, equipment, machines, [and] tools."

Because words "are known by their companions," it makes sense to read the generic items in light of the two other categories in the list.[143] Doing so suggests that lands, structures, facilities, and equipment must either be at an excavation site or at a processing plant to count as "mines" under the Act.[144]

Reading the Act that way reveals a geographic limit that neatly mirrors the Act's express functional limit. Under the Act's functional limit, no item on the list in subparagraph (C) counts as a "mine" unless it is "used in, or to be used in, or resulting from, the work of extracting . . . minerals . . . or . . . the milling of such minerals, or . . . preparing coal or other minerals."[145]

Webster (2025). "[I]mpoundments, retention dams, and tailings ponds" are all structures used to store tailings. 30 U.S.C. § 802(h)(1)(C). An "impoundment" is a generic term for a structure used to "retain tailings." U.S. EPA, *Technical Report: Design and Evaluation of Tailings Dams* 5 (1994), https://perma.cc/68LA-UJRF. A "retention dam" is a method of storing tailings in which the "dam[ ] [is] constructed at full height at the beginning of the disposal." *Id.* at 6 (In other retention designs the height of the embankment is increased as tailings are added. *See id.*) And a tailings "pond" is a body of wastewater held in by a dam or impoundment. *See id.* at 30.

[143] *Gutierrez v. Ada*, 528 U.S. 250, 255 (2000).

[144] *Cf. Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1548, 1552 (D.C. Cir. 1984) (subparagraph (C) "does not require that" processing facilities "be located on property where . . . extraction occurs," so a processing facility "immediately adjacent to a quarry" was a "mine").

[145] 30 U.S.C. § 802(h)(1)(C).

Milling involves grinding coal into smaller chunks so that it is commercially usable. *See* Peter T. Luckie & Leonard G. Austin, *Coal Grinding Technology*, Dep't Energy (1980), https://perma.c

Because milling is a type of coal preparation, the Act's functional test boils down to asking whether an item on the list is used in extracting or processing coal.[146] Similarly, the Act's geographic limit asks whether an item is at an extraction site or a processing plant.[147]

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c/EW37-MDVA (describing how several types of coal mills operate). Coal preparation involves separating coal from the raw material extracted at a mine site. *See* 30 U.S.C. § 802(i) (defining the "work of preparing the coal" as covering the gamut of coal processing: "breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading").

[146] I focus on coal simply because of the facts of this case. I do not mean to suggest the Act is limited to coal.

[147] To the extent the Buffalo Creek incident provides relevant historical context in interpreting the Act, it doesn't defeat my analysis. Although the majority notes that the dams there appear to have been more than a half mile from the main part of the processing facility, *see* Maj. Op. 39, the dams may well be best understood as part of the larger processing facility.

After all, the tailings stored in dams are a natural product of coal processing. *See* Society for Mining, Metallurgy & Exploration, *What are Tailings* (accessed on Mar. 18, 2026), https://perma.cc/4AP6-ZENJ. And although at first coal processors would "discharge[]" tailings "into the nearest stream or river," soon "heightened environmental awareness and public pressure" led "coal operators to construct" certain structures "to contain" the tailings. *See* Stanley J. Michalek et al., *Accidental Releases of Slurry and Water from Coal Impoundments Through Abandoned Underground Coal Mines*, MSHA, Pittsburgh Safety & Health Technology Center 2 (1996). So these storage structures may be seen as an integral part of the larger processing operations.

The intimate connection between these storage structures and processing facilities may be seen in the case of Buffalo Creek. There, the tailings from the processing facility were apparently "pumped" by pipes from the facility "into" a river "above" the retention dams, such that the tailings would "flow[] into the impoundment." Senate Subcommittee on Labor of the

Now consider the Secretary's literal reading of the statute. The Secretary contends that the Mine Safety and Health Administration's jurisdiction depends only on *function*, not *location*.[148] In the Secretary's view, any "piece of equipment" or "facility" can be a mine, no matter where it is located.[149]

The rest of the statute shows why that reading doesn't work. Many of the Act's provisions assume that a "mine" has a readily identifiable location. For example, a mine "operator" must "file with the Secretary" its mine's "name and address."[150] And at "each . . . mine" there must be "an office with a conspicuous sign designating it as the office of such mine."[151] Similarly, the Mine Safety and Health

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Committee on Labor & Public Welfare, 92d Cong., *Buffalo Creek (W. Va.) Disaster, 1972*, at 12 (1972); *see also* Michalek, *supra*, at 2 (explaining that historically, tailings were "piped from the preparation plant to the impoundment"); U.S. EPA, *supra*, at 30 ("Generally, tailings slurry is transported through pipelines from the mill to the tailings impoundment for deposition."). "Other pipes" would take the "discharge of clear water from" the lower dams and "direct[]" it to "a small impoundment." Senate Subcommittee, *supra*, at 12. Then, it was "pumped back to the preparation plant for further use in the washing process." *Id.* In other words, the dams formed part of a closed-loop system that dealt with the processing of coal. So given "[t]he physical proximity and the operational integration of" the processing facility-pipe-retention dam combination, it might have been "a unified mineral processing operation." *Carolina Stalite*, 734 F.2d at 1551.

[148] Secretary Br. 16.

[149] *Id.*

[150] 30 U.S.C. § 819(d).

[151] *Id.* § 819(a).

Administration must annually inspect each "coal or other mine[ ]."[152]

Those requirements would make no sense if a mine's location were unfixed.

Take an example. An independent contractor uses his truck for a mining job each Wednesday. The rest of the week he drives his truck 200 miles away for use at a construction site. Even when it's 200 miles away, that truck is a "mine" on a literal reading of the statute: It is a "machine[ ]" that is "used in, or to be used in, . . . the work of extracting . . . minerals."[153] Yet that result clashes with the Act's commands to install "an office with a conspicuous sign" and to file a mine's "name and address."[154]

The literal reading's problems only deepen from there. The Act covers "independent contractor[s]" when they are "performing services or construction at [a] mine."[155] And a contractor's tools and machinery are "used in, or *to be used in*" extraction wherever they are.[156] So if the Act has no geographic limit, the agency could inspect contractors anywhere they go — including at their homes.

The Secretary insists that we can sidestep these difficulties: Because KC's trucks were located at a physical location covered by the Mine Act, we need not

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[152] *Id.* § 813(a).

[153] *Id.* § 802(h)(1).

[154] *Id.* § 819(a), (d); *see also Maxxim Rebuild Co., LLC v. Federal Mine Safety & Health Review Commission*, 848 F.3d 737, 742 (6th Cir. 2017) (noting that "other definitions in the Mine Act portray a mine as a place").

[155] 30 U.S.C. § 802(d).

[156] *Id.* § 802(h)(1)(C) (emphasis added).

decide whether the trucks would be "mines" if located elsewhere.[157]

As a threshold matter, the Secretary's premise that KC's shop is covered by the Mine Act is mistaken for the reasons I just explained. Putting that aside, the Secretary offers no geographic limiting principle for future cases where a moveable item is not on land covered by the Mine Act. The Secretary tells us only that geography might be "relevant" in its "fact-intensive" inquiry as to whether an item is "used in" mining.[158] So how do we know if a moveable object is a "mine"? The Secretary's answer is, in effect, "trust us."

The better approach is to read the definition of "mine" in context, which shows that an item listed in subparagraph (C) must be located at an extraction site or a processing plant to count as a "mine" under the Act.

B. Processing Plants Fall Within the Geographic Limits

The Commission and the Sixth Circuit both held, as I would, that the Act has a geographic limit. But they interpreted that limit to cover only extraction sites. I part company with them there. Textual clues suggest that the Act covers *both* extraction sites (where ore is dug out of the ground) *and* processing plants (where ore is made into a usable product).

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[157] Secretary Supplemental Br. 21.

[158] Supplemental Oral Arg. Tr. 32, 33, 35; *see also id.* at 15, 32-35 (Counsel for the Secretary: a pickax used for mining remains a "mine" even when transported 5,000 miles from the extraction site).

In *Maxxim Rebuild*, the Sixth Circuit held that "facilities and equipment" count as "mines" under the Act only "if they are in or adjacent to — in essence part of" an *extraction site*.[159] The court reasoned that the list in subparagraph (C) reads as if the "author went to a mine and wrote down everything he saw in, around, under, above, and next to the mine."[160] The Commission adopted the Sixth Circuit's interpretation in its decision in this case.

But subparagraph (C)'s list reads more like the "author went to a mine [and a processing plant] and wrote down everything he saw."[161] That's because three items on the list — "impoundments, retention dams, and tailings ponds" — are associated with coal *processing*, not coal *extraction*.[162]

The rest of § 802(h)(1)(C) confirms that processing plants are included in the Act's geographic sweep. Any item in the list counts as a "mine" if it is "used in, or to be used in . . . the work of *preparing coal*."[163] And the list ends by expressly stating that a "mine" "includes custom coal preparation facilities."[164]

Plus, because many preparation plants are *not* located at extraction sites, the Sixth Circuit's reading would produce an odd regulatory checkerboard. Some processing plants would be covered and others not, depending on how close they are to an extraction

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[159] 848 F.3d at 740.

[160] *Id.*

[161] *Id.*

[162] 30 U.S.C. § 802(h)(1)(C); see *supra*, note 142, 147.

[163] 30 U.S.C. § 802(h)(1)(C) (emphasis added).

[164] *Id.*

site.[165] That outcome is hard to square with Congress's express view that "coal preparation facilities" are covered by the Act.[166]

Finally, interpreting § 802(h)(1)(C) to cover processing plants avoids surplusage. If subparagraph (C) were limited to items *at* an extraction site, it would largely collapse into subparagraph (A), which covers "area[s] of land from which minerals are extracted."[167] But reading subparagraph (C) to include processing plants gives it a distinct role in the statutory scheme.

C. KC's Shop Is Not A "Mine"

Though I read the Mine Act's definition of "mine" differently than does the Commission, I agree with its bottom-line conclusion.[168] KC's repair shop is not a "mine" under the Act because it is not at an extraction site or processing plant. So I would deny the Secretary's petition for review.

Today's majority thankfully refuses to embrace the Secretary's geography-agnostic approach. But it also refuses to reject it. And it also unfortunately refuses to say anything at all about the contours of the functional test it seems to favor. Instead of adopting the straightforward rule that an item in subparagraph (C) must be at an extraction site or processing plant, the majority opts for an "I know it

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[165] *See Standards of Performance for Coal Preparation and Processing Plants*, 74 Fed. Reg. 51950, 51961 (Oct. 8, 2009) (coal-preparation plants may be at "mine sites" or other "industrial sites").

[166] 30 U.S.C. § 802(h)(1)(C).

[167] *Id.* § 802(h)(1)(A).

[168] *See Calcutt v. FDIC*, 598 U.S. 623, 630 (2023) (we may affirm an agency, despite disagreeing with its reasoning, if the agency "was *required* to take [the] action" at issue (cleaned up)).

when I see it" approach to what a "mine" is.[169] Auto-body shop located decently close to a mine with trucks that transport coal to and from an extraction site pretty often? That is a mine (I think). Pair 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? Those boots are possibly not a "mine." But really, who knows? Not the miner. Nor the owner of the boot factory. Nor the inspector. Nor the Commission. Nor the Secretary. Nor the court. So the majority offers an interpretation that leaves "regulated parties" in the "frustrating" position of not being able to "perfectly predict the scope of [the Administration's] jurisdiction."[170] And in so doing, the majority forfeits its duty under *Loper Bright* (and *Marbury*[171]) to interpret the term "mine" at all, preferring to point out those things that possess sufficient mine-ness on a case-by-case basis.

Nor is the majority's approach the only one that accords with Congress's remedial goals for the Mine Act. Mine (pun intended) does, too. To the extent Congress enacted the Mine Act to ensure the Administration would have jurisdiction over retention dams,[172] such structures are expressly covered in subparagraph (C).[173] And to the extent a facility like KC's shop falls outside the Mine Safety and Health

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[169] *Cf. Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

[170] Maj. Op. 42.

[171] And Article III.

[172] *See* Maj. Op. 38-39 (explaining that Congress sought to eliminate jurisdictional uncertainty over retention dams following a catastrophic dam collapse in West Virginia); *see also supra*, note 147 (discussing this example).

[173] 30 U.S.C. § 802(h)(1)(C).

Administration's jurisdiction, other regulators like the Occupational Safety and Health Administration may step in.[174]

* * *

To count as a "mine" under the Mine Act, a "facility," like KC's repair shop, must be located at an extraction site or a processing plant. KC's repair shop is not. So the Mine Safety and Health Administration lacks jurisdiction over it.

IV. Conclusion

The court lacks jurisdiction to adjudicate this dispute between two parts of the Executive Branch. So the petition should be dismissed.

If we had jurisdiction, I would deny the petition.

Because the majority disagrees, I respectfully dissent.

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[174] *See* Supplemental Oral Arg. Tr. 10 (Secretary's counsel explaining that the Mine Safety and Health Administration and the Occupational Safety and Health Administration coordinate the boundaries of each agency's regulatory authority through an "interagency agreement").

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued December 15, 2022 Decided August 1, 2023

No. 22-1071

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION,
PETITIONER

V.

KC TRANSPORT, INC. AND FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION,
RESPONDENTS

On Petition for Review of a Decision of the Federal Mine Safety and Health Review Commission

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Susannah M. Maltz, Attorney, U.S. Department of Labor, argued the cause for petitioner. With her on the briefs was *Emily Toler Scott*, Counsel for Appellate Litigation.

James P. McHugh argued the cause for respondent KC Transport, Inc. With him on the brief was *Christopher D. Pence*. *Thaddeus Jason Riley* entered an appearance.

Before: WILKINS, WALKER, and PAN, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WILKINS.

Dissenting opinion filed by *Circuit Judge* WALKER.

WILKINS, *Circuit Judge*: Congress affirmed the importance of regulating effective health and safety

standards within the mining industry when it enacted the 1977 Federal Mine Safety and Health Amendments Act ("Mine Act"), Pub. L. No. 95-164, 91 Stat. 1290 (1977) (codified as amended at 30 U.S.C. § 801 *et seq.*). This dispute does not concern the substance of the Mine Act's safety standards, but rather the jurisdictional boundaries to which they apply.

KC Transport is an independent trucking company that provides various hauling services. Some of its clients include mining companies, and KC Transport used a facility, located over one mile from one of its client's mining extraction sites, as a maintenance area. A Mine Safety and Health Administration ("MSHA") inspector visited this area, after having inspected the nearby mine, and observed two of KC Transport's trucks undergoing maintenance. Both trucks were raised, unblocked from motion, and one truck had a person standing underneath it. Because the trucks' conditions violated safety standard 30 C.F.R. § 77.404(c), the MSHA inspector issued KC Transport two citations. KC Transport contested MSHA's jurisdiction to issue the citations, arguing that the Mine Act does not apply. If the Mine Act does apply, however, KC Transport concedes that its trucks violated safety standards and the citations are thus valid.

The Mine Act governs the regulation of "coal or other mine[s,]" 30 U.S.C. § 802(h)(1), as well as the activities of those who "operate[], control[], or supervise[,]" or "perform[] services or construction at such mine[s]," called "operator[s,]" *id.* § 802(d). Its jurisdiction covers all "mines," which are defined by statute as: (A) extraction sites; (B) the "private ways and roads appurtenant" thereto; and (C) a list of items

"used in, or to be used in, or resulting from," mining-related activity. *Id.* § 802(h)(1).

In the proceeding on review challenging MSHA's jurisdiction, the Federal Mine Safety and Health Review Commission ("Commission") held that for the list of items, in § 802(h)(1)(C), to be considered a "mine," the items had to be located at an extraction site, *id.* § 802(h)(1)(A), or the roads appurtenant thereto, *id.* § 802(h)(1)(B). Because neither the trucks nor the facility, associated with the citations at issue, were located on land covered under subsections (A)-(B), the Commission found they failed to constitute a "mine" and vacated the citations. The Commission also found that, as an independent contractor not engaged in servicing a mine at the time of citation, KC Transport failed to qualify as an "operator" under § 802(d) of the Mine Act.

The Secretary of Labor ("the Secretary"), acting through MSHA, appeals the Commission's decision and asks us to uphold the two citations as an appropriate exercise of the Secretary's jurisdiction under the Mine Act. In the Secretary's view, subsection (C) of the "mine" definition covers KC Transport's facility and trucks because they were "used in" mining activity. *See* § 802(h)(1)(C).

Given the Mine Act's language, context, and our binding precedent, we find that the Commission erred in its interpretation of the "mine" and "operator" definitions. And we generally defer to the Secretary's reasonable interpretation of an ambiguous statute—even when the Commission disagrees. *See Martin v. Occupational Safety & Health Rev. Comm'n*, 499 U.S. 144, 158 (1991); *Excel Mining*, 334 F.3d at 6. But here, the Secretary's position treats subsection (C) as

unambiguous and makes no meaningful effort to address the numerous practical concerns that would arise under such an interpretation. Therefore, and in conformity with our precedent, we vacate and remand the Commission's decision, allowing the Secretary to interpret the statute's ambiguous language. *See Sec'y of Lab. v. Nat'l Cement Co. of Cal., Inc.* ("*National Cement I*"), 494 F.3d 1066, 1077 (D.C. Cir. 2007).

I.

A.

Congress enacted the Federal Coal Mine Health and Safety Act ("Coal Act") in 1969 with the purpose of "improv[ing] mandatory health or safety standards to protect the health and safety of the Nation's coal miners[.]" Pub. L. No. 91-173, § 2(g), 83 Stat. 742, 743 (1969). As our nation's use of mines continued, so too did the occurrence of mining-related incidents. For example, 226 miners tragically died from unexpected mine explosions in West Virginia, Ohio, and Pennsylvania in 1940 alone. *See* J. Davitt McAteer, *The Federal Mine Safety and Health Act of 1977: Preserving a Law that Works*, 98 W. Va. L. Rev. 1105, 1113 (1996). Additional incidents also took the lives of 119 miners in Illinois in 1951; 78 miners in West Virginia in 1968; 91 miners in Idaho in 1972; and 26 miners in Kentucky in 1976. *Id.*

Because several forms of mine-related property were not enumerated in the Coal Act's mine definition, incidents like the collapse of a retention dam left confusion as to whether the Coal Act's protections applied. This lack of clarity put the Act's jurisdictional bounds in question, prompting congressional action. Indeed, upon enacting the more

comprehensive 1977 Mine Act, Congress cited the 1972 collapse of the West Virginia retention dam—"result[ing] in a large number of deaths, and untold hardship to downstream residents[]"—as a reason to amend the "mine" definition. S. REP. NO. 95-181, at 14 (1977) (explaining the need to clarify the "mine" definition as "the Committee [was] greatly concerned that at [the time of the 1972 dam incident], the scope of the authority of the Bureau of Mines to regulate such structures . . . was questioned [under the Coal Act]").

The Mine Act established one regulatory scheme, covering the mining of coal, metals, and non-metals. *See Sec'y of Lab. v. Excel Mining, LLC*, 334 F.3d 1, 3 (D.C. Cir. 2003) (citing 30 U.S.C. § 961(a)). In doing so, Congress affirmed that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner[.]" 30 U.S.C. § 801(a). It also aimed "to provide more effective means and measures for improving the working conditions" in American mines and "to prevent death[,] serious physical harm, and . . . occupational diseases[.]" *Id.* § 801(c). The Secretary is authorized to enforce this goal, and the Mine Act "created within the Department of Labor a new agency, [MSHA], to administer its provisions." *Am. Coal Co. v. FMSHRC*, 796 F.3d 18, 21 (D.C. Cir. 2015). Under this structure, the Secretary "develop[s] and "promulgate[s]" "improved mandatory health or safety standards for the protection of life" in mines. 30 U.S.C. § 811(a). MSHA enforces these standards by conducting regular inspections, *see* § 813(a); issuing safety orders, *see* § 813(k); and issuing citations for violations, *see* §§ 813(a), 815(a); for the Secretary to then assess and assign a corresponding

penalty, *see* § 820(a). Any resulting citations, orders, or penalties may be reviewed by the Commission. In practice, mine operators may contest citations before an administrative law judge ("ALJ"), and either party may subsequently appeal the ALJ's decision to the Commission. *Am. Coal Co.*, 796 F.3d at 21.

Given the nature of this case, it is important to emphasize that no part of this miner-safety-centered process applies absent jurisdiction. Whether property is subject to the Mine Act's frequent inspections and other procedures is thus contingent upon whether the property constitutes a "mine." A "coal or other mine" is defined under 30 U.S.C. § 802(h)(1) as:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, *facilities*, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, *used in, or to be used in, or resulting from, the work of extracting such minerals* from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h) (emphases added). In sum, the statute's jurisdiction over "mines" covers: (1) extraction sites; (2) the "private ways and roads appurtenant" thereto; and (3) a list of items "used in, or to be used in," mining-related activity. *Id.*

B.

The material facts are undisputed. *See* J.A. 4-13 (Joint Stipulations). KC Transport is an independent trucking company that operates truck maintenance and storage, and also provides hauling services to various businesses for different materials (*e.g.*, coal, earth, and gravel). The following events took place at one of KC Transport's locations—the Emmett facility located in Emmett, West Virginia.

One of KC Transport's clients is a coal mine operator named Ramaco Resources ("Ramaco") that maintains five mines near the Emmett facility ("facility"). Ramaco's representatives informed KC Transport that it could use the facility for maintenance, as Ramaco had no plans to operate a coal mine there. KC Transport accepted and began using the facility as its "maintenance area/shop." J.A. 7. KC Transport also obtained commercial insurance covering the facility.

At the time in question, the facility included only a parking area and two maintenance shipping containers. The facility was described as a "convenient centralized maintenance facility . . . for KC Transport," J.A. 7, and KC Transport used it to operate about 35 trucks. Ramaco's deep mines are about four to five miles away, and its strip mines are about six miles away. An estimated "60% of the [facility's] services" supported Ramaco's five nearby mines, and the remaining 40% of services aided other

companies like "American Electric Power [] and other coal operators." J.A. 7. The types of trucks at the facility are a mix of (1) off-road trucks, providing haulage for Ramaco's five nearby mines; and (2) on-road trucks used in earth and gravel haulage for other customers, as well as coal haulage services for non-Ramaco customers.

The facility is on Right Hand Fork Road located over one mile from one of Ramaco's coal plants, the Elk Creek Preparation Plant. Right Hand Fork Road is a road off of the haulage road that runs past Elk Creek Plant and dead ends on the other side of the facility. The facility is about 1000 feet from the haulage road, and while the road leading "into the KC Transport facility is not a coal haulage road[,] [it] does branch off from a haulage road." J.A. 6. The only way to access the facility is by advancing through a gate entrance on Right Hand Fork Road, and while part of the haul-road is public, everything past the gate is reserved for authorized persons. During this time, however, the gate was not operational.

On March 11, 2019, an MSHA coal mine inspector visited Ramaco's nearby Elk Creek Prep Plant. Although MSHA had never inspected, or even attempted to inspect, KC Transport's trucks at the facility, MSHA regularly inspected KC Transport's trucks along the haulage road, as well as at the Elk Creek Plant. Upon completing the Elk Creek Plant inspection, the inspector went "looking for trucks" that MSHA had previously cited and intended to terminate those citations. J.A. 5; *see* 30 U.S.C. § 814(e)(3). The inspector traveled over a mile along the haulage road, turned off this road onto Right Hand Fork Road, continued along this road for about 1000 feet, and ultimately reached the facility.

Upon arriving at the facility, the inspector observed KC Transport's trucks undergoing maintenance. According to MSHA safety regulations, "[r]epairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments." 30 C.F.R. § 77.404(c). Two of KC Transport's trucks, however, were unblocked. Notably, because these particular trucks "were not licensed to haul products over public roads[,]" they were "only being operated on private land," J.A. 10, and "regularly used to haul coal from the five Ramaco mines to the Elk Creek prep plant[,]" J.A. 8. At the time of inspection, the first truck was "jacked up with the wheels and tires off both back axles[,]" and "[w]ork [was] being performed on the brakes located on the back axles of the truck." J.A. 30-31. The second truck was raised and a miner was underneath it, "standing on the frame of the truck[.]" J.A. 31; *see* J.A. 58. Because neither of the two trucks were "blocked against motion," the inspector found KC Transport in violation of 30 C.F.R. § 77.404(c), and issued Citations Nos. 9222038 and 9222040.

C.

The primary issues in this litigation concern jurisdiction: (1) whether the facility or the two trucks constituted a "mine" under 30 U.S.C. § 802(h)(1)(C) of the Mine Act, such that MSHA had the authority to cite KC Transport for violating safety regulation 30 C.F.R. § 77.404(c); and (2) whether an independent contractor like KC Transport only qualifies as an "operator" under 30 U.S.C. § 802(d) when actively working at a mine site. If the Mine Act *does* apply, the parties agree both citations should be upheld and KC

Transport owes a penalty fee of $3,908 regarding citation No. 9222038, and $4,343 regarding citation No. 9222040. *See* J.A. 12-13.

Once KC Transport contested the two citations, both the Secretary and KC Transport filed cross-motions, requesting summary decision of the jurisdictional issue. The ALJ rejected the parties' interpretations of subsection (C), but ultimately ruled in MSHA's favor and upheld the two citations as a proper exercise of the Mine Act's jurisdiction. In the ALJ's view, the facility and the mining-related equipment located therein were too connected to the mining process to be excluded from the Mine Act's jurisdiction. Thus, the ALJ found the facility constituted a "mine" under the subsection (C)'s plain meaning, "and because the trucks were used in mining and parked at the facility," they qualified as "equipment" under subsection (C). J.A. 84.

On appeal, a divided Commission reversed the ALJ's finding of jurisdiction and vacated the two contested citations. According to the majority, 30 U.S.C. § 802(h)(1) unambiguously limits the "mine" definition to extraction sites and lands appurtenant thereto. Thus, the Commission 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 subsection 3(h)(1)(A) is not a mine within the meaning of section 3(h) of the Mine Act." J.A. 168. In a secondary holding, the Commission also found that KC Transport did not qualify as an "operator" under the Mine Act, because "[a]s an independent contractor, KC Transport is an operator subject to MSHA jurisdiction [only] while performing work at a mine

site." J.A. 165. One commissioner dissented, taking an even broader view than the ALJ, and argued that regardless of the facility, trucks constitute mines as they were "used in" mining and are "integral" to that process. J.A. 176. The Secretary filed a petition for review of the Commission's decision.

II.

We review the Commission's legal findings *de novo*. *See Am. Coal Co.*, 796 F.3d at 23. "Under the Mine Act, the Secretary's interpretation of the law must 'be given weight by both the Commission and the courts.'" *Excel Mining*, 334 F.3d at 5-6 (quoting *Sec'y of Lab. v. Cannelton Indus., Inc.*, 867 F.2d 1432, 1435 (D.C. Cir. 1989) (quoting S. REP. NO. 95-181, at 49)). Should the Secretary and the Commission advance differing interpretations, "it is . . . the Secretary rather than the Commission who is entitled to the deference described in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)." *Excel Mining*, 334 F.3d at 6 (cleaned up); *see also Am. Coal*, 796 F.3d at 23-24. But if the Secretary incorrectly treats the statute as unambiguous, such that deference is not appropriate, we have previously remanded the case to the Commission, instructing the Secretary to interpret the statute in recognition of its ambiguities. *See Sec'y of Lab. v. Nat'l Cement Co. of Cal., Inc. ("National Cement II")*, 573 F.3d 788, 791 (D.C. Cir. 2009).

A.

"Under these circumstances, the Secretary's litigating position before the Commission is as much an exercise of delegated lawmaking powers as is the Secretary's promulgation of a workplace health and

safety standard." *Martin*, 499 U.S. at 157. Accordingly, we turn to the Secretary's argument, maintaining that the trucks at issue fell under the Mine Act's jurisdiction under a plain reading of subsection (C). The Secretary maintains this Court should uphold the contested citations because 30 U.S.C. § 802(h)(1)(C) unambiguously grants MSHA jurisdiction over both the trucks and the maintenance facility. Under this interpretation, subsection (C) unambiguously extends the Mine Act's jurisdiction to cover each of the enumerated types of items if "used in, or to be used in" mining. Because the trucks are "equipment," and because both the trucks and the facility were "used in" mining activity, the Secretary argues they satisfy the "mine" definition.

Although advancing an opposing interpretation, the Secretary, like KC Transport in defending the Commission's decision, asserts that the Act's "mine" definition is unambiguous. As such, the Secretary urges us to uphold the citations as a proper exercise of MSHA's jurisdiction under a plain reading of the statute.

This was the case in *National Cement I*, 494 F.3d at 1066. The central issue there was whether "a road National Cement use[d] to access its cement processing plant [] pursuant to a nonexclusive right-of-way grant" constituted a "mine" under 30 U.S.C. § 802(h)(1). *Id.* at 1068. The Secretary defended its jurisdiction over the private road, arguing that because the road led to a cement processing plant, it unambiguously constituted a "private way[] and road[] appurtenant to" an extraction area under a plain reading of subsection (B), 30 U.S.C. § 802(h)(1)(B). Finding subsection (B) ambiguous, we declined to "accord the Secretary's litigating position

Chevron deference because she incorrectly treated the statute as unambiguous and interpreted it accordingly." *Nat'l Cement I*, 494 F.3d at 1073 (citing *Peter Pan Bus Lines, Inc. v. Fed. Motor Carrier Safety Admin.*, 471 F.3d 1350, 1354 (D.C. Cir. 2006) ("[D]eference to an agency's interpretation of a statute is not appropriate when the agency wrongly believes that interpretation is compelled by Congress." (internal quotation marks omitted))).

As we explained, the statute's use of the term "private" could encompass either a "group or class of persons," or "a particular person[,]"—and similarly, "appurtenant" could mean a road either "subject to a transferable right of way benefitting the mine lessee," or "dedicated exclusively to the use of the mine." *Nat'l Cement I*, 494 F.3d at 1074. Thus, we vacated and remanded the Commission's decision for the Secretary to interpret the ambiguous provision. On remand, the Secretary relied on two subsections and argued that subsection (B) extended over the road itself, while subsection (C) covered the mine-related vehicles traveling on the road. *See* 573 F.3d at 794. Satisfied that this interpretation reasonably accounted for the statute's ambiguities, the *National Cement II* Court found "the Secretary's interpretation of subsection (B)" was "entitled" to deference. *Id.* at 793.

Such an approach was not unique to *National Cement I*, as we took a similar path in *Akzo Nobel Salt, Inc. v. Federal Mine Safety and Health Review Commission*, 212 F.3d 1301, 1304-05 (D.C. Cir. 2000). There, the Secretary asserted that a regulation unambiguously applied to and covered the citation at issue. We disagreed and found the regulation's language ambiguous. The Secretary, however, "never grappled with" the "regulation's clear ambiguity[,]"

and because the Secretary had taken inconsistent positions, we vacated and remanded the Commission's decision. *Id.* at 1305 (instructing the Commission to secure the Secretary's regulatory interpretation, "and to resolve the case applying standard deference principles to that interpretation").

To be clear, it is the Secretary's litigating position resulting from a citation—not the Commission's position—that is ordinarily owed deference. *See Excel Mining, LLC*, 334 F.3d at 6 (citing *Martin*, 499 U.S. at 157). We cannot defer, however, when the Secretary's position mistakenly advances an interpretation *compelled* by Congress when the statute is in fact ambiguous. And as our case law shows, we have previously addressed such a mistake by remanding the case for the Secretary to account for the identified ambiguity.

As we discuss below, here again, we are faced with a situation where the Secretary incorrectly asserts that the relevant text—30 U.S.C. § 802(h)(1)(C)—is unambiguous. Thus, we remand the case, allowing the Secretary to address § 802(h)(1)(C)'s ambiguities.

Beginning with the statutory text, recall that § 802(h)(1) defines a "mine" as: (1) the physical extraction site, under subsection (A); (2) any "private ways and roads appurtenant" to that extraction site, under subsection (B); and (3) the items "used in, or to be used in, or resulting from" mining activity, under subsection (C). Congress's inclusion of subsection (C) clarifies that the Mine Act extends beyond the land and roads covered in subsections (A)-(B). The Secretary argues the "mine" definition must be read so broadly that it incorporates each of subsection (C)'s items as an individual "mine." Put differently, the

Secretary advances a view under which all "machines, tools," and even singular pieces of "equipment," could constitute a "mine"—no matter their location—so long as they either were, or will be, "used in" mining activity. But certain "equipment[]"—like a truck—is mobile, and without a clear locational limit, it is impossible to ensure MSHA could monitor the equipment's location and complete the statutorily mandated inspection requirements.

As indicated by its context, structure, and Congress's use of the phrase "coal or other mine" throughout Chapter 22 of Title 30—location is central to the Mine Act. Consider the process through which MSHA ensures compliance with the Mine Act's safety regulations. To start, Congress instructs that "[e]ach operator of a coal or other mine subject to this chapter *shall* file with the Secretary the name and *address* of such mine[.]" 30 U.S.C. § 819(d) (emphases added). In addition to recording the mine's location, Congress also instructed that each "coal or other mine" "shall" be inspected yearly, four times a year for "each underground coal or other mine[,]" and twice a year for "each surface coal or other mine." *Id.* § 813(a).

The statute delineates the limited circumstances under which the Secretary "may give advance notice of inspections[,]" and provides that authorized representatives "*shall* have a right of entry to, upon, or through any coal or other mine." *Id.* (emphasis added). No discretion is accorded once the inspection is underway, and the Mine Act *requires* inspectors to issue a citation upon belief "that an operator of a coal or other mine" violated "any mandatory health or safety standard, rule, order, regulation, or order[.]" *Id.* § 814(a)).

In addition to requiring a physical address for inspection purposes, the Mine Act also mandates that each "coal or other mine" operator "designate a responsible official" "in charge of health and safety" for each identified mine. *Id.* § 819(d). The Mine Act even outlines certain design requirements for every identified mine. "At each coal or other mine there shall be maintained an office with a conspicuous sign designating it as the office of such mine." *Id.* § 819(a). This office must also include "a bulletin board" near the entrance such that "orders, citations, notices and decisions required by law or regulation . . . may be posted[.]" *Id.* It is, thus, clear that no operator could comply with these provisions without first identifying a physical address for each of its mines.

The Commission's interpretation fares no better than the Secretary's, because treating subsection (C) as inherently connected to subsections (A)-(B) cannot be harmonized with the statutory structure under which there are three separate and independent subsections. *See id.* § 802(h)(1)(A)-(C). If a "mine" is so clearly defined under subsections (A)-(B), what then to make of subsection (C)? Because the Commission finds it "clear that neither the purpose nor the language of the Act indicate a further geographical extension of jurisdiction under subsection (C)[,]" it reasons that subsection (C) *must* be read as "catalog[ing] various mining-related places . . . and objects" that are used in mining activity at physical extraction sites described in subsection (A), or the roads appurtenant thereto, described in subsection (B). J.A. 163-64; *see Maxxim Rebuild Co. v. FMSHRC*, 848 F.3d 737, 740 (6th Cir. 2017) (explaining that subsection (C) reads as though "the author went to a mine and wrote down everything he

saw in, around, under, above, and next to the mine" and limiting the definition "only to everything that one would see in or around a working mine" itself). Not so.

One need only look to Congress's concerns—cited when explaining its decision to revise the Coal Act's "mine" definition—to conclude that subsection (C) was incorporated to specify that non-extraction site property may *also* constitute a "mine" when it (1) is "used in," (2) will "be used in," or (3) "result[s] from" the work of extracting or preparing minerals. 30 U.S.C. § 802(h)(1)(C). As briefly mentioned in relation to the deadly mining-related incidents, subsection (C) was necessary—at least in part—to ensure the Mine Act's jurisdiction extended to physical manifestations like dams that may be distant from the actual extraction site. Limiting jurisdiction to the land in subsections (A)-(B) would effectively omit subsection (C) and could exclude the very property Congress intended to cover.

The Commission's decision cannot stand for another fundamental reason: such a narrow view of 30 U.S.C. § 802(h)(1) conflicts with this Circuit's precedent under which we have clarified that the Mine Act extends beyond structures on extraction sites. In *Donovan v. Carolina Stalite Co.*, we explained that the Mine Act "does not require that those structures or facilities [listed in subsection (C)] . . . be located on property where such extraction occurs." 734 F.2d 1547, 1548, 1552 (D.C. Cir. 1984) (finding that a "slate gravel processing facility" placed on "property immediately adjacent to a quarry" fell under the Mine Act's jurisdiction). Importantly, we also endorsed the view that MSHA's "jurisdictional bases were expanded accordingly [in the 1977 Mine

Act] to reach not only the 'areas . . . from which minerals are extracted,' but also the 'structures . . . which are used or are to be used in . . . the preparation of the extracted minerals.'" *Id.* at 1554 (quoting S. REP. NO. 95-181). This conclusion applies equally to all property listed in subsection (C) which, as relevant here, includes both "structures" and "equipment."

Although the Secretary nominally recognized that the statute could be ambiguous, and advanced an alternative argument seeking our deference, at no point during this litigation did the Secretary grapple with the conflicting, practical implications of the advanced interpretation. *See* Sec'y Br. 38-42; Sec'y Reply Br. 5, 14-17; Sec'y Supp. Br. 11-13. Nor did the Secretary acknowledge the statute's ambiguity as demonstrated by its historical background. For instance, when passing the 1977 Mine Act, Congress explained it would "enlarge[] the definition of 'mine' in [30 U.S.C. § 802(h)] to include those mines previously covered by the [1966] Federal Metal and Non-Metallic, Mine Safety Act ['Metal Act']." S. REP. NO. 95-181, at 59; *see* Pub. L. No. 89-577, 80 Stat. 772 (1966) (repealed 1977). The Metal Act fell under the Department of Interior, and the Mining Enforcement and Safety Administration ("MESA") exercised the agency enforcement role like the one MSHA occupies today. When referring to the Metal Act's jurisdiction, a 1974 MESA-OSHA Memorandum of Understanding ("MOU") explained that a "mine," under this predecessor to the Mine Act, included "mineral extraction (mining) operations" as well as "milling and preparation facilities and other surface facilities used in mining or milling." 39 Fed. Reg. 27,382, 27,383 (July 26, 1974) (summarizing 30 U.S.C. § 721(b)). From this, MESA "interpret[ed] its authority to

include the prescription and enforcement of standards regarding" a variety of operations, locations, and "transportation." *Id.* But nowhere in the later 1979 MSHA-OSHA MOU, pertaining to the 1977 Mine Act, is there any mention of MSHA's authority as covering transportation. 44 Fed. Reg. 22,827, 22,827 (Apr. 17, 1979). What this might, or might not, signify—in relation to subsection (C)'s scope today—remains a mystery as the Secretary's briefs failed to discuss it. This lack of analysis further indicates the need to remand for the Secretary to engage with subsection (C)'s ambiguity.

In the Secretary's view, however, any risk of incorrectly broadening subsection (C) is mitigated by a functional analysis that officials conduct in determining whether certain facilities or equipment constitute a "mine." Framed as a limitation, the Secretary argues that whether facilities or equipment constitute a "mine" depends only on a fact-based inquiry under which one must evaluate how closely related the relevant facility or equipment was to mining activity. Location is but one factor that may be relevant to this "use-in-mining" analysis. Oral Arg. Tr. at 10:3; *see id.* at 9-17; Sec'y Supp. Br. 13, 21. But such a fact-based inquiry does nothing to explain how MSHA might locate mobile equipment, such as the trucks at issue here, and fulfill its *mandatory* obligations to "make frequent inspections." 30 U.S.C. § 813(a). Indeed, without an identifiable address, how will inspectors know where to find all equipment that has, or will be, "used in" mining? And how long after equipment is "used in" mining does it still qualify as a "mine" if no longer located on mine-related property? The Secretary's broad and categorical view, although temptingly clear in theory, ultimately creates many

more questions in practice. These questions bespeak ambiguity, and the Secretary's litigation position must explain how they were taken into account.

We note that all but *three* of the items enumerated in subsection (C) constitute physical manifestations. The physical manifestations—including, for example, "tunnels and workings, structures, facilities, . . . [and] retention dams[]"—are similar to the extraction sites and roads outlined in subsections (A)-(B) because they are stationary and, thus, associated with a particular location. 30 U.S.C. § 802(h)(1)(C). The three movable items—"equipment, machines, [and] tools," *id.*—stand alone as property subject to much broader, non-mining related definitions. And as "[a] canon related to *noscitur a sociis, ejusdem generis,* counsels: 'Where general words follow specific words in a statutory enumeration, the general words are usually construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.'" *Yates v. United States*, 574 U.S. 528, 545 (2015) (cleaned up). One way of interpreting subsection (C) is therefore to view the three movable items included in the middle of the list in relation, and as connected, to the preceding physical manifestations.

As applied here, there is at least a question of whether "equipment, machines, [and] tools," when read within the wider Chapter 22 context, constitute "coal or other mine[s]" only when there is an established connection to the fixed physical manifestations listed before and after them. 30 U.S.C. § 802(h)(1)(C). It is unclear, however, whether such an established connection impacts the circumstances under which the three movable types of property remain "mines" when not physically connected to the manifestations listed in subsections (A)-(C). At a

minimum, the statutory language, broader context, and numerous practical concerns render subsection (C)'s meaning ambiguous.

Our dissenting colleague contends that "an item listed in subsection (C) must be located at an extraction site or a processing plant to count as a 'mine' under the Act." Dissenting Op. 8. This restrictive construction of the statute countermands our observation in *Donovan* that the Act included a "sweeping definition of a mine[,]" 734 F.2d at 1554 (internal quotation marks omitted), as well as our ruling in *National Cement II* that the "broad statutory definition of 'mine[]' . . . extends the protections of the Mine Act beyond the actual site where mining takes place." 573 F.3d at 795. The dissent's interpretation also contradicts our recognition in *National Cement I* that, as a procedural matter, the Secretary should "confront" the breadth and ambiguity of the Act in the first instance. 494 F.3d at 430. In that case, we held that because the definitional terms of "mine" in subsection (B) of the Mine Act "are ambiguous and the Secretary instead interpreted them as having a plain, unambiguous meaning, we vacate the Commission's decision and remand for it to obtain from the Secretary a *Chevron* step 2 interpretation[.]" *Id.*; *see also Akzo Nobel Salt, Inc.*, 212 F.3d at 1304-05 (explaining that while the Secretary asserted that a Mine Act regulation unambiguously applied, we found the regulation's language ambiguous and remanded for the Secretary to "grappl[e] with" the "regulation's clear ambiguity"). We are of course bound by our precedent. *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996). The dissent's oversimplification also elides the interpretive difficulty that arises when a truck is cited while located on an extraction or

processing site, but MSHA later goes looking for the truck outside the extraction or processing area to determine whether the cited violations have been abated—which is exactly how the present dispute began. *See supra* at 8; J.A. 5. Does the statute unambiguously provide that MSHA loses jurisdiction over a truck once it leaves the extraction or processing area? Apparently so, under the dissent's view. But that reading of the statute renders enforcement of the Mine Act unworkable, frustrating Congress's intent.

B.

The Commission's secondary ruling, concerning the Mine Act's "operator" definition, faces a similar fate as its first. An "operator" is defined under § 802(d) as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor *performing services* or construction at such mine[.]" 30 U.S.C. § 802(d) (emphasis added). To further confirm that the Secretary lacked jurisdiction to issue the citations, the Commission held that KC Transport failed to qualify as an "operator" under the Mine Act. It reasoned that "[a]s an independent contractor," KC Transport only qualifies as "an operator subject to MSHA jurisdiction while performing work at a mine site[,]" and "[w]hen the citations were issued" here, "KC Transport was not performing services in a mine." J.A. 165. Because the trucks were parked and off the mine site, "KC Transport was not performing services in a mine[]" when the two citations were issued and, therefore, was not an "operator." *Id.*

The Secretary asks us to vacate the ruling, not only because the Commission incorrectly narrowed the circumstances under which an independent contrac-

tor qualifies as an "operator" under the Mine Act, but also because it exceeded its jurisdiction by deciding an unraised issue in the first instance. We find it especially telling that KC Transport chooses not to defend the Commission's "operator" ruling on the merits. Instead, KC Transport insists this is a non-issue, because rather than a secondary holding, the Commission merely quoted statutory language discussing "operators" to further support its "mine" definition ruling. This argument is clearly rebutted by the record, revealing the Commission found KC Transport "was not an operator under section 3(d)" because it "was not performing services in a mine[.]" J.A. 165. We therefore review the Commission's secondary "operator" holding and find it lacked jurisdiction to make such a ruling.

The Commission's jurisdiction is limited to questions that were reviewed by the ALJ, and then included in the petition for discretionary relief on appeal. *See* 30 U.S.C. § 823(d)(2). However, the record shows that the ALJ never considered KC Transport's "operator" status. As the parties' joint stipulations confirm, KC Transport conceded that its trucks' conditions violated 30 C.F.R. § 77.404(c) "should the [ALJ] find that MSHA did have jurisdiction over the *trucks*[.]" J.A. 12 (emphasis added). KC Transport then repeated this concession in its briefs before the ALJ, and both parties advanced arguments that focused exclusively on the Mine Act's jurisdiction concerning the trucks and, or, the facility. Neither party so much cited 30 U.S.C. § 802(d)'s "operator" definition, and there is no trace of such a discussion in the ALJ's decision. *See* J.A. 75 ("The parties have stipulated that should this Court find that MSHA had jurisdiction over the trucks and

location, the cited conditions would constitute violations of 30 C.F.R. § 77.404(c)[.]"). And the parties maintained the same focus on 30 U.S.C. § 802(h)(1)'s "mine" definition before the Commission. Thus, KC Transport's "operator" status was not questioned until the Commission issued its majority decision.

Because the Commission resolved this unraised issue on its own without the benefit of briefing—and in the first instance—it failed to abide by its jurisdictional boundaries under 30 U.S.C. § 823(d)(2). And although there is a process through which the Commission may exercise its discretion to reach additional issues, *see id.* § 823(d)(2)(B), nothing in the record shows it followed that procedure here.

* * *

To be sure, the Mine Act is intentionally broad, and this characteristic helps enable the government to protect and promote miner safety. *Am. Coal Co.*, 796 F.3d at 25. We reiterate, however, that broad authority does not equate limitless jurisdiction. *Nat'l Cement I*, 494 F.3d at 1077. It is the courts' role to ensure this broad authority is exercised within its jurisdictional bounds, and we use a variety of tools to do so. Ensuring that the Secretary adopts a reasonable interpretation of its jurisdiction by grappling with the questions and challenges posed by an ambiguous statute is one of the devices in our toolkit. But without such an interpretation here, there is nothing to which we may defer. *Id.* at 1075. Heeding the lessons of *National Cement I* & *II*, we vacate the Commission's decision and remand for the Secretary to reconsider its position pursuant to a revised interpretation of subsection (C), after recognizing its

ambiguity and addressing the questions outlined in this opinion. *See id.* at 1077.

So ordered.

WALKER, *Circuit Judge*, dissenting:

KC Transport is a small trucking company. It occasionally uses its trucks to haul coal for nearby mines. When those trucks break down, KC repairs them at its truck-repair shop — some four miles away from the nearest mine.

Because KC's shop repairs mining trucks, the Secretary of Labor says the shop is a "mine." In his view, any "facilit[y]" "used in . . . the work of extracting [coal]" is a "mine" under the Mine Act. 30 U.S.C. § 802(h)(1). And that puts KC's truck-repair shop within the Mine Safety and Health Administration's jurisdiction.

I disagree. To count as a "mine," a "facility" like KC's shop must be located at an extraction site or a processing plant. KC's shop is not. So the Administration lacks jurisdiction over it.

I would thus deny the Secretary's petition for review.

I. Background

A. Mine Safety and Health Administration's Jurisdiction

The Mine Act tasks the Secretary of Labor with setting health-and-safety standards for mines. 30 U.S.C. § 811. To enforce those standards, the Mine Safety and Health Administration must "make frequent inspections and investigations" of "mines." *Id.* § 813(a); *see* 29 U.S.C. § 557a. If a mine operator

fails to meet the agency's safety standards, it may issue a citation. 30 U.S.C. §§ 813, 802(d) (a mine "operator" "operates, controls, or supervises a . . . mine").

Because the Administration may inspect and cite only "mines," its jurisdiction depends on the Mine Act's definition of "coal and other mines":

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground,
>
> (B) private ways and roads appurtenant to such area, and
>
> (C) lands, excavations, underground passage-ways, shafts, slopes, tunnels and workings, structures, **facilities**, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, **used in**, or to be used in, or resulting from, the work of **extracting** such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the **milling** of such minerals, or the work of **preparing coal or other minerals**, and includes custom coal preparation facilities.

Id. § 802(h)(1) (emphases added).

Here, we must decide if a truck-repair shop that occasionally fixes mining trucks is a "mine" within the Administration's jurisdiction.

B. KC Transport's Citations

KC Transport has a contract to haul coal at Ramaco Resources' mines near Emmett, West Virginia. To help KC with the job, Ramaco lets KC use a patch of land off a private road near the mines to maintain its trucks. KC built a parking lot on the land and installed two shipping containers to use as a maintenance shop.

KC's shop is about a mile away from Ramaco's coal-processing plant and more than four miles away from Ramaco's nearest extraction site. In addition to its arrangement with Ramaco, KC uses trucks from the shop to serve customers that don't mine coal (or anything else). For instance, it has a "large earth moving project" for a different company. JA 7.

In 2019, a mine-safety inspector visited KC's repair shop. He noticed that KC was servicing two dump trucks, but had not taken sufficient precautions to prevent the truck beds from moving during maintenance. That, the inspector decided, was a violation of the Administration's regulations. 30 C.F.R. § 77.404(c). So he issued KC two citations, one for each truck.

Rather than pay the citations, KC challenged them before the Mine Safety Commission. It argued that the Administration lacked jurisdiction to issue the citations. The agency may issue citations only to "an operator of a coal or other mine," and, KC pointed out, its repair shop is not a "mine." 30 U.S.C. § 814(a).

An administrative law judge rejected KC's challenge, holding that its shop is a "mine" under the Act. Because repairing mining trucks is "essential to the coal hauling and preparation process," JA 91, the ALJ reasoned that the shop is a "facilit[y]" that is "used in . . . the work of extracting . . . minerals." 30 U.S.C. § 802(h)(1)).

On appeal, the Commission reversed. It held that the ALJ's reading of the statute divorced select words in the definition of "mine" from their context. The full definition — quoted above — is filled with geographic language suggesting that a facility must be close to an extraction site to count as a mine. *Id.* § 802(h)(1). Because KC's shop is "distant from a mine site, owned by an independent company, and used for parking and repairing its vehicles," it did not count as a "mine." JA 164. So the agency lacked jurisdiction over it.

Unhappy with the Commission's decision, the Secretary petitioned this court for review, challenging the Commission's interpretation of the Mine Act. I would deny the Secretary's petition.[1]

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[1] "[A] constitutional quandary [is] raised by a federal court resolving a lawsuit," like this one, "between two Executive Branch agencies." *United States Postal Service v. Postal Regulatory Commission*, 963 F.3d 137, 143 (D.C. Cir. 2020) (Rao, J, concurring). "[S]uch disputes do not appear to constitute a case or controversy for purposes of Article III," because "agencies involved in intra-Executive Branch disputes are not adverse to one another (rather, they are both subordinate parts of a single organization headed by one CEO)." *SEC v. FLRA*, 568 F.3d 990, 997 (D.C. Cir. 2009) (Kavanaugh, J., concurring). Our precedents, however, allow such suits to proceed.

II. KC's Shop Is Not A "Mine"

KC's truck-repair shop is not a "mine" under the Mine Act because it is not located at an extraction site or at a processing plant (where minerals like coal are milled or prepared, turning them from ore into usable products).

A. The Act's Definition of "Mine" Has Geographic Limits

Though the Mine Act's definition of "mine" has no express geographic limit, the statute's "carefully calibrated scheme" confirms that there is one. *Turkiye Halk Bankasi A.S. v. United States*, 143 S. Ct. 940, 947 (2023) (looking to the statutory scheme to cabin the reach of a seemingly broad statutory provision); Antonin Scalia, *A Matter of Interpretation* 24 (1997) ("the good textualist is not a literalist").

Recall that the Act defines "mine" in three subsections. 30 U.S.C. § 802(h)(1). To count as a mine, a facility must meet the criteria in one of those subsections. *Secretary of Labor v. National Cement Co. of California, Inc.*, 573 F.3d 788, 795 (D.C. Cir. 2009) (each subsection independently defines "mine").

Two subsections have express geographic limits: Subsection (A) extends only to excavation sites, covering "area[s] of land from which minerals are extracted," and subsection (B) includes "roads appurtenant to such area[s]." 30 U.S.C. § 802(h)(1).

That leaves us with subsection (C). It's a catch-all list of additional things that may count as mines if they are "used in" "extracting," "preparing," or "milling." *Id.* § 802(h)(1)(C). That list breaks down into three categories:

- *Structures found at excavation sites*: "excavations, underground passageways, shafts, slopes, tunnels and workings."
- *Generic items*: "lands, . . . structures, facilities, equipment, machines, tools."
- *Structures found at preparation plants*: "impoundments, retention dams, and tailings ponds."[2]

Because words "are known by their companions," it makes sense to read the generic items in light of the two other categories in the list. *Gutierrez v. Ada*, 528 U.S. 250, 255 (2000). Doing so suggests that lands, structures, facilities, and equipment must either be at an excavation site or at a processing plant to count as "mines" under the Act. *Cf. Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1548, 1552 (D.C. Cir. 1984) (subsection (C) "does not require" that processing facilities "be located on property where . . . extraction occurs," so a processing facility "immediately adjacent to a quarry" was a "mine").

Reading the Act that way reveals a geographic limit that neatly mirrors the Act's express functional

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[2] "Tailings" are a waste product generated by coal processing. They are a "residue separated in the preparation of various products (such as grain or ores)." Tailing (def. 1), *Merriam-Webster* (2023). "[I]mpoundments, retention dams, and tailings ponds" are all structures used to store tailings. 30 U.S.C. § 802(h). An "impoundment" is a generic term for a structure used to "retain tailings." *Technical Report: Design and Evaluation of Tailings Dams*, EPA, at 5 (Aug. 1994), https://perma.cc/68LA-UJRF. A "retention dam" is a method of storing tailings in which the "dam[] [is] constructed at full height at the beginning of the disposal" (in other retention designs the height of the embankment is increased as tailings are added). *Id.* at 6. And a tailings "pond" is a body of wastewater held in by a dam or impoundment. *See id.* at 30.

limit. Under the Act's functional limit, no item on the list in subsection (C) counts as a "mine" unless it is "used in, or to be used in, or resulting from, the work of extracting . . . minerals . . . or . . . the milling of such minerals, or . . . preparing coal or other minerals." 30 U.S.C. § 802(h)(1)(C).[3] Because milling is a type of coal preparation, the Act's functional test boils down to asking whether an item on the list is used in extracting or processing coal. Similarly, the Act's geographic limit asks whether an item is at an extraction site or a processing plant.

Now consider the Secretary's literal reading of the statute. The Secretary contends that the Administration's jurisdiction depends only on *function*, not *location*. Pet. Br. 16. In the Secretary's view, any "piece of equipment" or "facility" can be a mine, no matter where it is located. *Id.*

The rest of the statute shows why that reading doesn't work. Many of the Act's provisions assume that a "mine" has a readily identifiable location. Thus, mine "operator[s]" must "file with the Secretary" their mine's "name and address." 30 U.S.C. § 819(d). And at "each . . . mine" there must be "an office with a conspicuous sign designating it as the office of such mine." *Id.* § 819(a). Similarly, the Mine Safety and

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[3] Milling involves grinding coal into smaller chunks so that it is commercially usable. *See* Peter T. Luckie & Leonard G. Austin, *Coal Grinding Technology*, Dept. Energy (1980), https://perma.cc/EW37-MDVA (describing how several types of coal mills operate). Coal preparation involves extracting coal from the raw material extracted at a mine site. *See* 30 U.S.C. § 802(i) (defining the "work of preparing the coal" as covering the gamut of coal processing: "breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading").

Health Administration must annually inspect each "coal or other mine." *Id.* § 813(a).

Those requirements would make no sense if a mine's location was unfixed.

Take an example. An independent contractor uses his truck for a mining job each Wednesday. The rest of the week he drives his truck 200 miles away for use on a construction site. Even when it's 200 miles away, that truck is a "mine" on a literal reading of the statute: It is a "machine[]" that is "used in, or to be used in, . . . the work of extracting . . . minerals." *Id.* § 802(h)(1). Yet that result clashes with the Act's commands to install "an office with a conspicuous sign" and to file a mine's "name and address." *Id.* § 819(a), (d); *see also Maxxim Rebuild Co., LLC v. Federal Mine Safety & Health Review Commission*, 848 F.3d 737, 742 (6th Cir. 2017) (noting that "other definitions in the Mine Act portray a mine as a place").

The literal reading's problems only deepen from there. The Act covers "independent contractor[s]" when they are "performing services or construction at [a] mine." 30 U.S.C. § 802(d). But if the Act has no geographic limit, the agency could inspect contractors anywhere they go — including at their homes. That's because a contractor's tools and machinery are "used in, or to be used in" extraction wherever they are. *Id.* § 802(h)(1)(C).

Such absurd results are not required by the Act's text. Reading the definition of "mine" in context shows that an item listed in subsection (C) must be located at an extraction site or a processing plant to count as a "mine" under the Act.

B. Processing Plants Fall Within the Geographic Limits

The Commission and the Sixth Circuit both held, as I would, that the Act has a geographic limit. But they interpreted that limit to cover only extraction sites. I part company with them there. Textual clues suggest that the Act covers *both* extraction sites (where ore is dug out of the ground) *and* processing plants (where ore is made into a usable product).

In *Maxxim Rebuild*, the Sixth Circuit held that "facilities and equipment" count as "mines" under the Act only "if they are in or adjacent to — in essence part of" an *extraction site*. 848 F.3d at 740. The court reasoned that the list in subsection (C) reads as if the "author went to a mine and wrote down everything he saw in, around, under, above, and next to the mine." *Id.* The Commission adopted the Sixth Circuit's interpretation in its decision in this case.

But subsection (C)'s list reads more like the "author went to a mine [and a processing plant] and wrote down everything he saw." *Id.* That's because three items on the list — "impoundments, retention dams, and tailings ponds" — are associated with coal *processing*, not coal *extraction*. 30 U.S.C. § 802(h)(1)(C); *see supra* note 2.

The rest of § 802(h)(1)(C) confirms that processing plants are included in the Act's geographic sweep. Any item in the list counts as a "mine" if it is "used in, or to be used in . . . the work of *preparing coal*." 30 U.S.C. § 802(h)(1)(C) (emphasis added). And the list ends by expressly stating that a "mine" "includes custom coal preparation facilities." *Id.*

Plus, because many preparation plants are not located at extraction sites, the Sixth Circuit's reading

would produce an odd regulatory checkerboard. Some processing plants would be covered and others not, depending on how close they are to an extraction site. *See Standards of Performance for Coal Preparation and Processing Plants*, 74 Fed. Reg. 51,950, 51,961 (Oct. 8, 2009) (noting that coal-preparation plants may be at "mine sites" or other "industrial sites"). That outcome is hard to square with Congress's express view that "coal preparation facilities" are covered by the Act. 30 U.S.C. § 802(h)(1)(C).

Finally, interpreting § 802(h)(1)(C) to cover processing plants avoids surplusage. If subsection (C) were limited to items at an extraction site, it would largely collapse into subsection (A), which covers "area[s] of land from which minerals are extracted." *Id.* But reading subsection (C) to include processing plants gives it a distinct role in the statutory scheme.[4]

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[4] My interpretation is consistent with precedent. *Cf.* Maj. Op. 19-20. To repeat, I understand the items listed in § 801(h)(1)(C) to count as "mines" if they are located either at an extraction site (where mining occurs) or at a processing plant (where ore is turned into a usable product). So like *National Cement II*, I would not limit the Act's reach to "the actual site where mining occurs." *Secretary of Labor v. National Cement Co. of California, Inc.*, 573 F.3d 788, 791 (D.C. Cir. 2009). And like *Donovan*, I would consider a processing plant "adjacent to a quarry" to be a "mine." *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1552 (D.C. Cir. 1984). As for whether *National Cement I*, 494 F.3d 1066, 1076 (D.C. Cir. 2007), means that "the Secretary should 'confront' the breadth and ambiguity of the Act" before a court may interpret it, Maj. Op. 20, "go take a look at the decision," *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 143 S. Ct. 1258, 1293 n.2 (2023) (Kagan, J., dissenting) ("I'll take my chances on readers' good judgment").

III. Remand to the Commission is Unwarranted

Though I read the Mine Act's definition of "mine" more narrowly than the Commission, I agree with its bottom-line conclusion. KC's truck repair shop is not a "mine" under the Act because it is not at an extraction site or processing plant. So I would deny the Secretary's petition for review. *See Calcutt v. FDIC*, 143 S. Ct. 1317, 1321 (2023) (we may affirm an agency, despite disagreeing with its reasoning, if the agency "was *required* to take [the] action" at issue (cleaned up)).

Today's majority takes a different tack. It first decides that the statute is ambiguous. Then, it remands to the agency to let the Secretary have a crack at interpreting it. Presumably, once the case comes back up on review, this court will defer under *Chevron* to the Secretary's interpretation of the now-ambiguous statute — at least if it's reasonable. *See Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984); *Secretary of Labor v. National Cement*, 494 F.3d 1066, 1068 (D.C. Cir. 2007) (remanding to let the Secretary interpret an ambiguous statute).

But that approach too readily relinquishes this Court's duty to "decide all relevant questions of law" and to "interpret . . . statutory provisions." 5 U.S.C. § 706. Deference under *Chevron* is appropriate only in those rare cases when "employing traditional tools of statutory construction" leaves a court "unable to discern Congress's meaning." *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018) (quoting *Chevron*, 467 U.S. at 843 n.9). And even then, a court must satisfy itself that Congress meant to leave a "gap for

the agency to fill" using its expertise. *Chevron*, 467 U.S. at 843.

That is not this case. As the parties agree, the meaning of the Mine Act depends on principles of statutory interpretation — not an exercise of policymaking discretion by the Secretary. Thus, the Commission interpreted the Act using "the traditional tools of statutory construction." JA 161. And the Secretary's opening brief acknowledged that "[t]he text is all that is necessary to divine the meaning of what constitutes a mine." Pet. Br. 17. At argument, the Secretary reiterated: "[T]he statute is unambiguous. The Secretary is not asking this Court for deference. The Secretary is simply asking that this Court read the plain meaning of the statute, you know, as the Secretary does." Oral Arg. Tr. 39.

In those circumstances, deference is inappropriate. When the "executive branch . . . ask[s] the court to do what courts usually do in statutory interpretation disputes [and] supply its best independent judgment about what the law means," courts should not "place[] an uninvited thumb on the scale in favor of the government." *Guedes v. Bureau of Alcohol, Tobacco, Fire-arms & Explosives*, 140 S. Ct. 789, 790 (2020) (Gorsuch, J., concurring in denial of certiorari); *see also HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, 141 S. Ct. 2172, 2180 (2021) (refusing to defer when "the government [did] not invok[e] *Chevron*").

Indeed, the Secretary's shifting and self-serving interpretations of the Mine Act show just how inappropriate remand is here. When KC Transport first contested its citations before the ALJ, the Secretary insisted that he had jurisdiction because

"each *truck* independently constituted a 'mine'" under the Act. JA 156. After the ALJ rejected that argument — in his view, calling trucks "rolling mines" was "absurd" — the Secretary tweaked his position, now contending that KC's truck-repair *facility* is a "mine." *Id.*; Pet. Br. 17. Today's remand gives the Secretary a third bite at the apple.

What's the upshot? A small trucking business is forced once more to fight a moving target. "While it is true enough . . . that one who deals with the Government may need to turn square corners he need not turn them twice" — let alone three times. *United States v. Winstar Corp.*, 518 U.S. 839, 922 (1996) (Scalia, J., concurring) (cleaned up).

Because I agree with the parties that this case can be resolved using the traditional tools of statutory interpretation, I would do just that.

* * *

To count as a "mine" under the Mine Act, a "facility" like KC's shop must be located at an extraction site or a processing plant. KC's shop is not. So the Administration lacks jurisdiction over it.

Because the majority disagrees, I respectfully dissent.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, DC 20004-1710

April 5, 2022

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	Docket No. WEVA 2019-0458
v.	:	
KC TRANSPORT, INC.	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

DECISION

BY: Althen and Rajkovich, Commissioners

This proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) ("Act" or "Mine Act"). It involves two citations issued to the trucking company, KC Transport, Inc., regarding haul trucks parked for maintenance at the company's facility in Emmett, West Virginia.[1] The

[1] A settlement regarding 18 of the 20 citations in this docket was approved by the Judge below on December 19, 2019. The two remaining citations, Nos. 9222038 and 9222040, both allege violations of 30 C.F.R. § 77.404(c) ("Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion."). If MSHA is found to have jurisdiction, the parties stipulated the facts of the violations

only issue before the Commission is whether the Mine Safety and Health Administration ("MSHA") had jurisdiction to issue the citations.

The parties filed cross-motions for summary decision on the jurisdictional issue. The Secretary asserted stand-alone jurisdiction over the trucks. The Judge rejected that argument; however, the Judge found MSHA had jurisdiction over the facility and, therefore, over the trucks while they were at the facility. 42 FMSHRC 221 (Mar. 2020) (ALJ). KC Transport appeals.

For the reasons below, we reverse the Judge's decision, grant KC Transport's motion for summary decision, and vacate the two citations. In doing so, we affirm the finding that MSHA did not have jurisdiction over the cited trucks and reverse the Judge's finding of jurisdiction over the KC Transport facility.

I.

Factual and Procedural Background

A. Summary of Uncontested Facts

KC Transport is an independent trucking company that provides coal, earth, and gravel hauling services to various businesses, including (but not limited to) coal operators such as Ramaco Resources ("Ramaco"). Jt. Stips. 7, 8. KC Transport operates maintenance and storage facilities at five locations, including at Emmett, West Virginia (the "Emmett facility").[2] The

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and reached an agreement concerning gravity, negligence, and appropriate penalty amounts. Jt. Stips. 39-42.

[2] The parties' stipulations did not provide any facts regarding the other locations.

Emmett facility is located on Right Hand Fork Road, approximately 1,000 feet from a haulage road that serves Ramaco's Elk Creek Prep Plant and other Ramaco mines. The haulage road is partly public; there is a gate limiting access near the Elk Creek Plant, beyond which Ramaco maintains the road. To reach the Emmett facility, one must pass through the gate, travel up the haulage road, then turn onto the public Right Hand Fork Road. The facility is over a mile from the prep plant, with three mines approximately four to five miles distant and additional mines about six miles remote. Jt. Stips. 9-12, 24-26.

KC Transport operates approximately 35 trucks from the Emmett facility. These trucks include off-road trucks that provide haulage for nearby mines and on-road trucks that provide haulage services completely unrelated to mining. Approximately 60% of services from the facility are for Ramaco. The facility is not on mine property, and Ramaco does not employ personnel or maintain equipment at KC Transport's facility. KC Transport shares the facility's parking area with a logging company. Jt. Stips. 13-15, 17, 20, 30. When the relevant citations were issued, KC Transport had not yet built a maintenance shop at the facility, so KC Transport used shipping containers and service trucks for maintenance needs. Jt. Stip. 6. The area was, essentially, a parking lot with an open storage area.

The relevant events occurred on March 11, 2019. An MSHA Inspector was searching for trucks that he had cited while they were at Ramaco's Elk Creek Prep Plant during a recent inspection. He intended to terminate those citations. When he arrived at the KC Transport facility's parking area, he discovered

ongoing maintenance work on two trucks and issued the two new subject citations. Jt. Stips. 2-5. The citations allege that the trucks were not blocked against motion while raised for repair in violation of 30 C.F.R. § 77.404(c).[3] The trucks were parked for maintenance at the KC Transport parking lot when cited. Jt. Stips. 18, 19.

The cited trucks are regularly inspected by MSHA when on-site at a Ramaco property or along Ramaco's haulage road, but MSHA had never inspected the Emmett facility. Jt. Stip. 29. MSHA never sought to inspect the facility before March 11, 2019, and the inspector did not attempt to inspect any other vehicles at or other parts of the facility that day.[4]

B. Procedural Background

The parties filed cross-motions for summary decision before the Judge on the issue of jurisdiction. Both parties relied upon the definition of "coal or other mine" in Section 3(h)(1) of the Mine Act, 30 U.S.C.

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[3] Section 77.404(c) provides, "[r]epairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments."

[4] The parties stipulated that eleven months earlier, on April 3, 2018, MSHA issued two citations to KC Transport at a muddy parking area that KC Transport then had adjacent to where the haulage road intersects Right Hand Fork Road. MSHA later vacated those citations. Sometime between April 2018 and March 2019, KC Transport constructed its new facility 1,000 feet away from the Right Hand Fork Road's haulage road. Jt. Stips. 21-23. MSHA knew of the new location as demonstrated by the inspector going to the facility. However, MSHA did not attempt to inspect the facility or trucks located at it until April 2019. Having traveled to the facility for a different purpose than inspecting, the inspector issued the citations in dispute.

§ 802(h)(1).[5] The Secretary argued that each truck independently constituted a "mine" under subsection 3(h)(1)(C) and was, therefore, subject to MSHA jurisdiction irrespective of its location. KC Transport countered that the Mine Act only provides jurisdiction over equipment in or appurtenant to a mine as defined in section 3(h)(1)(A) or (B). Therefore, KC Transport claimed the facility was not a mine, and MSHA did not have jurisdiction over the trucks while at the facility.

As a preliminary matter, the Judge noted that the parties disagreed as to the jurisdictional question at issue: the Secretary argued that each truck independently constituted a mine, while the operator argued that the facility was not a mine and, therefore, MSHA could not issue citations for the trucks parked at it. 42 FMSHRC at 229-30. The Judge rejected both arguments, finding that the Secretary's approach would create "rolling mines" and lead to "absurd results," but that the facility fell "within the definition" of a mine. *Id.* at 231, 237. The Judge ultimately found MSHA jurisdiction over the facility and both trucks, concluding that the trucks were at the KC Transport maintenance facility, which he

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[5] Section 3(h)(1) of the Act defines a "mine" as:

> (A) an area of land from which minerals are extracted . . . (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passage-ways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, 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, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1).

found to be a "mine." By implication, therefore, he found the trucks were "mines" within subsection 3(h)(1)(C) only when located on a mine or haulage road. He held that maintaining trucks to haul coal was integral to the mining process. Therefore, both the facility and the trucks at the facility were "used in" mining under section 3(h)(1)(C) of the Mine Act. *Id.* at 230-32, 237-38.

On appeal, the parties reiterate their arguments. KC Transport claims the Judge erred in finding jurisdiction over the trucks at the facility because only equipment and facilities that are in or appurtenant to working mines (as defined in section 3(h)(1)(A)) are subject to MSHA jurisdiction, and the facility does not engage in coal extraction or preparation within the scope of Subsection (A). The Secretary counters that the Commission must evaluate subsection (C) independently and that the plain language of the definition covers the trucks and facility because they are "used in" mining.[6]

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[6] KC Transport contends that the Judge erred in even addressing MSHA's jurisdiction over the facility. Noting that the Secretary had not sought such jurisdiction, the company claims the Judge should not have reached an issue for which there was no live case or controversy. As we are reversing the Judge's finding of jurisdiction over the facility, we need not address this argument in depth. However, we note that it was necessary to discuss the facility's jurisdictional status under KC Transport's rationale. The company asserted that the trucks were not subject to MSHA jurisdiction because the facility was not a mine. Mot. for Sum. Dec. at 1, 6.

II.

Disposition

This case comes before us in an unusual posture. Before the Judge's decision, MSHA did not assert or attempt to exercise jurisdiction over the KC Transport facility. Nor did it do so after citing the trucks while they were at the facility. On cross-motions for summary judgment on the truck citations, the Judge awarded MSHA unasked-for jurisdiction over the facility. Before us, the Secretary vigorously seeks to retain MSHA's unrequested prize.

Vital to this analysis is that KC Transport is an independent contractor and that no mining activities or structures within the scope of subsection (A) occur at its facility. Further, MSHA does not assert the KC Transport facility is on a road or private way appurtenant to Ramaco's operation. The Secretary asserts MSHA jurisdiction over trucks and a facility owned by this independent contractor situated on land where no mining is occurring. The Secretary's effort must fail.

A. The Secretary's Arguments

The Secretary principally argues that the definition of a "mine" is plain and that we must apply a *Chevron* analysis.[7] Under step one of the analysis (*Chevron I*), if Congress has spoken in subsection 3(h) to the precise issue in dispute, the matter is ended, and we must accept Congress' directive. According to the Secretary, subsection 3(h)(1)(C) plainly applies to all tools, equipment, machines, etc. actually used in or

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[7] *Chevron USA Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).

to be used in mining regardless of whether they are on a mine site, a site appurtenant to the mine site, or elsewhere. The Secretary would permit no further inquiry. Secondarily, by footnote, the Secretary argues that if we do not apply *Chevron I*, we must conduct an analysis under step two of *Chevron* (*Chevron II*) and defer to the Secretary's construction. S. Resp. Br. at 8 n.3.

1. Plain Meaning

We find no support for the Secretary's proposition that the definition of a "mine" in the Mine Act plainly applies to offsite, non-mining storage and repair facilities or all tools, equipment, and machines located off a mine site that have a use in mining. The Secretary would find tools and equipment to be mines regardless of their location. Thus, as the Judge pointed out, a truck sitting in a diner parking lot would be a "mine." 42 FMSHRC at 231. If a miner used his own hammer at work, it would be a "mine" even when located in his home workshop. The Judge was correct that such a construction of the term "mine" would be absurd. If jurisdiction follows equipment as it travels away from the mine, there is no point at which jurisdiction ceases.

The Secretary invokes this "plain meaning" basis for jurisdiction over the trucks because they were "used in" mining previously and most likely would be used in the future. S. Resp. at 7-11; 42 FMSHRC at 230-32, 237-38. The Secretary argues for jurisdiction over the independent KC Transport facility because it provides offsite parking and repair for trucks used in mining. S. Resp. at 12-15. It is a fixed location away from any mine site, and no mining occurs at the site. The difficulty with the Secretary's argument is that it

seizes on the words "used in" within the lengthy definition rather than undertaking any analysis of the definition as a whole or its role in securing miners' safety. Such focus results in an absurd interpretation that certainly is not "plain."

In rejecting the Secretary's assertion under almost similar facts, the U.S. Court of Appeals for the Sixth Circuit recently made the specific finding that MSHA's theory would create "no stopping point." *Maxxim Rebuild Co. LLC v. Federal Mine Safety and Health Review Commission*, 848 F.3d 737, 743 (6th Cir. 2017). In fact, *Maxxim* did not involve merely trucks or other tools; it involved a facility far more closely related to mining than the KC Transport facility. The circuit court did not accept the Secretary's limitless definition of a mine.

In reaching this conclusion, the circuit court essentially followed the same logic as the Judge applied to the trucks (standing alone) in this case. The Secretary's grossly overbroad interpretation creates an absurdity, and avoidance of absurd results in reviewing statutes is a "golden rule of statutory interpretation." 2A Sutherland Construction § 45.12 (7th ed.). The Commission recognizes this principle. *Sims Crane*, 40 FMSHRC 301, 303 (Apr. 2018) ("[S]tatutes and regulations should not be construed to produce an absurd result.")

Beyond the absurdity of such unlimited inspection reach, we cannot square the proposed interpretation that every tool, machine, etc., is a separate and distinct "mine" regardless of location or current usage with a resultant imposition of the Mine Act's mandatory inspection requirements. Section 103(a) of the Act requires the Secretary to "make inspections of

each underground coal or other mine in its entirety at least four times a year."[8] 30 U.S.C. § 813(a). The duty to make such inspections is not optional; the Mine Act mandates such inspections. Yet, we have not been made aware of any MSHA policy, program, or procedures for inspecting warehouses, repair shops, storage areas, and other facilities that are not on or at a mine site.

Separate from the absurdity of MSHA's construction, there is no merit to the Secretary's proposition that the lengthy, multi-tiered definition of a mine "plainly" applies to the offsite parking and repair facility of an independent entity and trucks neither on a mine site nor engaged in mining activity. It is not "plain" that Congress meant the phrase "used in" to be taken in such a literal sense that tools on shelves of independent supply stores would be deemed to be "mines."[9]

Certainly, a tool present in a mine remains within MSHA's jurisdiction even though it is not actively being used at a particular moment. It is there and readily available for use in mining. However, when it is not at the mine, it cannot be engaged in mining and it is not a "mine."

Further, as discussed below, the definition of a "mine" focuses on land areas where mining is

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[8] We explain below that section 103(a) requires "frequent inspections and investigations in coal or other mines each year." The use of the word "in" further emphasizes the locational aspect to mines for jurisdictional purposes.

[9] As Judge Learned Hand wisely opined, "there is no surer way to misread any document that to read it literally." *Guiseppi v. Walling*, 144 F.2d 608, 623, 624 (2d Cir. 1944) (J. Hand, concurring).

occurring, on private ways appurtenant to such lands, and on equipment used to extract and prepare mined material. It is certainly not "plain" that Mine Act jurisdiction applies to tools, equipment, machines, etc., not on a mine site that at one time were used on the mine site, or that could be brought to the mine site again.

Turning again to the Sixth Circuit's Maxxim decision, the circuit court addresses this precise point in construing the definition of "mine" in the Mine Act. The circuit court states:

> But context and perspective are everything. In pulling back the lens, we see several indications that the power of the Mine Safety and Health Administration extends only to such facilities and equipment if they are in or adjacent to—in essence part of—a working mine.

Maxxim, 848 F.3d at 740. Thus, the Secretary's interpretation of subsection 3(h) would make the definition absurd. Further, the complexity of the definition and the many factors we take into account below demonstrate that the definition of a "mine" is not "plain." The Secretary's interpretation does not warrant *Chevron I* regard.

2. *Chevron* II/*Skidmore* deference

Because MSHA's definition of a "mine" is absurd, we do not owe it deference. We could proceed immediately to our interpretation. Nonetheless, we

examine deference under *Chevron* II[10] and *Skidmore*[11] standards.

Under *Chevron* II, the Commission reviews whether the Secretary's interpretation of the Act is reasonable. If so, the Commission must accept it, even if it differs from how the Commission would have interpreted the statute in the absence of the Secretary's interpretation. *Marfork Coal Company, Inc.*, 29 FMSHRC 626, 630 (Aug. 2007). Separately, if the Commission decides an MSHA interpretation does not warrant *Chevron II* deference, the Commission may afford the interpretation a lesser degree of deference under the *Skidmore* standard. *The American Coal Company*, 38 FMSHRC 1972, 1979 n.9 (Aug. 2016). That standard is whether the Secretary's interpretation is persuasive.

In this case, the Secretary's position is a litigation position, rather than a formal position taken after a demonstrated internal review or policy consideration, let alone public notice and comment. Indeed, regarding jurisdiction over the KC Transport facility, it is a position taken on appeal and not expressed before the Judge. Only after the Judge decreed unrequested jurisdiction did the Secretary assert jurisdiction over the facility at the second stage of litigation.

Thus, the Secretary did not develop this position by an objective standard found in MSHA's rules or policy statements. Instead, this is a matter of retaining an unasked-for litigation award. As a late-blooming litigation tactic, the interpretation would receive only

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[10] *Chevron*, 467 U.S. at 842-43.

[11] *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

weak Skidmore deference—namely, deference only to the extent it has the power to persuade. *Knox Creek Coal Corp. v. Secretary of Labor*, 811 F.3d 148, 159-60 (4th Cir. 2016).[12]

In any event, given the guides identified and discussed below, the Secretary's proffered interpretation is neither reasonable nor persuasive. We turn to the proper construction of section 3(h). In doing so, we employ the "traditional tools of statutory construction," including an examination of the statute's text, legislative history, and structure, as well as its purpose. *See Chevron*, 467 U.S. at 842-43.

B. MSHA does not have Jurisdiction Over KC Transport's Parking and Repair Facility or Trucks Parked at the Facility.

The purpose of the Mine Act is to protect individuals performing work "*in the Nation's coal or*

[12] We recognize, of course, that in other cases the Secretary has also asserted jurisdiction over off-site facilities. We find no record of a thoughtful policy-driven basis for such claims. Indeed, in the Maxxim case, the respondent, Maxxim, was a wholly-owned subsidiary of a mining company. Maxxim operated seven shops. Five were inspected by the Occupational Safety and Health Administration and two, including the subject shop, were inspected by MSHA. The Secretary did not explain any logic or legal reason for such differences. Further, as here, the Secretary did not provide evidence that MSHA had developed any consistent policy for the exercise of jurisdiction over off-site facilities. In this case, MSHA certainly knew of the existence and location of the facility but did not seek to exercise any jurisdiction or perform any statutorily required inspections until after an inspector went to the site and impulsively issued citations for two trucks. Even then, MSHA did not assert jurisdiction over the facility. The actions of MSHA regarding such facilities and off-site equipment demonstrate only a pattern of random, sporadic action rather than implementation of a thoughtful policy.

other mines." *See generally* 30 U.S.C. § 801 (emphasis added). The repeated references to conditions "in" coal or other mines demonstrate that Congress was concerned with the health and safety of miners as they engage in mining tasks. Necessarily, therefore, the Mine Act addresses the full range of activities and instrumentalities used in those mines. That focus differs substantially from defining a mine to include all tools and equipment, regardless of use and wherever they are located.

KC Transport operates a trucking and repair facility that is neither in a mine nor appurtenant to a mine. KC Transport is an independent entity unrelated to any mining enterprise and supplies trucking services to mining and non-mining customers. Jt. Stip. 39. Applying the proper construction tools, we find no support for finding that KC Transport's facility or trucks are "mines." No support exists in the language of the Mine Act's predecessor statute (the Coal Act), the legislative history of the Mine Act, the text of the Mine Act, important precedential decisions of the United States Circuit Courts of Appeal for the Sixth and Seventh Circuits, or common sense.

1. The Federal Coal Mine Health and Safety Act of 1969 ("Coal Act")

The Coal Act defined a "mine" by reference to activities conducted upon, under, or above a land area that constituted a mining operation. The statute defined a coal mine as:

> an area of land *and* all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed

> upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal . . . and the work of preparing the coal so extracted.

30 U.S.C. § 802(h) (1976) (emphasis added).

This definition contains the conjunctive "and" linking two distinct aspects of a coal mine. The first aspect covered "land" as it related to the extraction of coal. This aspect covered "lands" where extractive mining, milling, or preparation occurs. The conjunctive "and" then brought under the Coal Act real or personal property used in mining on such lands. Most importantly, the Coal Act applied to property "placed upon, under, or above the surface of *such* land." *Id.* (emphasis added). Thus, the coverage reached and applied only to personal or real property related to extracting coal *in that land*. This definition plainly does not reach beyond the land and property used in or resulting from extracting or preparing coal.

2. Legislative History of the Mine Act

In passing the Mine Act some eight years later, Congress did not express any intent to expand the jurisdiction of MSHA (the newly formed enforcement agency) beyond the scope exercised by its predecessor the Mine Enforcement Safety Administration ("MESA")[13] under the Coal Act. Thus, the Mine Act's legislative history does not demonstrate an intention to expand the geographical scope of MSHA jurisdic-

[13] MESA was an agency within the Department of the Interior. The Mine Act created MSHA and moved mine safety enforcement to the new agency within the Department of Labor.

tion to lands or areas removed from the mine, such as independent contractor maintenance facilities, or to facilities where mining equipment is stored, repaired, or sold.

While Congress modified the Coal Act's definition of "mine" in the Mine Act, Congress explicitly stated that it intended to *clarify* the scope of the definition:

> [T]he definition of 'mine' is *clarified* to include the areas, both underground and on the surface, from which minerals are extracted. . . . Also included in the definition of 'mine' are lands, excavations, shafts, slopes, and other property, including impoundments, retention dams, and tailings ponds. These latter were not specifically enumerated in the definition of mine under the Coal Act. It has always been the Committee's express intention that these facilities be included in the definition of mine and subject to regulation under the Act, and the Committee here expressly enumerates these facilities within the definition of mine in order to *clarify* its intent.

S. Rep. No. 95-181, at 14 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., *Legislative History of the Federal Mine Safety and Health Act of 1977*, at 602 (1978) ("Legis. Hist.") (emphasis added).

The updated definition simply "enumerated" types of facilities that were already presumed to be subject to MSHA jurisdiction under the Coal Act. The definition did not expand MSHA's jurisdiction in any

broad sense. Congress' clarification to include these large structures of impoundments, retention dams, and tailings ponds on a mining site does not support expanding jurisdiction to mining equipment wherever it is located.[14]

3. The Mine Act Definition of a "Mine" and Related Terms

Section 3(h)(1) of the Mine Act defines a "coal or other mine" in relevant part as:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits . . . or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and

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[14] While the legislative history concludes with the statement that "doubts" regarding jurisdiction should "be resolved in favor of inclusion of a facility within the coverage of the Act," MSHA cannot create jurisdiction by wrongly asserting jurisdiction and then arguing that there exists a "doubt" about it. In this case, MSHA either did not think it had jurisdiction over the Emmett facility or at least did not act on such a thought or seek jurisdiction over the facility until after the Judge's decision.

> includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1).

As seen in the plain language, all three subsections include a locational connection to working mines. Subsection (A) covers relevant "area[s] of land from which minerals are extracted," while (B) includes ways and roads "appurtenant to such area." Subsection (C) then catalogs various mining-related places (e.g., lands, underground passageways, retention dams, tailing ponds) and objects that serve a mining-related purpose in such areas (i.e., structures, facilities, equipment, machines, and tools used in mining). *See Maxxim*, 848 F.3d at 740-42.

Each of these definitions relates to work in or at a mine. The definition of "mine" in subsection (C) specifically refers to things "on the surface or underground." 30 U.S.C. § 802(h)(1)(C). "[S]urface" and "underground" are terms of art in mining and mining regulation. They are used to differentiate distinct areas of what is generally understood to be a mine site in the normal sense. "Surface" and "underground" do not suggest areas off the mine site. The use of "surface" does not mean the drafters used it to corral in off-site areas.

Other definitions in the Mine Act are similarly locational. An "operator" is defined as "any owner, lessee, or other person who operates, controls, or supervises *a coal or other mine* or any independent contractor performing services or construction *at such mine*." 30 U.S.C. § 802(d) (emphasis added). An agent means "any person charged with responsibility for the operation of all or a part of *a coal or other mine* or the supervision of the miners *in a coal or other mine*." 30

U.S.C. § 802(e). A miner is an "individual working *in a coal or other mine*." 30 U.S.C. § 802(g). Section 103(a) (related to inspections) provides, "[a]uthorized representatives of the Secretary or the Secretary of Health and Human Services shall make frequent inspections and investigations *in coal or other mines*." 30 U.S.C. § 813(a) (emphasis added). MSHA must thoroughly inspect operations conducting mining, milling, and preparation activities and all instruments and instrumentalities used in such operations. It is not required to leave the mine site and track down tools, equipment, machines, trucks, and other instruments when they are on a site unrelated to mining. Certainly, the record in *Maxxim, supra*, demonstrates that MSHA does not fulfill its inspection obligations by inspecting only two of seven identical facilities owned and operated by subsidiaries of the same mining company.

In statutes, words are known by the company they keep. *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995) ("[A] word is known by the company it keeps (the doctrine of *noscitur a sociis*)"). Just as in the federal courts, the Commission applies this rule to avoid ascribing to one word or phrase a meaning so broad that it is inconsistent with its accompanying words, thus giving "unintended breadth to the Acts of Congress." *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961).

In context, the definition of a "mine" states—consistent with the surrounding language, intent of the drafters, and purpose of the Mine Act—that MSHA jurisdiction extends to lands used in mining and appurtenant roads, and equipment and structures thereupon. The statute's goal is to protect miners from hazards found in mines or on

appurtenant private ways. The Mine Act does not follow equipment after its removal to facilities where mining does not occur, nor does it apply to equipment before it has entered or after it has left a mine site because operators could use the equipment for mining in the future.

Subsection (B)'s coverage of appurtenant ways is clearly connected to lands covered by Subsection (A). The small extension of jurisdiction specifically to cover "appurtenant" roads is consistent with the larger protective purpose of the Act. Those areas may expose individuals to mining-related hazards. For the reasons above, it is clear that neither the purpose nor the language of the Act indicate a further geographical extension of jurisdiction under subsection (C). Coverage over appurtenant ways and roads under subsection (B) does not somehow imply coverage over lands distant from a mine site, owned by an independent company, and used for parking and repairing its vehicles.[15]

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[15] The Secretary cites *State of AK Dep't of Transp.*, 36 FMSHRC 2642, 2647-48 (Oct. 2014). There, the Commission considered an argument that equipment used along a public road to extract sand and gravel could not be a "mine" because it was not a "private way or road appurtenant" to an area of extraction. The Commission quickly dismissed that argument, finding the activity on that road constituted both extraction (mining) and milling. Therefore, the activity fell squarely under subsection (A) as land upon which mining and milling occurred. In turn, the activities fell under subsection (C) because the equipment's use was on land where mining was occurring. The case provides no support for the proposition that MSHA has jurisdiction over lands that are not appurtenant to a mine site and where no mining activities occur.

4. As an "Independent Contractor," KC Transport is an "Operator" Only When "Performing Services at a Mine."

"Operators" fall into two categories, as noted above. An entity that does not own, lease, operate, control, or supervise a coal or other mine is an "operator" only when that entity, acting as an independent contractor, *physically* performs services *at a mine*. 30 U.S.C. § 802(d).

When KC Transport's trucks are at its parking area off the mine site, the trucks are not performing services at a mine, and KC Transport is not an "operator" for the Act's purposes. There is no reason to believe Congress envisioned MSHA following independent contractors back to their home locations, or anywhere else, away from the actual mine after their services.

Congress expressly addressed independent contractors to ensure that all employees working in a mine "are miners within the definition of the [Act]." S. Rep. No. 95-181 at 14; *Legis. Hist.* at 602. In other words, persons exposed to the same hazards as miners deserve the same protections granted to miners, regardless of their employer. *United Energy Syncs. Inc. v. MSHA*, 35 F.3d 971, 974-76 (4th Cir. 1994). Conversely, persons not working in a mine but who provide non-mining services off a mine site do not face mining hazards. Such workers do not require the Mine Act's extra protection and may otherwise be appropriately protected by the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*; *Old Dominion Power Co. v. Donovan*, 772 F2d 92, 95 (4th Cir. 1985). These jurisdictional concepts regarding independent contractors providing services at mines

find expression in the Congressional intent and statutory purpose.

The Secretary concedes that KC Transport is an independent contractor that provides coal haulage services at Ramaco mines and the Elk Creek Plant as part of its business activities. Jt. Stips. 7, 10, 11. It offers services to other non-mining entities, as well. Jt. Stips. 7, 15. As an independent contractor, KC Transport is an operator subject to MSHA jurisdiction while performing work at a mine site.

Here, the inspector cited trucks that were not performing services at a mine. They had *left* the mine site where the trucks were "used in mining" and returned to the separately and independently-owned Emmett facility for parking and repair. Jt. Stips. 15-17. When the citations were issued, KC Transport was not performing services in a mine. Jt. Stip. 19. Thus, it was not an operator under section 3(d), further confirming that the Secretary did not have jurisdiction to issue the relevant citations.[16]

KC Transport used its Emmett facility for its independent contract trucking business that served both coal and non-coal customers. There is no evidence that Ramaco or any other coal operator used the facility for any mining functions or activities that might cause it to be considered a mining facility. *See*

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[16] We note that MSHA stated on the citations that the violations occurred at the Elk Creek Plant, despite the fact that the citations were issued in an area that was not on Ramaco property. *See* Citation Nos. 9222038 and 9222040. We view this as indicating MSHA's belief—which is borne out both in its standard inspection regimen and its citation form—that its exercise of jurisdiction over a contractor is necessarily contingent upon the contractor's activities occurring at a site within Mine Act jurisdiction.

Harman Mining Corp. v FMSHRC, 671 F.2d 794 (4th Cir. 1981).

5. Important Federal Circuit Court decisions in *Ziegler Coal* and *Maxxim Rebuild Co.* Demonstrate that KC Transport's Facility is not a "Mine."

Federal circuit courts have accepted these underlying jurisdictional precepts for more than 30 years. In *Dep't of Labor v. Ziegler Coal Co.*, 853 F.2d 529, 533-34 (7th Cir. 1988), the Seventh Circuit noted the "geographical component" of the situs of a facility:

> The statutory definition of a coal mine plainly contemplates that the facilities used in the work of extracting coal must be located *on or below the area of land where the coal is extracted*, milled, or prepared. Section 802(h) speaks in terms of "an area of land" and facilities "placed upon . . . the surface of such land" used "in the work of extracting in such area [coal] . . . from its natural deposits."

Id. (emphasis added).

Ziegler involved a repair shop located approximately one and one-half miles away from the nearest Ziegler mine. *Id.* at 531. The court recognized that the Mine Act's legislative history contains a generous construction of the term "coal mine" but specifically noted that "this does not justify *disregarding* the statutory language which speaks in terms of the area in which coal is being extracted." *Id.* at 534 (emphasis added). The shop dealt only with equipment used in mining, but the court recognized that it was "one-step

removed from those facilities used to perform work directly on the extracted coal." *Id.* at 536. The court went on to recognize "that a repair shop might be essential to an efficient mining operation, but this alone is insufficient to satisfy [section] 802(i)." *Id.*

Even more importantly, the U.S. Court of Appeals for the Sixth Circuit directly addressed circumstances nearly identical to this case in the previously cited *Maxxim* case. The Commission had applied a prior Commission case, *Jim Walter Res., Inc.*, 22 FMSHRC 21 (Jan. 2000), to affirm a finding that MSHA had jurisdiction over a maintenance shop that repaired, rebuilt, and fabricated mining equipment and parts for mining equipment. *Maxxim Rebuild Co. v. FMSHRC*, 38 FMSHRC 605 (Apr. 2016).

The facts in *Maxxim* were considerably more robust than the facts presented in this case. The shop operator (Maxxim) was a wholly-owned subsidiary of a mining company (Alpha Natural Resources) rather than a wholly independent business. The shop's location was on property owned by Sidney Coal Company, a sister company to Maxxim and a mining subsidiary of Alpha Natural Resources. *Id.* at 607. Maxxim's employees regularly went to the mining operation to complete boreholes to accommodate blasting equipment furnished by Maxxim. *Id.* The Commission found the work by Maxxim made the shop a "mine" though not located on an actual mining site.

The Sixth Circuit unanimously reversed the Commission.[17] In doing so, the circuit court

[17] We do not hold that we are required to find the Seventh Circuit's decision in Ziegler or the Sixth Circuit's decision in

emphasized the need for context and perspective. Looking at the case from the standpoint of protecting miners from mining hazards, the circuit court found jurisdiction extended to facilities and equipment if they are in or adjacent to—in essence, part of—a working mine. Again, this finding applied to a wholly-owned subsidiary of a mining company with a related company for which Maxxim supplied services engaged in active mining.

Quoting the Mine Act definitions cited above, as well as the definitions in Title IV of the Mine Act, the circuit court found these provisions teach:

> [A] lesson taught many times before. "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme [ ] because the same terminology is used elsewhere in a context that makes its meaning clear or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."

Id. at 742 (citation omitted).

Going further, the circuit court considered the irrational practical implications of finding jurisdiction, including the common sense points raised below.

Maxxim binding upon us for a case arising in the Fourth Circuit. Nevertheless, we recognize both as superior authorities. *See Westmoreland Coal Co.*, 11 FMSHRC 960, 964 (June 1989); *Ray, emp. by Leo Journagan Constr. Co. Inc.*, 20 FMSHRC 1014, 1025 (Sept 1998). As discussed herein, we find that both circuit courts' reasoning is consistent with the plain text, larger statutory context, and purpose of the Mine Act. We are in full accord with these decisions. For that reason, we write in agreement with, and rely upon, both decisions.

Thus, the Sixth Circuit squarely held that MSHA did not have jurisdiction over the Maxxim facility, a repair shop more closely related to actual mining activities than the Emmett facility of KC Transport.

Finally, the circuit court noted that the Commission relied upon its finding of jurisdiction in *Jim Walter Resources, supra*. The court found that *Jim Walter* was decided incorrectly, stating:

> Far better, it seems to us, to stand by the text and context of § 802(h)(1), which limit the agency's jurisdiction to locations and equipment that are part of or adjacent to extraction, milling, and preparation sites.

Id. at 744.

We are in accord with and fully accept the circuit court's analysis. Not only as a matter of authority, but because it aligns with the positions identified above following from the Coal Act, the Mine Act's legislative history, definitions in the Mine Act, and KC Transport's independent contractor status, as well as common sense as discussed below. We recognize that our decision today departs from the *Jim Walter* approach and certain prior Commission cases.[18] Our holding is 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 subsection 3(h)(1)(A) is not a mine within the meaning of section 3(h) of the Mine Act. We further hold that tools, equipment, and the like not on a mine site or any appurtenance thereto and not engaged in any

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[18] *W.J. Bokus Indus. Inc.*, 16 FMSHRC 704, 708 (Apr. 1994); *US Steel Mining Co. Inc.*, 10 FMSHRC 146 (Feb. 1988).

extraction, milling, preparation or other activities within the scope of subsection 3(h)(A) are not mines within the scope of subsection 3(h) of the Mine Act. Today's decision is consistent with the history, language, statutory framework, legislative intent, and two well-considered federal circuit court of appeals decisions.

6. Common Sense

Finally, we are well-advised to follow the Sixth Circuit's path and take an overall view of the business in which KC Transport is engaged and the illogical consequences of accepting the Secretary's construction of the Mine Act. KC Transport is an independent commercial trucking firm. It provides trucking services to different types of customers and stays in business by carrying different materials. In short, it is engaged in commercial trucking like thousands of other commercial trucking firms. When its trucks are in a mine providing services, they must conform to MSHA standards. Therefore, any assertion that denying jurisdiction over trucks at the KC Transport facility means that they could enter a mine and engage in extraction related work, without complying with MSHA's requirements, is without merit.[19]

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[19] Our dissenting colleague asserts the majority approach would compromise safety by impeding the inspector's ability to issue citations. MSHA knew of the facility but never asserted a right to inspect the facility. Even then, MSHA only sought jurisdiction over the trucks. Indeed, MSHA went there to vacate citations issued on the trucks while on the mine site. If an inspector finds a pre-shift violation while examining a contractor's truck on the mine site, he may and will cite it, and similarly, an inspector can and should cite any equipment defect

The jurisdictional standard we describe is consistent with a common sense understanding of the Mine Act's purpose, namely protecting miners from *hazards associated with mining*. *See* 30 U.S.C. § 801. Common sense dictates that jurisdiction should not attach in situations, such as here, where no such risks particular to a mine exist at an independent parking area and garage removed from a mine site. No stipulation suggests that repair work at the Emmett facility is different, in any respect, from the same type of work performed on tens of thousands of trucks throughout the nation at other facilities or, indeed, on any other KC Transport truck that hauls material other than coal. The record shows no difference in activities at the Emmett facility between contractor trucks hauling coal and contractor trucks moving non-coal materials.

As explained in *Maxxim*, *supra*, Congress tailored the Mine Act to protect against dangers that arise from handling coal and other minerals, not generic risks associated with making or repairing equipment. 848 F.3d at 743; *see also United Energy Svcs. Inc. v. MSHA*, 35 F3d 971, 975 (4th Cir. 1994) (emphasizing that employees deserve the same protections as miners if they are subject to the same risks). Jurisdiction over an independent and *offsite* truck repair facility, not exposing employees to any hazards

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he sees on the mine site. *See, e.g., Ames Construction Inc.*, 33 FMSHRC 1607, 1611 (July 2011), *aff'd* 676 F.3d 1109 (D.C. Cir. 2012) (where independent contractor was performing services at a mine and was therefore an operator under the Act, contractor can be found strictly liable for a violation of a mandatory standard occurring at the mine). At no point is a truck allowed on the mine with a mine safety violation. Thus, the same vigorous safety enforcement applies.

associated with the mining process, does not serve the Mine Act's purpose.[20]

A manufacturing plant is not a mine because it manufactures equipment for use in mining and an electrical utility plant is not a mine only because it uses coal. *Id.* at 743; *Herman v. Assoc. Elec. Coop.*, 172 F.3d 1078, 1082-83 (8th Cir. 1999); *see also Bush & Burchett Inc v. Reich*, 117 F.3d 932 (6th Cir. 1997). If jurisdiction follows each piece of equipment, regardless of its travel away from the mine, then, as the Sixth Circuit said, there would be no stopping point. *Id.* at 744. Such an unbounded jurisdictional approach clearly leads to absurd results. A supervisor's pickup truck used at the mine for mining purposes would be subject to MSHA regulations—but not in the supervisor's garage at home.

The jurisdictional principles announced here apply equally to the attempt to exercise jurisdiction over the KC Transport facility and the trucks parked there.[21] The KC Transport facility is only one of the hundreds of facilities that manufacture, store, or repair the vast amount of equipment used in mines. Thus, we share the opinion and observations of the Sixth Circuit in *Maxxim* regarding attaching MSHA jurisdiction to

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[20] By no means is safety ignored in this situation. Where Mine Act jurisdiction does not apply, other jurisdictional oversight does, such as the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, or additional state safety or transportation enforcement agencies. Nothing in the record casts doubt upon their enforcement capabilities.

[21] In reversing the Judge's finding of jurisdiction over the facility, we note the Judge's correct rejection of the Secretary's "rolling mines" theory of jurisdiction over the trucks as stand-alone pieces of equipment at a parking/repair facility. 42 FMSHRC at 231.

any facility or any piece of equipment with *some* connection to mining, regardless of whether that connection exposes employees to relevant mining hazards.

IV.

Conclusion

For the preceding reasons, we find that the Secretary did not have jurisdiction to issue Citation Nos. 9222038 and 9222040 involving trucks parked at KC Transport's Emmett Facility. Accordingly, we reverse the Judge's decision, grant KC Transport's Motion for Summary Decision, and vacate the citations.

/s/ William I. Althen
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Commissioner

Chair Traynor, dissenting:

The question on review is whether an inspector from the Secretary of Labor's Mine Safety and Health Administration ("MSHA") had jurisdiction to issue citations to KC Transport, Inc., when he observed its employees violate a mandatory safety standard while repairing coal haul trucks at KC Transport's parking lot. As I will demonstrate, Congress has directly spoken to the issue; the Mine Act plainly states that "equipment . . . used in, or to be used in" mining processes are subject to the provisions of the Mine Act. 30 U.S.C. § 802(h)(1)(C).

A. Factual Summary

On March 11, 2019, MSHA Inspector John M. Smith traveled down a public road in Logan County, West Virginia and arrived at a manned-gate controlled by Ramaco Resources. The gate marked the point where the public road became Ramaco's private mine haul road. Only authorized personnel are permitted access to the mine road, which connects five coal mines (three deep mines, one strip mine and a highwall mine) with the Elk Creek Preparation Plant. The road, mines, and preparation plant are all owned and operated by Ramaco and subject to the provisions of the Mine Act.

Inspector Smith first traveled to the Elk Creek Plant. From the plant, Inspector Smith traveled about a mile down the haul road to KC Transport's parking lot. KC Transport is an independent contractor that provides haulage services at these Ramaco mine properties.[1] KC Transport's off-road trucks regularly haul coal from the five mines, over the haul road and to the Elk Creek Plant. The off-road trucks were not licensed to travel on-road at the time of the inspection and, therefore, were operated exclusively at Ramaco's mine complex. On this day, Inspector Smith was following-up on citations that had been previously issued to KC Transport's trucks during a MSHA inspection of a Ramaco mine.

KC Transport parks and maintains its trucks at a sand and gravel parking lot built on land controlled by Ramaco. The lot is separated from the haul road by

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[1] KC Transport operates truck maintenance and storage facilities at five different locations. The Emmett, West Virginia facility at issue contained approximately 35 trucks, including both off-road trucks and on-road trucks.

an approximately 1000-foot side road. At the time of the inspection, KC Transport was in the process of constructing a maintenance facility next to the parking lot and was using two shipping containers and two service trucks to conduct repairs.[2] KC Transport shares the lot with a logging company.

In addition to the off-road trucks, KC Transport also operates on-road trucks out of this facility providing services for other customers. This was the first time that MSHA issued a citation for conduct that occurred at this newly-constructed parking lot.[3] However, MSHA regularly inspects the same exact trucks when operated at Ramaco's mines and on its roads.

On March 11, 2019, during his visit to the parking lot, Inspector Smith observed two Mack haul trucks undergoing repairs. The trucks were not blocked against motion as required by the mandatory safety standard at 30 C.F.R. § 77.404(c). Accordingly, Inspector Smith issued two citations to KC Transport. Inspector Smith also issued an imminent danger order pursuant to section 107(a) of the Mine Act because a person was standing underneath the raised unblocked bed of one truck, a serious hazard that could result in a fatal injury. The issuance of the imminent danger order authorized the inspector to

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[2] On the day Inspector Smith issued these citations he did not attempt to inspect the shipping containers, service trucks or any other trucks located at KC Transport's facility.

[3] In April 2018, MSHA visited a different KC Transport parking lot. MSHA issued citations that were later vacated. After those citations were issued, KC Transport constructed the subject sand and gravel parking lot, in an area that was further from the mine haul road than its previous lot.

withdraw the individual from danger. The order is not at issue in this case.

The parties filed cross motions for summary decision with the Judge. KC Transport agreed to accept the two citations as issued if the Judge found that MSHA had properly asserted jurisdiction. Commission Procedural Rule 67, 29 C.F.R. § 2700.67, authorizes a Judge to grant summary decision if the entire record shows there is no genuine issue of material fact and the moving party is entitled to summary decision as a matter of law. KC Transport argued that MSHA lacked jurisdiction to issue the citations because the repairs were being performed at a facility that was not a "mine." The Secretary argued that MSHA has jurisdiction to enforce safety standards governing equipment "used in" mining.

The Judge granted the Secretary's motion for summary judgement, finding MSHA jurisdiction over the trucks as well as the parking lot facility.

B. Analysis

On review, KC Transport argues that section 3(h)(1)(C) of the Mine Act only covers equipment connected to "mines" as specified in sections 3(h)(1)(A) and (B). The Secretary maintains that section 3(h)(1)(C) covers equipment that is "used in" mining irrespective of its location. The Commission reviews a Judge's decision to grant summary decision *de novo*. *M-Class Mining, LLC*, 41 FMSHRC 579, 582 (Sept. 2019) (citations omitted).

The Mine Act provides that "[e]ach coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such

mine shall be subject to the provisions of this Act." 30 U.S.C. § 803. Section 3(h)(1) of the Mine Act defines a "coal or other mine" in relevant part as:

> (A) An area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits . . . or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1).

Under the plain language of the Mine Act, the Mack coal haul trucks are "equipment . . . used in, or to be used in" "extracting" and "preparing coal" and thus I would find that the citations were properly issued. *Chevron U.S.A. Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) (Under step one of *Chevron*, we ask "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency,

must give effect to the unambiguously expressed intent of Congress.").

In the legislative history of the Act, Congress made it clear "that what is considered to be a mine and to be regulated under this Act be given the *broadest possibl[e] interpretation*." S. Rep. No. 95-181, at 14 (1977), *reprinted in* Senate Subcomm. on Labor, Comm. on Human Res., Legislative History of the Federal Mine Safety and Health Act of 1977, at 602 (1978) ("Legis. Hist") (emphasis added).[4] Congress further stated that "doubts [shall] be resolved in favor of inclusion of a facility within the coverage of the Act." *Id.* Accordingly, the Commission has consistently construed section 3(h)(1) broadly in favor of Mine Act coverage and recognized that "jurisdictional doubts [shall] be resolved in favor of coverage by the Mine Act." *Calmat Company of Arizona*, 27 FMSHRC 617, 624 (Sept. 2005) (holding that the cited haul trucks "were clearly related to mining operations and within MSHA's jurisdiction.").

In fact, the Commission has repeatedly held that pursuant to section 3(h)(1)(C), "equipment" that is "used in, or to be used in" mining is subject to the provisions of the Mine Act, even when located at a place that is not a "mine" pursuant to sections 3(h)(1)(A) and (B).[5] *See W.J. Bokus Industries, Inc.*,

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[4] Indeed, in *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F.2d 589, 591-92 (3d Cir. 1979), *cert. denied*, 444 US 1015 (1980), the court stated that "the statute makes clear that the concept that was to be conveyed by the word ["mine"] is much more encompassing than the usual meaning attributed to it—the word means what the statute says it means."

[5] The Commission generally considers whether the equipment "used in" coal preparation or extraction is "essential to" or

16 FMSHRC 704, 708 (Apr. 1994); *see also State of AK Dep't of Transp.*, 36 FMSHRC 2642, 2647-48 (Oct. 2014) (holding that equipment used to extract material is subject to the provisions of the Mine Act and noting that lack of jurisdiction over a public road under subsection (B) does not foreclose jurisdiction over operations on that road under (A) or (C)). That is because under section 3(h)(1)(C) whether a particular piece of equipment is subject to the provisions of the Mine Act is primarily resolved by examining the equipment's function (not its location or ownership).[6]

In *W.J. Bokus*, the Commission held that "[u]nder section 3(h)(1), the Secretary need only establish that the items in issue *were used or to be used in mining*." 16 FMSHRC at 708 (emphasis added). Bokus Industries operated a sand and gravel mine on a portion of its property. An asphalt plant was also located on the property. Bokus had an arrangement by which it leased the asphalt plant to another company. Bokus also leased a garage, located adjacent to the asphalt plant, to the asphalt company. Under the terms of the lease, both Bokus Industries and the asphalt company could jointly use the garage. On review, the Commission held that it was not necessary to determine whether the garage was a "mine," because the evidence established that the cited pieces of equipment in the garage "were used or to be used in mining." *Id.* at 708. In so holding, the

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"integral to" the process. *See Maxxim Rebuild Co., LLC*, 38 FMSHRC 605, 607 (Apr. 2016).

[6] And not by reference to the folk notion of two Commissioners in the majority who declare that the technical definition of a "mine" in the Act cannot possibly encompass trucks parked immediately adjacent to mine property.

Commission relied upon the function of the cited equipment.[7]

In *Jim Walter Res, Inc.*, 22 FMSHRC 21 (Jan. 2000), the Commission reaffirmed that "whether a mine operator's equipment is covered by the Mine Act *is not determined by its location but rather by its function*—that is, whether it is used in extracting or preparing coal." *Id.* at 27 n.11 (emphasis added). The Commission held that the supply shop at issue and its contents were subject to the provisions of the Mine Act because the "facilit[y]" was a "mine" and because it held "equipment . . . used in or to be used in" mining. *Id.* at 25.

My colleagues rely on the anomalous Sixth Circuit opinion in *Maxxim Rebuild*, 848 F.3d 737 (6th Cir. 2017), for their finding that these haul trucks were not subject to MSHA jurisdiction at the time the citations were issued.[8] My colleagues are wrong. Even under the narrow interpretation of section 3(h)(1) articulated in *Maxxim*, the citations and the Judge's decision should be affirmed.[9]

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[7] *See also Justis Supply & Machine Shop*, 22 FMSHRC 1292, 1296 (Nov. 2000) (finding MSHA jurisdiction over a dragline assembly site where the record demonstrates that the dragline was intended for use at a nearby mine).

[8] My colleagues rely upon *U.S. Dep't of Labor v. Ziegler Coal Co.*, 853 F.2d 529 (7th Cir. 1988), in which the court reviews a decision of the Benefits Review Board. Slip op. at 13. Because *Ziegler* neither concerns a decision of the Federal Mine Safety and Health Review Commission, nor MSHA jurisdiction, it is not relevant to our inquiry.

[9] The Sixth Circuit's decision in *Maxxim* is not binding on a case arising in the Fourth Circuit. As *Maxxim* is inconsistent with the plain language of section 3(h)(1) of the Mine Act, as well

Maxxim concerned a repair shop that mostly serviced mining equipment for Alpha Natural Resources—a large coal producer and Maxxim's parent company. *Id.* at 739. The shop also included a warehouse which stored at least one piece of equipment for Alpha. The Commission affirmed that MSHA properly asserted jurisdiction over the shop.[10] The Sixth Circuit reversed, holding that section 3(h)(1) of the Mine Act limited the agency's jurisdiction "to locations and equipment that are part of or adjacent to extraction, milling, and preparation sites." *Id.* at 744. The Sixth Circuit stated that the Mine Act does not govern "'machines, tools, or other property" wherever they may be found or made. *Id.* at 740. Instead, "equipment" covered by subsection (C) "*must be connected* to a working mine." *Id.* at 741 (emphasis added). The Sixth Circuit stated that section 3(h)(1) (A), (B), and (C) "are place connected, and place driven." The court ultimately held that the shop at issue "was not attached to or adjacent to a working mine," instead it was "one-step removed from" a "mine" and that "it makes no difference that Alpha's mines may one day use the shop's fabricated or repaired equipment" to extract coal. *Id.* at 742-43.

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as its legislative history and Commission precedent, I believe it was wrongly decided. However, as demonstrated infra, even under the Sixth Circuit's narrow interpretation of section 3(h)(1), the Judge's decision in this case should be affirmed.

[10] The Commission concluded that under the plain language of section 3(h)(1)(C) the shop was subject to MSHA jurisdiction because it was a "facility" that was "used in" the process of "extracting" and preparing coal; the Maxxim facility worked on equipment that was integral to the mining process. 38 FMSHRC 605, 607 (Apr. 2016). Substantial evidence supported the Judge's conclusion that a significant part of the work performed at the shop was mining related. *Id.* at 608.

The facts of the case currently before the Commission are readily distinguishable from the facts in *Maxxim*. First, let's consider the location. The parking lot is not "one-step removed" from a mine site. Instead, it sits on a large tract of land that contains five working mines and a coal prep plant. Furthermore, it is *adjacent to an active mine haul road* (about 1000 feet away) which connects five mines and a preparation plant. Each of these entities, including the mine haul road, are a "mine." 30 U.S.C. § 803(h)(1)(B) ("private ways and roads appurtenant to such area"). Moreover, one cannot access the parking lot without first traveling through a manned gate controlled by the mine operator.

Second, and more importantly, let's consider direct evidence of the trucks' function. The two trucks are each "connected to a working mine" because the parties stipulated that each was "regularly used to haul coal from the five Ramaco mines to the Elk Creek prep plant" and are regularly inspected by MSHA. Jt. Stips. 18, 29. These stipulations are dispositive evidence of the trucks' function. In addition, the trucks were parked and undergoing maintenance work previously mandated by MSHA at the time these citations were issued. The repairs were necessary so that the trucks could continue hauling coal for Ramaco. These particular trucks were not licensed to travel over public roads at the time the citations were issued and thus could only be operated on Ramaco's property. Jt. Stip. 27. Accordingly, both trucks were obviously connected to a working mine. Even under *Maxxim*, the Secretary rightfully asserted Mine Act jurisdiction.

In summary, substantial evidence supports the Judge's finding that the coal haul trucks are

"equipment" "used in" mining as defined at 30 U.S.C. § 802(h)(1). Furthermore, the Secretary demonstrated that the trucks are essential and integral to mining operations. The location of the parking lot, adjacent to the mine haul road, provides additional evidence of the trucks' function.[11] The Judge's finding of jurisdiction should be affirmed. Insofar as the Judge believed he had to address the jurisdiction over the facility to affirm jurisdiction over the trucks, he was in error.[12]

C. The Result of the Majority's Ruling

The majority's decision will result in decreased enforcement of safety standards governing the maintenance and operation of mining equipment at off-site facilities or on-site separate facilities. As a result, those workplaces will become more dangerous.

Powered haulage accounts for a large percentage of the fatal injuries in mining. In 2017, 50% of fatal

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[11] Considering the location of the equipment as circumstantial evidence of function, while also requiring direct evidence of the equipment's function, helps to address KC Transport's concerns regarding overbroad MSHA jurisdiction. For example, certain implications can logically be drawn if a truck is parked at its manufacturer's warehouse versus being parked at a mine operator's on-site repair shop.

[12] The Judge primarily conducted a functional analysis, finding that the trucks perform "an integral part of the mining and preparation process" by transporting coal from the mines to the prep plant, and "the maintenance of the trucks at the facility is [also] essential to the coal hauling and preparation process." 42 FMSHRC at 237-38. However, the Judge also states that "the location of the trucks and the maintenance facility matter." *Id.* at 237. Essentially, in so doing, he was stating that location can serve as evidence that the equipment is "used in" the extraction or preparation of coal.

injuries at mines involved powered haulage.[13] Haul trucks in particular present a variety of safety hazards. Two of the fatal injuries in 2017 occurred when a 340-ton haul truck collided with a passenger van at a mine site.[14]

More recently, from October 1 to December 13, 2021, five of the ten total fatal injuries at mines involved powered haulage.[15] In an attempt to better address those hazards, MSHA recently issued a notice of proposed rule-making to require mine operators to develop and implement powered haulage safety programs. *Safety Program for Surface Mobile Equipment*, 86 Fed. Reg. 50496 (Sept. 9, 2021). Apparently, as a result of the majority's decision, KC Transport will not be required to comply with this particular MSHA rule while maintaining trucks at its parking lot.

Of course, injuries can also occur during the maintenance of haul trucks. Recently, a mechanic was fatally injured when a haul truck bed collapsed on him while he was working on the truck.[16] The

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[13] Jennica Bellanca, *Mining Project: Characterization of Haul Truck Health and Safety Issues*, The National Institute for Occupational Safety and Health (NIOSH), www.cdc.gov/niosh/mining/researchprogram/projects/index.html.

[14] MSHA, *Fatality Alert #11 & #12 – October 31, 2017*, Mine Safety and Health Administration, www.msha.gov/data-reports/fatality-reports/2017/fatality-11-12-october-31-2017/fatality-alert.

[15] *MSHA: 'Work with us' as powered haulage, other concerns persist*, Safety and Health Magazine, www.safetyandhealthmagazine.com/articles/22065-msha-work-with-us-as-powered-haulage-other-concerns-persist.

[16] MSHA, *October 19, 2021 Fatality – Fatality Alert*, Mine Safety and Health Administration, www.msha.gov/data-

citation and imminent danger order issued to KC Transport on March 11, 2019, cite eerily similar facts. Inspector Smith observed a miner standing underneath the truck bed while it was in a raised position, without having been blocked to prevent motion. According to my colleagues' ruling, MSHA inspectors are not permitted to issue an order to stop work if they observe a similar dangerous occurrence in the future.

However, the complete implications of their ruling remain unclear. In fact, it gives rise to a number of questions. For instance, suppose an MSHA inspector stops a truck at a Ramaco mine. The inspector discovers that the KC Transport driver conducted an inadequate pre-shift examination earlier in the day.[17] If the pre-shift examination occurred at the parking lot, can MSHA issue a citation? Suppose the truck is later involved in a fatal accident at a mine. Are MSHA's accident investigators permitted to consider whether improper maintenance at the parking lot was a contributing factor? Or perhaps an MSHA inspector observes a haul truck driving on the mine road with an obvious equipment defect. The inspector follows the truck to the parking lot. Does the truck's presence at the lot prevent the MSHA inspector from issuing a citation for a defect that he observed at the mine road?

These questions and confusion demonstrate the absurdity of my colleagues' interpretation. Impeding

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reports/fatality-reports/2021/october-19-2021-fatality/fatality-alert.

[17] The mandatory safety standard at 30 C.F.R. § 77.1606(a) states that "[m]obile loading and haulage equipment shall be inspected by a competent person before such equipment is placed in operation," and that safety defects shall be "recorded and reported."

MSHA's ability to prevent and investigate accidents that involve coal haul trucks frustrates Congress's goals in passing the Mine Act. 30 U.S.C. § 801(c) ("[H]ere is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm"). Haul truck accidents lead to fatal injuries.

Instead of permitting MSHA to ensure that mining equipment complies with minimum mandatory safety standards, my colleagues issue a decision that designates an area an "MSHA free zone." I am concerned that their decision will become a how-to-guide, used by the most cynical mine operators to avoid regulations.

My colleagues contend that the trucks at the parking lot are subject to the provisions of the Occupational Safety and Health Act, 29 U.S.C. § 651, and thus safety will not be compromised. They fail to acknowledge that the Occupational Safety and Health Administration ("OSHA") does not have the budget or the man-power to inspect even a fraction of the workplaces currently in its jurisdiction.

OSHA ended fiscal year 2021 with only 750 inspectors, the lowest number of inspectors in the 51-year history of the agency.[18] With similar staffing levels it would take 165 years for OSHA inspectors to

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[18] Bruce Rolfson, *Federal Workplace Safety Inspector Numbers Fall Under Biden*, Bloomberg Law, https://news.bloomberglaw.com/safety/federal-workplace-safety-inspector-numbers-tumble-under-biden.

visit every workplace in its jurisdiction once.[19] In contrast, the Mine Act requires MSHA to inspect each surface mine at least two times a year and each underground mine at least four times a year. 30 U.S.C. § 813(a). MSHA inspectors will continue to regularly visit Ramaco's mining complex, however, OSHA inspectors will rarely, if ever, be on the premises.[20]

Accordingly, miner safety would be best promoted if equipment "used in" mining was inspected by MSHA inspectors, as Congress intended. Thus, I dissent.

/s/ Arthur R. Traynor, III
Arthur R. Traynor, III, Chair

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[19] David Michaels and Jordan Braab, *The Occupational Safety and Health Administration at 50: Protecting Workers in a Changing Economy*, National Library of Medicine, www.ncbi.nlm.nih.gov/pmc/articles/PMC7144438/.

[20] The Mine Act also provides miners with other enhanced protections that are absent from the Occupational Safety and Health Act, including the right to temporary reinstatement to their position if fired for engaging in protected safety related activity. 30 U.S.C. § 815(c)(2).

Furthermore, MSHA inspectors have been granted greater access to inspect properties as compared to their OSHA counterparts. *Cf. Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978) (warrantless inspection under the OSH Act violates the 4th amendment); *Donovan v. Dewey*, 452 U.S. 594, 606 (1981) (warrantless Mine Act inspections are "constitutionally permissible").

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MAR -3 2020

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner, v. K C TRANSPORT, INC., Respondent.	CIVIL PENALTY PROCEEDING Docket No. WEVA 2019-458 A.C. No. 46-02444-487883 A8938 Mine: Elk Creek Plant

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DECISION
ORDER GRANTING SECRETARY'S MOTION FOR SUMMARY DECISION
ORDER TO MODIFY
ORDER TO PAY

Before: Judge Lewis

On December 20, 2019, The Secretary of Labor ("Secretary") and KC Transport ("Respondent") filed with the undersigned cross-motions for partial summary decision in WEVA 2019-458.[1] The parties

[1] The parties were offered the opportunity to file Reply Briefs and they both did so on January 10, 2020.

settled 18 of the 20 citations included in this docket prior to the motions for summary decision.[2] The two remaining citations at issue in the motions for summary decision are Citation Nos. 9222038 and 9222040, both for alleged violations of 30 C.F.R. § 77.404(c).[3] Both citations were issued for conditions of trucks owned by Respondent that were in the parking area of K C Transport's truck maintenance facility in Emmett, West Virginia (the "Emmett facility" or "maintenance facility") at the time the citations were issued. The Respondent is challenging Mine Act jurisdiction over the Emmett facility and the trucks parked therein. The parties have stipulated that should this Court find that MSHA had jurisdiction over the trucks and location, the cited conditions would constitute violations of 30 C.F.R.

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[2] A Decision Approving Partial Settlement was issued on December 19, 2019.

[3] The full text of the Regulation is as follows:

> **§ 77.404 Machinery and equipment; operation and maintenance.**
>
> (a) Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.
>
> (b) Machinery and equipment shall be operated only by persons trained in the use of and authorized to operate such machinery or equipment.
>
> (c) Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments.
>
> (d) Machinery shall not be lubricated while in motion where a hazard exists, unless equipped with extended fittings or cups.

30 C.F.R. § 77.404.

§ 77.404(c), that both violations were abated in good faith, that the gravity findings are accurate, and that the negligence for each citation should be modified from moderate to low. The parties further stipulated that the appropriate penalty amount for Citation No. 9222038 would be $3,908.00 and the appropriate penalty amount for Citation No. 9222040 would be $4,343.00. Accordingly, the only matter before this Court is a jurisdictional question.

For the following reasons, I grant the Secretary's Motion for Summary Decision and deny the Respondent's Motion for Summary Decision.

Undisputed Facts

The parties in this case have worked diligently in creating a detailed list of joint stipulations.[4] They are as follows:

1. The Administrative Law Judge and the Federal Mine Safety and Health Review Commission have jurisdiction to hear and decide civil penalty proceedings pursuant to Section 105 of the Federal Mine Safety and Health Act of 1977.
2. On March 11, 2019, MSHA Coal Mine Inspector John M Smith was conducting inspection activities at the Elk Creek Prep Plant, Mine ID 46-02444.
3. The Elk Creek Prep Plant is owned and operated by Ramaco Resources, LLC. ("Ramaco Resources").

[4] Joint Stipulations will be designated by JS ¶ followed by the stipulation number.

4. After completing his activities at the Elk Creek Prep Plant on March 11, 2019, CMI Smith traveled more than a mile up the hollow along the haul-road and then turned off the haul-road at Right Hand Fork Road and followed Right Hand Fork Road across a creek about 1000 feet to a location where K C Transport had constructed a parking area with two maintenance shipping containers. K C Transport purchased the gravel and stone for the parking lot and constructed the parking area. K C Transport also has commercial insurance to cover this facility.
5. Inspector Smith traveled up the haul-road and Right Hand Fork Road because he was looking for trucks to issue terminations for previously issued citations. When he reached K.C. Transport's maintenance lot, he observed the trucks cited in Citation Nos. 9222038 and 9222040.
6. At the time of the citations, K C Transport was in the process of constructing a new maintenance shop at that location. The construction materials for a planned approximately 60' x 70' metal building for the new maintenance shop had arrived at the site but were staged on pallets and the metal building had not yet been constructed. The parking area for the planned maintenance shop had been constructed and K C was using two shipping containers and two service trucks for its maintenance needs.
7. K C Transport is an independent trucking company which provides hauling services to

various businesses, including coal hauling, earth hauling and gravel hauling.

8. K C Transport provides coal hauling services to various coal mine operators, including, but not limited to Ramaco Resources.
9. K C Transport operates truck maintenance and storage facilities at five (5) locations, including one at Bluefield West Virginia, one at Taz[e]well, Virginia, two at Princeton, West Virginia, one at Man, West Virginia and the one at issue in this proceeding in Emmett, West Virginia.
10. The new K C Transport maintenance area is located on Right Hand Fork Road, which is a road off the haulage road, which runs past the Elk Creek Plant operated by Ramaco Resources. It is located approximately 1000 feet from the haulage road.
11. The K C Transport maintenance facility is more than a mile up the hollow from the Elk Creek Plant. The Elk Creek Preparation Plant is the nearest coal extraction/preparation facility to K C Transport's maintenance facility.
12. There is a gate at the entrance to the K C Transport facility on Right Hand Fork Road and there is no other way into the hollow where it is located. At the time Citation Nos. 9222038 and 9222040 were issued, the gate was in need of repair and was not operational. KC Transport usually operates this maintenance facility on a 24-hour, 6 day a week basis. Right Hand Fork Road dead ends on the other side of the KC Transport facility. The road into

the K C Transport facility is not a coal haulage road but does branch off from a haulage road.

13. K C Transport shares the parking area for its maintenance facility with a logging company. Ramaco Resources has no personnel or equipment at the facility.
14. K C Transport operates both on-road and off-road trucks out of this facility. The off-road trucks provide haulage for five (5) nearby Ramaco Resources' mines. The on-road trucks provide earth haulage services for AEP, gravel haulage services to other customers and coal haulage services for customers other than Ramaco Resources.
15. KC Transport asserts that about 60% of the services from this KC facility are to the five (5) nearby Ramaco Resource mines, including the 3 deep mines, a strip mine and a highwall mine. The other 40% of K C Transport's work from this location is to provide services for companies other than Ramaco Resources, including American Electric Power ("AEP") and other coal operators. For example, for the past 4-5 months, K C Transport has been working on a large earth moving project for AEP and the trucks working on this project are parked and maintained at the Emmett shop. Although the Secretary has no knowledge of these facts, the Secretary does not dispute the company's assertions.
16. This facility provides a convenient centralized maintenance facility in Logan County for KC Transport.

17. Representatives of Ramaco told K C Transport they could use the area where the trucks referenced in Citation Nos. 9222038 and 9222040 were located for a maintenance facility and assured K C Transport that this area was not on permitted, bonded mine property, so Ramaco would not be operating there. The Secretary has no evidence that K C Transports' facility is on permitted, bonded mine property. Ramaco Resources has no plans to operate a coal mine at the location where K C Transport maintains its maintenance area/shop. K C Transport uses the property for purposes of maintaining a portion of its truck fleet, including those trucks servicing the Ramaco Resources mines and customers other than Ramaco Resources.
18. The haul trucks cited in Citation Nos. 9222038 and 9222040 were owned by K C Transport and were located at KC Transport's Emmett, West Virginia maintenance facility when cited. The haul trucks referenced in Citation Nos. 9222038 and 9222040 were regularly used to haul coal from the five Ramaco mines to the Elk Creek prep plant at the time of the citations.
19. At the time that CMI Smith inspected the haul trucks referenced in Citation Nos. 9222038 and 9222040, the trucks were not hauling coal, were not on a haul-road and were parked at K C Transport's maintenance area for maintenance work to be performed on the trucks.

20. On March 11, 2019, K C Transport's maintenance/shop area, where the trucks referenced in Citation Nos. 9222038 and 9222040 were located, was property that was not permitted or bonded by the state of West Virginia. See Respondent's Exhibit A (map).
21. Until the Citation Nos. 9222038 and 9222040 were issued, MSHA never sought to enter or inspect K C Transport's Emmett maintenance shop or parking area at any time, from the time K C Transport constructed the parking lot to the time the citations were issued. MSHA has not attempted to enter or inspect this area or the trucks while at this location, since the citations.
22. On one occasion, on April 3, 2018, MSHA did cite a work trailer and muddy parking area that K.C. Transport had adjacent to where the haulage road intersects with Right Hand Fork Road. (Citation Nos. 9174394 and 9174395). However, MSHA vacated the citations for the work trailer and muddy parking lot. After this incident, K C Transport elected to construct the new facility approximately 1000 feet away from the haulage road up Right Hand Fork Road.
23. When Citation Nos. 9222038 and 9222040 were issued, MSHA did not attempt to inspect the shipping containers, service trucks or any other trucks at the location, nor did MSHA inspect the logging trucks which were located at K C Transport's maintenance area.
24. To get to KC transport' s Emmett facility, it is necessary to pass along the Ramaco Resources,

LLC's Elk Creek Plant haul-road until reaching the Right Hand Fork Road hollow where the facility is located. Then it is necessary to cross a creek and drive 1000' up Right Hand Fork Road to the facility.

25. KC Transport's maintenance facility where these trucks were inspected is located more than a mile from the Elk Creek Plant, approximately 4-5 miles from three (3) deep mines operated by Ramaco Resources, LLC and six (6) miles from a strip mines and highwall mines operated by Ramaco Resources. Thus, the closest location where coal is mined or prepared is more than a mile from this facility.

26. All of the Ramaco mines are accessed via the haul-road. That haul-road is a public road for some distance. However, before reaching the Elk Creek Plant, there is a gate limiting public access to the haul-road beyond that location. The gate is manned and only authorized persons are permitted beyond that point. The haul-road beyond the gate is maintained by Ramaco Resources and is no longer a public road. KC Transport's maintenance area is also accessed only by traveling through the gate and up the haul-road to the turn-off at Right Hand Fork Rd, although Right Hand Fork Road is not part of the haul-road.

27. At various times, the cited trucks have hauled coal from each of the Ramaco mines to the Elk Creek Plant. The cited trucks were not licensed to haul products over public roads at the time the citations were issued, but they

have been in the past and they may be in the future.

28. On or about March 11, 2019, the trucks referenced in Citation Nos. 9222038 and 9222040 were only being operated on private land, including haul-roads operated by Ramaco Resources. There were other trucks parked at that same location which were used by K C Transport to haul coal and materials other than coal and for customers other than Ramaco.
29. The cited trucks are inspected regularly by MSHA when they are at the five (5) Ramaco Resources LLC mines and at the Elk Creek prep plant and along the haul-road. They had never previously been inspected at K C Transport's maintenance facility/parking area.
30. K C Transport operates about 35 trucks from the Emmett, West Virginia, Maintenance Facility.
31. The proposed penalty amounts that have been assessed for the violations at issue pursuant to 30 U.S.C. Section 820(a) will not affect the ability of K C Transport to remain in business.
32. MSHA Coal Mine Inspector John M Smith was acting in his official capacity and as an authorized representatives of the Secretary of Labor when Citation Nos. 9222038 and 9222040 involved in this proceeding were issued.
33. True copies of each of the citations that are at issue in this proceeding along with all continuation forms and modifications, were

served on K C Transport or its agent as required by the Act.

34. Each of the violations involved in this matter were abated in good faith.
35. Government Exhibit 1 is an authentic copy of Citation No. 9222038, with all modifications and abatements, and may be admitted into evidence for the purpose of establishing its issuance and not for the purpose of establishing the accuracy of any statements asserted therein.
36. Government Exhibit 2 is an authentic copy of Citation No. 9222040,[5] with all modifications and abatements, and may be admitted into evidence for the purpose of establishing its issuance and not for the purpose of establishing the accuracy of any statements asserted therein.
37. Respondent's Exhibit A is a map of the area. Neither party contests its authenticity and it may be admitted into evidence for the purpose of demonstrating the layout of the area and the permitted, bonded areas for the Court as well as the location of K C Transport's facility in relation to the Elk Creek Plant.
38. With respect to Citation Nos. 9222038 and 9222040, K C Transport contests that MSHA had jurisdiction over the trucks referenced in the citations, while located at KC Transport's Emmett, WV maintenance facility. K C Transport argues that both citations should be vacated for lack of jurisdiction at this location.

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[5] The parties erroneously listed this citation as 9222038.

39. With respect to Citation Nos. 9222038 and 9222040, should the administrative law judge find that MSHA did have jurisdiction over the trucks, while at K C Transport's maintenance facility, K C Transport concedes that the conditions then present would violate 77.404(c) if the trucks had been subject to jurisdiction. With respect to Citation Nos. 9222038 and 9222040, should the administrative law judge affirm the finding that 77.404(c) was violated, the parties have agreed that the gravity findings set forth in the citations shall be affirmed.
40. With respect to Citation Nos. 9222038 and 9222040, should the administrative law judge find jurisdiction and affirm the finding that 77.404(c) was violated, the negligence for each citation shall be modified from moderate to low.
41. With respect to Citation No. 9222038, should the administrative law judge find jurisdiction and affirm the finding that 77.404(c) was violated, the parties agree that the appropriate penalty amount is $3,908.00.
42. With respect to Citation No. 9222040, should the administrative law judge find jurisdiction and affirm the finding that 77.404(c) was violated, the parties agree that the appropriate penalty amount is $4,343.00.
43. For purposes of Section 110(i) of the Act, the proposed penalty amounts are appropriate given the operator's history of violations and the size of the operator.

44. Government Exhibit 3 is a photograph depicting how the truck referenced in Citation No. 9222038 appeared at the time of inspection.
45. Government Exhibit 4 is a photograph depicting how the truck referenced in Citation No. 9222040 appeared at the time of inspection.

Secretary Motion for Partial Summary Decision, 3-12.[6] Respondent's Motion for Summary Decision, 1-3; Secretary's Motion for Summary Decision, 4-5. In addition to the stipulated facts, the parties each submitted exhibits.

Summary Decision Standard

The Court may grant summary decision where the "entire record...shows: (1) That there is no genuine issue as to any material fact; and (2) That the moving party is entitled to summary decision as a matter of law." 29 C.F.R. § 2700.67(b); *see also UMWA, Local 2368 v. Jim Walter Res., Inc.*, 24 FMSHRC 797, 799 (July 2002); *Energy West Mining*, 17 FMSHRC 1313, 1316 (Aug. 1995) *(citing Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986), which interpreted Fed.R.Civ.P. 56). The Commission has analogized its Rule 67 to

[6] References to the Secretary of Labor's exhibits are designated as "SX." References to Respondent's exhibits are designated "RX." References to the Secretary's Motion for Partial Summary Decision are designated "SB" followed by the page number. References to the Secretary's Reply Brief are designated "SRB" followed by the page number. References to the Respondent's Memorandum of Law in Support of Motion for Summary Decision are designated "RB" followed by the page number. References to Respondent's Reply Brief are designated "RRB" followed by the page number.

Federal Rule of Civil Procedure 56, which authorizes summary judgments upon a proper showing of a lack of a genuine, triable issue of material fact. *Hanson Aggregates New York, Inc.*, 29 FMSHRC 4, 9 (Jan. 2007). A material fact is "a fact that is significant or essential to the issue or matter at hand." *Black's Law Dictionary* (9th ed. 2009, *fact).* "There is a genuine issue of material fact if the nonmoving party has produced evidence such that a reasonable factfinder could return a verdict in its favor." *Greenberg v. Bellsouth Telecommunications, Inc.*, 498 F.3d 1258, 1263 (11th Cir. 2007) (citation omitted). The court must evaluate the evidence "in the light most favorable to ... the party opposing the motion." *Hanson Aggregates*, 29 FMSHRC at 9. Any inferences drawn "from the underlying facts contained in [the] materials [supporting the motion] must be viewed in the light most favorable to the party opposing the motion." *Id.* Though the moving party bears the initial burden of informing the court of the basis for its motion, it is not required to negate the nonmoving party's claims. *Celotex*, 477 U.S. at 323. "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Scott v. Harris*, 550 U.S. 372, 380 (2007) (citation omitted).

Analysis

This case concerns the limits of MSHA jurisdiction, and like many jurisdictional cases, it raises difficult, often novel issues, driven by the precise facts of the case. As Judge Manning has eloquently stated,

"Jurisdictional issues under the Mine Act are often factually complex. The Commission and various federal circuit courts have wrestled with these issues... Whether MSHA has jurisdiction under the specific facts at issue here will be one of the key issues in these cases." *Cox Transportation Corp.*, 22 FMSHRC 568, 569-70 (April 5, 2000) (ALJ). The case is made even more difficult because even though both parties are arguing about jurisdiction, their arguments are often not directed at each other.

K C Transport is an independent trucking business that provides hauling services to various businesses, including coal and gravel mines. JS ¶¶ 7, 8. It owns and operates five maintenance and storage facilities in Virginia and West Virginia. JS ¶ 9. At issue here are trucks that were located in the Emmett, West Virginia maintenance facility (hereinafter referred to as the "maintenance facility"). JS ¶¶ 4-6. The maintenance facility provides off-road trucks for haulage for five nearby Ramaco Resources mines and on-road trucks for earth haulage services for American Electric Power ("AEP"), as well as trucks for gravel and coal haulage for other customers. JS ¶ 14. Approximately 60% of the services from the maintenance facility are for the five nearby Ramaco Resources mines, including three deep mines, a strip mine, and a highwall mine. JS ¶ 15. The other 40% of K C Transport's work from this facility provides services for AEP and other coal operators. JS ¶ 15. At the time of the citations, K C Transport was in the process of constructing a new maintenance shop at this location. JS ¶ 6.

In order to get to the maintenance facility, one travels along the Ramaco Resources Elk Creek Plant haul-road until reaching the Right Hand Fork Road,

following that road for approximately 1,000 feet, until reaching the facility. JS ¶¶ 4, 10, 24. The haul-road "is a public road for some distance." JS ¶ 26. The maintenance facility is located more than a mile from the Elk Creek Plant, approximately four to five miles from three deep mines operated by Ramaco Resources, and six miles from strip mines and highwall mines operated by Ramaco. Therefore, the closest location where coal is mined or prepared is more than a mile from the maintenance facility. JS ¶ 25.

Here, an MSHA inspector at the Elk Creek Prep Plant traveled more than a mile up the hollow along the haul-road, then turned at the Right Hand Fork Road and traveled along it for approximately 1,000 feet, crossed a creek, and arrived at the maintenance facility. JS ¶ 4. Once he arrived, he cited two trucks that were undergoing maintenance at the off-site K C Transport maintenance facility for violations of 30 C.F.R. § 77.404(c).[7] JS ¶ 5; SX-1; SX-2. The

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[7] Citation No. 9222038 states:

> The red Mack tandem coal truck Co# 120 is jacked up with the wheels and tires off both back axles and is not blocked to prevent motion. The rear of the truck is jacked up by using blocking under the back end of the bed and using the motion of the bed when raised to lift the back wheels off the ground. Work is being preformed [sic] on the brakes located on the back axles of the truck. Standard 77.404(c) was cited 1 time in two years at mine 4602444 (0 to the operator, 1 to a contractor).

GX-1. Citation No. 9222040 states:

> The bed on the Mack Co#5 coal truck is in the raised position and is not blocked against motion. A miner is observed standing on the frame of the truck under the raised unblocked bed. This citation was factor that

mandatory standard provides that "repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments." 30 C.F.R. § 77.404(c). At the time the trucks were cited, the trucks were not hauling coal or on a haul-road; rather, they were parked at the maintenance facility for maintenance work. JS ¶ 19. The cited trucks have hauled coal from each of the Ramaco mines to the Elk Creek Plant. JS ¶ 27. The parties agree as to the gravity, negligence, and penalty amounts if this Court finds jurisdiction over the trucks here. JS ¶ 39-43.

Contentions of the Parties

A difficult aspect of this case is that the parties do not seem to be on the same page as to what issue is before the Court, with the Secretary arguing for jurisdiction over the trucks and the Respondent arguing against jurisdiction over the maintenance facility. The Secretary states in its opening brief, "The parties agree that the only issue in dispute concerning the citations is whether the trucks are subject to MSHA coverage."[8] SB at 1. Throughout its brief, the Secretary's arguments are almost entirely in support of the trucks, rather than the facility, being under MSHA's jurisdiction. The Secretary clarifies that "whether the maintenance area is a mine subject to

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> contributed to the issuance of Imminent Danger Order No. 9222039 dated 3/11/2019. Therefore, no abatement time was set. Standard 77.404(c) was cited 2 times in two years at mine 4602444 (2 to contractor 77.404(c)).

SX-2.

[8] As will be discussed, *infra*, the parties did not in fact agree on this being the sole issue.

MSHA coverage need not be decided in this case to determine whether MSHA coverage applied to the subject trucks." SRB at 1.

In contrast, the Respondent states that "all that remains for the Court to decide is the purely legal issue of whether MSHA had jurisdiction over KC Transport's Emmett facility." RB at 6. The Respondent argues that "because KC Transport's Emmett facility is not a 'coal or other mine,' as defined in the Federal Mine Safety and Health Act of 1977 ('Mine Act'), the Court should find that MSHA was without jurisdiction over the facility and that Citation Nos. 9222038 and 9222040 should be vacated." RB at 1. The Respondent's brief vacillates between arguing against this position that the Secretary does not take and arguing that MSHA cannot assert jurisdiction over the trucks without jurisdiction over the maintenance facility. RB at 8.

The Secretary argues that the definition of a "mine" was intended to be read broadly, and that the trucks referenced in the citations are equipment that were used in the extraction and preparation of coal and therefore subject to Mine Act coverage. SB at 14. The Secretary makes clear that its argument is that the trucks, not the maintenance facility or any structures on the site, are under MSHA jurisdiction. SRB at 1. The Secretary argues that though the Act is clear, if this Court finds ambiguity, the Secretary should be accorded *Chevron* deference. SB at 15-16. If this Court does not extend MSHA jurisdiction to the trucks, the Secretary asserts that it would create "a bifurcated coverage scheme [that] would be impractical, if not impracticable, and would lead to confusion on the part of miners and the operator itself as to what standards were applicable at any given

time." *Id.* at 19. The Secretary refers to this bifurcated coverage between MSHA and OSHA as "an absurd result." SRB at 3.

The Respondent argues that off-site facilities, such as the maintenance facility here, are not under MSHA jurisdiction. RB at 6-7. It further argues that location is key to understanding whether MSHA has jurisdiction over equipment, and that MSHA cannot simply attach jurisdiction to a piece of mobile equipment and follow that equipment "wherever it goes." RB at 2. It argues that MSHA can cite the trucks at issue while they are at any of the Ramaco mines or Elk Creek preparation plant, but not when they are located in an area that is not under MSHA's jurisdiction.

Because the parties' briefs raise both the issue of whether the maintenance facility is a mine and whether the trucks are mines, this Court will consider both questions. Based on the following analysis, this Court rejects the Secretary's argument that each of these trucks constituted a "mine" under the Act no matter where they are located. However, this Court also rejects the Respondent's argument that the maintenance facility was not a "mine" under the Act. Rather, this Court finds that the maintenance facility was a "mine" under Section 3(h)(1)(C), and because the trucks were used in mining and parked at the facility, they constituted "equipment" under the same section. However, MSHA's jurisdiction over the trucks is not limitless; though it is clear that MSHA had jurisdiction in the instant case, it would likely lack such jurisdiction if the trucks were at a non-mining site performing non-mining activities.

Case Disposition

The first inquiry here must be "whether Congress has directly spoken to the precise question at issue." *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984); *Thunder Basin Coal Co.*, 18 FMSHRC 582, 584 (Apr. 1996). "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-843. "In ascertaining the plain meaning of the statute, courts utilize traditional tools of construction, including an examination of the 'particular statutory language at issue, as well as the language and design of the statute as a whole,' to determine whether Congress had an intention on the specific question at issue. *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988); *Local Union 1261, UMWA v. FMSHRC*, 917 F.2d at 44; *Coal Employment Project v. Dole*, 889 F.2d 1127, 1131 (D.C. Cir. 1989)." *MSHA v. Jim Walter Resources, Inc.*, 22 FMSHRC 21 (Jan. 31, 2000). If it is found that Congress has not addressed the question at issue, "the court does not simply impose its own construction on the statute... Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 842-843.

Examining the Mine Act, as well as relevant legislative history, I find that Congress has directly spoken to the precise question at issue. Though the definition of a "mine" under the Mine Act is broad and was intended to be read expansively, it was not intended to be limitless. The Secretary's argument

that MSHA has jurisdiction over a truck that was used to haul coal, no matter where that truck is located, expands MSHA' s jurisdiction to every road, parking lot, garage, and facility in the country. Mobile equipment such as trucks would essentially become rolling mines under the Secretary's interpretation. Under the Secretary's interpretation, if the trucks at issue here were hundreds of miles from the mine and were undergoing maintenance at a private mechanic, MSHA would have jurisdiction over those trucks. If the trucks were parked at a diner while the drivers ate, MSHA would have jurisdiction. If the trucks were hauling lumber for a lumberyard, MSHA would have jurisdiction. Beyond the absurdity of MSHA having geographically and functionally limitless jurisdiction over the trucks, there would also be the problem that any person working on the truck or driving it at any time might be considered a miner under Section 3(g) ("'miner' means any individual working in a coal or other mine." 30 U.S.C. 802(g).)

"In enacting the statute, Congress was plainly aware that the mining industry is among the most hazardous in the country and that the poor health and safety record of this industry has significant deleterious effects on interstate commerce." *Donovan v. Dewey*, 452 U.S. 594, 602 (1981). As a result, Congress took care to put in place a strict regulatory scheme to protect the health and safety of miners at a mine. However, it carefully described what constituted a mine, creating three general categories that were geographically and functionally centered. Congress's definition does not include trucks in whatever location they may be and whatever they may be doing. However, the Mine Act clearly defines a mine in a manner that includes, under the facts of

this case, both the maintenance facility and the equipment (or trucks) therein. While MSHA cannot simply attach jurisdiction to the trucks and follow them wherever they may drive, it can assert jurisdiction over the maintenance facility and all the equipment at the facility that is used for mining.[9]

Section 4 of the Mine Act makes clear that "Each coal or other mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this chapter." 30 U.S.C. § 803. The Act further provides in Section 3(h)(1) three categories of definitions for what constitutes a "coal or other mine" as:

> (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface

[9] It should be noted that if MSHA asserts jurisdiction over the maintenance facility, trucks and other equipment contained on the site, it must conduct inspections "of the mine in its entirety at least two times a year." 30 U.S.C. § 813(a). In the instant case, the MSHA inspector only inspected the trucks, and "did not inspect the shipping containers, service trucks or any other truck at the location." JS ¶ 23. It is not entirely clear from the record whether all this equipment was mining-related, but if so, MSHA would be required to conduct such comprehensive inspections.

> or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

30 U.S.C. § 802(h)(1). Because the controversy in this case concerns whether either the maintenance facility and/or the trucks could constitute a "mine," it is clear that subsection (A) concerning land, and subsection (B) concerning private ways and roads, are not at issue.[10] Specifically, it is the portion of subsection (C) that mentions "structures, facilities, equipment, machines, tools...used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits....or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals," that the Secretary argues provides jurisdiction over the trucks. SB at 13.

When analyzing the definition of "mine" under the Act, one must not be "governed by ordinary English usage," but rather by the broad definition and intent that Congress set forth. *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1551 (D.C. Cir. 1984). The Commission has repeatedly emphasized that "The definition of a 'coal or other mine' in section 3(h) of the Mine Act is broad, sweeping and expansive." *MSHA v. KenAmerican Resources, Inc.*, 42 FMSHRC 1, 6 note

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[10] In *National Cement Co. of Ca. Inc.*, the Secretary took the position that Section 3(h)(1)(B) covers roads, but not vehicles on those roads. 573 F.3d 788, 794-796 (D.C. Cir. 2009).

12 (Jan. 16, 2020); *Jim Walter Resources*, 22 FMSHRC at 24; *MSHA v. Justis Supply & Machine Shop*, 22 FMSHRC 1292, 1296 (Nov. 03, 2000). This description was based on the congressional intent of the Mine Act. The Senate Report accompanying the Mine Act states that "it is the Committee's intention that what is considered to be a mine and to be regulated under this Act be given the broadest possibl[e] interpretation." *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1554-55 (D.C. Cir. 1984) (quoting S. Rep. No. 461, 95th Cong., 1st Sess. 37 (1977), U.S. Code Cong. & Admin. News 1977, 3401, 3414). "Close jurisdictional questions are to 'be resolved in favor of inclusion of a facility within the coverage of the Act.' *Id.*

Following this directive to interpret the definition of a mine broadly, ALJs, the Commission, and Federal Courts of Appeal have found a broad variety of lands, roads, structures, facilities, and equipment to constitute a mine. Combined these provide a general framework for the breadth and limits of MSHA jurisdiction, as well as the appropriate analysis to determine jurisdiction.

In *Marshall v. Stoudt's Ferry Preparation Co.*, the Third Circuit held that a preparation plant that separated low-grade fuel from sand and gravel dredged from a riverbed was a mine. 602 F.2d 589 (3rd Cir. 1979). Analyzing the Act's use of the words, "structure" and "facility," the Court stated that "although it may seem incongruous to apply the label 'mine' to the kind of plant operated by Stoudt's Ferry, the statute makes clear that the concept that was to be conveyed by the word is much more encompassing than the usual meaning attributed to it[. T]he word means what the statute says it means." *Id.* at 592. Similarly, In *Harman Min. Corp. v. FMSHRC*, the

Fourth Circuit held that a plant's "car dropping" facility, where railroad cars were loaded with coal, was a mine. 671 F.2d 794 (4th Cir. 1981). The Court held that the broad definition of "mine" included "all of the facilities used at a coal preparation plant." *Id.* at 796. In *Donovan v. Carolina Stalite Co.*, the D.C. Circuit held that a slate gravel processing facility that was immediately adjacent to a quarry, but was not engaged in direct slate extraction was a mine because it fit within Section (C)'s inclusion of "structures." 734 F.2d 1547 (D.C. Cir. 1984).

In *National Cement Co. of Ca. Inc.*, the D.C. Circuit held that the Secretary's interpretation of Section 3(h)(1) was reasonable when it argued that Mine Act jurisdiction extended to a private road leading to the plant. 573 F.3d 788 (D.C. Cir. 2009). In this case, the Secretary explained the interplay between the three subsections of Section 3(h)(1)(B), which the Court accepted as reasonable. The Secretary interpreted the word "area" in Subsection (A) as "all-encompassing because virtually everything in an extraction area ... is necessarily related to [mining] activity." *Id.* at 794. The Secretary interpreted Subsection (B) to cover mining roads, but not the vehicles traveling on those roads. *Id.* Lastly, the Secretary interpreted Subsection (C) to cover mining related vehicles traveling on mining roads. *Id.* at 795. "Subsections (B) and (C) can be read to work in tandem." *Id.*

In the seminal case, *MSHA v. Jim Walter Resources, Inc.*, the Commission held that a central supply shop used to repair and maintain electrical and mechanical equipment at nearby mines was a mine

under the Act. 22 FMSHRC 21 (Jan. 2000).[11] The Commission reasoned that the language of the Mine Act was clear, stating:

> The stipulated record is equally clear in establishing that the Central Supply Shop is a dedicated off-site facility of a (multiple) mine operator where employees receive, stock, maintain, and deliver equipment, tools, and supplies used at JWR's coal extraction sites, preparation plants, and Central Supply Shop, including, inter alia, rock dust, line curtains, hard hats, machine parts, and conveyor belts. Consequently, there is Mine Act jurisdiction because a ""mine" includes "facilities" and "equipment ... used in or to be used in" JWR's mining operations or coal preparation facilities.

Id. At 25. In dicta, the Commission cited to the *W.J. Bokus Industries* for the proposition that "whether a mine operator's equipment is covered by the Mine Act is not determined by its location but rather by its

[11] Similarly, in *MSHA v. U.S. Steel Mining Co.*, the Commission held that an off-site central repair shop, which had a separate Mine ID, and "exists and functions to repair and maintain electrical and mechanical equipment used in or to be used in USSM's underground and surface coal mines and its coal cleaning plant" constituted a separate "surface coal mine" under the Act. 10 FMSHRC 146, 149 (Feb. 1988). Also, in *MSHA v. W.F. Saunders & Sons*, ALJ Melick held that a preparation plant's truck shop and storeroom, which was primarily used to store and repair trucks used in mining, was a mine under the Act. 1 FMSHRC 2130 (Dec. 28, 1979) (ALJ).

function — that is, whether it is used in extracting or preparing coal." *Id.* at Note 11.

In *MSHA v. W.J. Bokus Industries, Inc.,* the Commission found that gas cylinders kept in a garage adjacent to an asphalt plant and beside an office used by the mine were under MSHA jurisdiction. 16 FMSHRC 704 (April 1994). The garage was regularly used by miners on mining-related tasks. *Id.* at 708. In *W.J. Bokus,* it was unclear whether the ALJ found the garage itself to be under MSHA jurisdiction, but the Secretary's position appeared to be that the equipment in the garage was under MSHA jurisdiction *because* the garage was under MSHA jurisdiction ("The Secretary assert[ed] that the judge 'accepted that MSHA had jurisdiction over the garage.' He infers that the judge would not have examined jurisdiction over items in the garage unless he assumed that MSHA had jurisdiction over the garage itself." 16 FMSHRC at 707, FN 9). However, in reversing the ALJ, the Commission made clear that "we need not reach the issue raised by the Secretary, that the garage was a 'structure' or 'facility' used in mining and, therefore, a 'mine' within the meaning of section 3(h)(1) of the Mine Act." Id. at 708.

In *MSHA v. Justis Supply & Machine Shop,* the Commission relied on *Jim Walter Resources* to conclude that an off-site dragline assembly site was a mine under the Act. 22 FMSHRC 1292 (Nov. 2000). The Commission found that the dragline was equipment "to be used in" mining coal, and the site and employees at the site were devoted to building the dragline that would be used at the mine. Therefore, the dragline assembly site was a mine under the Act.

In *MSHA v. State of Alaska, Dept. of Transp.*, the Commission held that a SAG Screener, a mobile piece of equipment that excavated material at pits along a gravel road and which had its own MSHA Mine ID, was a mine under the Act. 36 FMSHRC 2642 (Oct. 2014). The Commission examined Subsections (A) and (C) in conjunction and held that even though the dedicated right-of-way may not fall under the definition of "private ways and roads" in Subsection (B), it was a piece of equipment used in a mining area.

In *MSHA v. Austin Powder*, ALJ Andrews rejected the Respondent's arguments that because an off-site storage facility was "not employed in" mining at the quarry, it was not a "mine." 37 FMSHRC 1337, 1349 (June 8, 2015). He found that the storage facility was used to store explosives and related materials used in mining, and was therefore a "facility" under the Act. *Id.* at 1352. Similarly, In *MSHA v. Youngquist Brothers Rock, Inc.*, ALJ Gill found that MSHA had jurisdiction to cite a truck that may have been on a section of the mine property where a restaurant was located. 36 FMSHRC 2492 (Sept. 19, 2014) (ALJ). Judge Gill's analysis focused on the location of the truck when it was cited and he found jurisdiction specifically because it was on an area that fell under the definition of a "mine." Further relevant to the instant case, in *Youngquist* MSHA's position was that if the truck been outside the mine gates, MSHA would not have had jurisdiction over it.[12] *Id.* at 2496. In

[12] MSHA has stated this position in several cases. In *MSHA v. Drillex, Inc.*, the inspector "further confirmed that his enforcement jurisdiction over the respondent is limited to any trucks actually found on quarry or mine properties, and that in the instant case, he inspected the truck after it was driven onto

MSHA v. Jeppesen Gravel, ALJ Melick held that a Caterpillar front end loader was under the Mine Act's jurisdiction when it was being used to load gravel in a private way or road appurtenant to the area where the gravel was extracted. 32 FMSHRC 1749 (Nov. 18, 2010) (ALJ). In *MSHA v. Northern Illinois Service Co.*, ALJ Gill held that MSHA had jurisdiction over a service truck and its contents when that truck was on mine premises, even if it was also used at non-mine locations. 36 FMSHRC 2811 (Nov. 10, 2014) (ALJ).

More recently, ALJ Simonton held that a parking lot and office that were located on mine property and adjacent to the plant's active extraction sites was a mine under the Act. *MSHA v. Rain for Rent*, 40 FMSHRC 1267, 1271 (Aug. 22, 2018). The Judge emphasized that the "parking lot is on Natividad Plant property, adjacent to active extraction sites, and used for mine-related purposes." *Id.* at 1272. In finding jurisdiction, Judge Simonton concluded that the "office and parking lot are thus geographically and functionally related to the mining process at Natividad Plant and are subject to MSHA jurisdiction under the Act." *Id.*

In *MSHA v. Maxxim Rebuild Co.*, the Commission held that an off-site maintenance shop that was used primarily to maintain, repair, and fabricate equipment used in the mining process was a mine under the Act. 38 FMSHRC 605 (April 2016). However, this decision was reversed by the Sixth Circuit, in a sweeping decision that rejected *Jim Walter Resources* and much of the Commission's reasoning on jurisdiction. *Maxxim Rebuild Co. v.*

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the mine site in question." 9 FMSHRC 1972, 1975 (Nov. 24, 1987).

FMSHRC, 848 F.3d 737, 740 (6th Cir. 2017). In looking at the three subsections in the definition of a "mine," the Court emphasized, "Location, location, location: All three definitions are place connected and place driven." Id. at 742. The Sixth Circuit held that MSHA jurisdiction "extends only to such facilities and equipment if they are in or adjacent to—in essence part of—a working mine."[13] *Id.* at 740. Since the maintenance shop was not attached to or adjacent to a working mine, it did not fall under the Act's definition of a mine. *Id.* at 742. With regards to equipment, the Court held that such equipment's use in mining is not dispositive of MSHA jurisdiction. "It does not cover mining 'equipment' or for that matter mining 'machines, tools, or other property' wherever they may be found or made." *Id.* at 740.[14] In reaching

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[13] Similarly, in *MSHA v. Pickett Mining Group*, ALJ Rae found that MSHA lacked jurisdiction over a Ford tractor. 36 FMSHRC 2444 (Sept. 8, 2014) (ALJ). Judge Rae's analysis looked at the location of the tractor and its use. She found that there was no evidence that the tractor has been or will be used in mining activities, and that at the time of citation the tractor was not located at any location that could be deemed part of an extraction area.

[14] While the Respondent uses the Sixth Circuit position to advance its argument, the Secretary uses the Commission decision to advance its argument. RB at 10-12; SB at 14. The Secretary argues that not only is the Sixth Circuit's reversal of the Commission in *Maxxim Rebuild* not binding precedent in this case, which arises out of the Fourth Circuit, but that "the lower unanimous decision by the Commission affirming MSHA coverage is the applicable precedent for this case." SRB at 2. This Court questions the Secretary's argument that a Circuit Court reversal (without remand) only disturbs the Commission's decision in the applicable Circuit. Nonetheless, whether the Commission's decision still governs ultimately has little bearing

its conclusion, the Court stated that for the same reason it was rejecting the Commission's decision in *Maxxim Rebuild,* it rejected the Commission's decision in *Jim Walter Resources*. *Id.* at 744. Throughout the decision, the Court expressed dismay that the Secretary's position provided no natural limits. It emphasized that "The Secretary's interpretation also has no stopping point," Id. at 743, and that the definition's "locational focus" provides such a limit. *Id.* at 742.

This is not the only instance of a judge expressing that MSHA's jurisdiction, while broad, must have limits. In *Bush & Burchett, Inc. v. Reich*, the Sixth Circuit rejected the argument that any road appurtenant to a mine was within MSHA's jurisdiction, stating:

> Not only does the statute not compel such a reading, but also such a reading is contrary to common sense. Without some limitation on the meaning of "roads appurtenant to," MSHA jurisdiction could conceivably extend to unfathomable lengths since any road appurtenant to a mine that connects to the outside world would necessarily run into yet other roads, thus becoming one contiguous road. Because of the potential reach of MSHA jurisdiction if the definition in § 802(h)(1)(B) is left

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on the instant decision. This is due to the fact that the Commission's *Maxxim Rebuild* decision does not stand alone for the proposition that off-site facilities and equipment are under MSHA jurisdiction. Rather, it is but one of many cases over decades of jurisprudence analyzing Mine Act jurisdiction.

> unfettered, "private ways and roads" cannot simply mean "any road." Otherwise, there could conceivably be no limit to MSHA jurisdiction, a result Congress clearly did not intend.

117 F.3d 932, 937 (6th Cir. 1997). Similarly, *Dilip K. Paul v. P.B – K.B.B.*, Inc., the Commission held that an engineering office that was responsible for designing an exploratory shaft, as well as providing personnel, equipment, and materials, was not a mine under the Act. 7 FMSHRC 1784 (Nov. 21, 1985). The Commission stated that "while we have recognized that the definition of 'coal or other mine' provided in section 3(h) of the Mine Act is expansive and is to be interpreted broadly, the inclusive nature of the Act's coverage is not without bounds." *Id.* at 1787 (citations omitted).[15]

Analyzing this jurisdictional map that arises through a review of the outer bounds of the Mine Act's definition of a "mine," the facility and equipment at issue here falls squarely within the definition. The off-site maintenance facility and trucks at issue here are much like the central supply shop at issue in *Jim Walter Resources,* the gas cylinders at issue in *W.J. Bokus,* the off-site dragline assembly site at issue in *Justis Supply & Machine Shop*, the off-site Screener at issue in *State of Alaska Department of*

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[15] In *MSHA v. Ammon Enterprises*, ALJ Zielinski discussed in dicta the question of whether MSHA would have jurisdiction over trucks loading mined materials that were stockpiled and separated by a screen, calling it a "gray area." 2008 WL 4190445 at Note 9 (July 10, 2008) (ALJ). He further stated that if the mining operations had been closed, "that the loading of trucks from the stockpiles would not be considered within MSHA's jurisdiction." *Id.*

Transportation, the off-site storage facility at issue in *Austin Powder*, and other cases discussed *supra.* The Respondent is correct that the location of the trucks and the maintenance facility matter, and that the Secretary's idea of the trucks being rolling mines would lead to an absurdity.

However, in this instance, the maintenance and trucks were located four to five miles from Ramaco's three deep mines and more than a mile from the Elk Creek Plant. JS ¶ 25. In *Jim Walter Resources*, the central shop was not on the property of any one of the coal extraction sites, but rather one mile from the closest site, six miles from two of the sites, and 25 miles from the farthest site. 22 FMSHRC at 22. In *U.S. Steel Mining Co.*, the shop at issue was located approximately eight and a half miles from one mine, five miles from another mine, and a half mile from the cleaning plant. 10 FMSHRC at 147. The location of K C Transport's maintenance facility is not remote from the extraction and processing sites. Indeed, its proximity leads to the second question concerning the maintenance facility and trucks' functions.

K C Transport asserted that approximately 60% of the services from the maintenance facility are to the five nearby Ramaco Resource mines, and the other 40% is split between other companies, including other coal operators. JS ¶ 15. These services include operating on-road and off-road trucks used in coal, gravel, and earth haulage. JS ¶ 14. The two cited trucks at issue here have been used at various times to haul coal from each of the Ramaco mines to the Elk Creek Plant. JS ¶ 27. The trucks used to haul the coal from the mine to the processing facility fit well within the Mine Act's definition of equipment used in the work of preparing coal. The transportation of coal

from those mines to that preparation plant is an integral part of the mining and preparation process. Furthermore, the maintenance of the trucks at the facility is essential to the coal hauling and preparation process. This interpretation is in line with the Commission's reasoning in *W.J. Bokus*, where the Commission found compressed gas cylinders, a stove, and a grinder to be equipment used in mining. 16 FMSHRC at 707-709. The Commission reasoned that miners worked in the garage where the gas cylinders were kept on mining-related tasks, the grinder had been used to maintain mining equipment, and the stove warmed the garage where the miners worked. *Id.*

I find the possibility of the "bifurcated coverage scheme" that the Secretary warns of to be not quite as absurd as the Secretary states. In fact, it is already in existence many times over in most aspects of mining and other industries. There are various interagency agreements and memoranda of understanding between OSHA and MSHA precisely because jurisdiction often shifts between the agencies. *See eg State of Alaska, Dept. of Transportation*, 36 FMSHRC 2642; *W.J. Bokus Industries*, 16 FMSHRC 704. Despite the Secretary's dire warnings of a bifurcated coverage scheme covering the trucks when they are on mines and/or engaged in mining-related activities, and when they are not on mines engaged in activity unrelated to mining, this Court is confident that the Department of Labor can adequately determine which agency and statute provides coverage.[16]

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[16] Judge Manning described the various statutory jurisdictions controlled by the Secretary of Labor thusly: "The

Therefore, this Court finds that MSHA had jurisdiction over the trucks at issue as well as the maintenance facility. Accordingly, under the prior agreement of the parties, Citation No. 9222038 is affirmed, but modified to "low" negligence with a penalty amount of $3,908.00. Citation No. 9222040 is affirmed, but modified to "low" negligence with a penalty amount of $4,343.00.

ORDER

It is **ORDERED** that Citation Nos. 9222038 and 9222040 be modified to "low" negligence, and the Respondent, K C Transport, Inc., is **ORDERED** to pay the Secretary of Labor the sum of $8,251.00 within 30 days of this order.[17]

/s/ John Kent Lewis
John Kent Lewis
Administrative Law Judge

Distribution:

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Secretary takes what is often called a 'nooks and crannies' approach when interpreting OSHA jurisdiction. OSHA fills in the nooks and crannies that other safety statutes do not cover." *Cox Transportation Corp.*, 22 FMSHRC at 580.

[17] Payment should be sent to: MINE SAFETY AND HEALTH ADMINISTRATION, U.S. DEPARTMENT OF LABOR, PAYMENT OFFICE, P. O. BOX 790390, ST. LOUIS, MO 63179-0390

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1071 **September Term, 2025**

MSHR-WEVA2019-0458

Filed On: July 13, 2026

Secretary of Labor, Mine Safety and Health Administration,

Petitioner

v.

KC Transport, Inc. and Federal Mine Safety and Health Review Commission,

Respondents

BEFORE: Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

O R D E R

Upon consideration of respondent's petition for rehearing en banc, the response thereto, the letter, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Lillian Wright
Deputy Clerk

30 U.S.C. § 802

§ 802. Definitions

For the purpose of this chapter, the term—

(a) "Secretary" means the Secretary of Labor or his delegate;

* * * * *

(d) "operator" means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine;

(e) "agent" means any person charged with responsibility for the operation of all or a part of a coal or other mine or the supervision of the miners in a coal or other mine;

(f) "person" means any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization;

(g) "miner" means any individual working in a coal or other mine;

(h)(1) "coal or other mine" means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to

be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment;

(2) For purposes of subchapters II, III, and IV, "coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities;

(i) "work of preparing the coal" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing, and loading of bituminous coal, lignite, or anthracite, and such other work of preparing such coal as is usually done by the operator of the coal mine;

* * * * *

(n) "Administration" means the Mine Safety and Health Administration in the Department of Labor.

(o) "Commission" means the Federal Mine Safety and Health Review Commission.

30 C.F.R. § 77.404

Machinery and equipment;
operation and maintenance.

(a) Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.

(b) Machinery and equipment shall be operated only by persons trained in the use of and authorized to operate such machinery or equipment.

(c) Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments.

(d) Machinery shall not be lubricated while in motion where a hazard exists, unless equipped with extended fittings or cups.