No. 23-876

In the Supreme Court of the United States

KC TRANSPORT, INC., PETITIONER

v.

JULIE A. SU, ACTING SECRETARY OF LABOR, ET AL.

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

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

The Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.*, authorizes the Secretary of Labor to promulgate mandatory health and safety standards for the protection of life and prevention of injury in "coal or other mines," 30 U.S.C. 811(a). The Mine Act defines "'coal or other mine'" to include three separately enumerated categories: "(A) an area of land from which minerals are extracted"; "(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 * * * used in, or to be used in, * * * the work of extracting such minerals from their natural deposits." 30 U.S.C. 802(h)(1). The question presented is as follows:

Whether the court of appeals correctly rejected petitioner's contention that 30 U.S.C. 802(h)(1) unambiguously compels the conclusion that the items listed in clause (C), including "facilities, equipment, machines, tools, or other property * * * used in" mining, are encompassed by the definition only when those items are located in an area already covered by clauses (A) or (B), *i.e.*, on an "area of land from which minerals are extracted" or a private road "appurtenant to such area."

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-38a) is reported at 77 F.4th 1022. The decision of the Federal Mine Safety and Health Review Commission (Pet. App. 41a-87a) is reported at 44 F.M.S.H.R.C. 211. The order of the administrative law judge (Pet. App. 88a-123a) is reported at 42 F.M.S.H.R.C. 221.

JURISDICTION

The judgment of the court of appeals was entered on August 1, 2023. A petition for rehearing was denied on October 3, 2023 (Pet. App. 124a-126a). On December 5, 2023, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including February 12, 2024, and the petition was filed on that date. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Congress enacted the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.*, to protect the health and safety of the Nation's miners. 30 U.S.C. 801(g); see *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 202 (1994). The Mine Act directs the Secretary of Labor (Secretary) to develop and promulgate "mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines," 30 U.S.C. 811(a), and to "make frequent inspections and investigations in coal or other mines each year" to ensure compliance, 30 U.S.C. 813(a). The Secretary discharges those responsibilities through the Mine Safety and Health Administration (MSHA) within the Department of Labor. 29 U.S.C. 557a.

The Mine Act authorizes the Secretary to issue citations and propose civil penalties for violations discovered in an inspection or investigation. 30 U.S.C. 814(a), 820(a). A mine operator may contest any citation or proposed penalty assessment before the Federal Mine Safety and Health Review Commission (Commission), an adjudicative agency established by the Mine Act outside of the Department of Labor. 30 U.S.C. 815(d); see 30 U.S.C. 823; *Thunder Basin*, 510 U.S. at 204.

The Commission relies on administrative law judges (ALJs) to hear and decide disputes in the first instance. See 30 U.S.C. 823(b)(2) and (d). After an ALJ renders his or her "final disposition of the proceedings," any person aggrieved by the decision may request discretionary review by the Commission, or the Commission may grant such review sua sponte. 30 U.S.C. 823(d)(1); see 30 U.S.C. 823(d)(2). If the Commission does not grant further review, the ALJ's decision becomes the final decision of the Commission 40 days after the deci-

sion is issued. 30 U.S.C. 823(d)(1). Any person adversely affected or aggrieved by a final decision of the Commission may file a petition for review in either the D.C. Circuit or the regional court of appeals where the violation occurred. 30 U.S.C. 816(a)(1).

b. The Mine Act applies to "[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." 30 U.S.C. 803. As relevant here, the Act defines the phrase "coal or other mine" to include the area of land in which mining occurs, roads appurtenant to that area, and facilities and equipment used in the mining:

> "[C]oal 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.

30 U.S.C. 802(h)(1). The Act defines an "operator" to include both the "owner, lessee, or other person who operates, controls, or supervises a coal or other mine," as well as "any independent contractor performing services or construction at such mine." 30 U.S.C. 802(d).

2. Petitioner is "an independent trucking company which provides hauling services to various businesses, including coal hauling, earth hauling and gravel hauling." Pet. App. 92a. At the time relevant here, petitioner was providing coal hauling services to a coal mine operator in West Virginia, Ramaco Resources, LLC (Ramaco). *Ibid.*; see *id.* at 90a-92a. Ramaco owns and operates five coal extraction sites that are connected by a private haul road to a coal preparation plant. *Id.* at 91a, 93a. The haul road is maintained by Ramaco and closed to the public. *Id.* at 96a. To enter, vehicles must pass through a staffed security gate. *Ibid.* The coal hauling services that petitioner provided to Ramaco consisted of transporting coal by truck from Ramaco's five extraction sites to Ramaco's coal preparation plant via the private haul road. *Id.* at 94a.

In March 2019, petitioner was in the process of constructing a maintenance facility for its trucks at a site "located approximately 1000 feet from the haulage road" and connected to it by a second road. Pet. App. 92a; see *id.* at 90a-91a. The maintenance site was accessible only by traveling along the private haul road. *Id.* at 96a. Petitioner was using the site to repair and maintain the haul trucks that it used to transport coal for Ramaco on the private haul road. *Id.* at 93a, 97a. Petitioner also used the maintenance site to service other trucks used to provide hauling services to other customers. *Id.* at 93a.

On March 11, 2019, an MSHA inspector conducted a routine inspection of Ramaco's coal preparation plant. Pet. App. 90a. After inspecting Ramaco's plant, the inspector then proceeded to the maintenance site, traveling about one mile on the private haul road before turning off on the second, arterial road. *Id.* at 91a, 103a.

The MSHA had previously inspected petitioner's haul trucks when the trucks were located at Ramaco's coal extraction sites or Ramaco's coal preparation plant, or on the haul road itself, and had issued citations to petitioner for violations involving the trucks. *Id.* at 97a. On the occasion involved in this case, the inspector was seeking to determine whether petitioner had abated previously cited violations involving the trucks. *Id.* at 91a; see 30 U.S.C. 814(a) and (b) (requiring that a citation fix a "reasonable time" for abatement and authorizing additional inspections and sanctions to ensure timely compliance).

At the maintenance site, the MSHA inspector saw two haul trucks undergoing maintenance in unsafe conditions. Pet. App. 103a. The rear of one truck had been "jacked up" to perform work on the rear brakes, but the truck was not "blocked" to prevent it from inadvertently moving during the work. *Id.* at 104a n.7 (quoting citation). The bed of the second truck was similarly "in the raised position" but "not blocked against motion," and a miner was standing "under the raised unblocked bed." *Ibid.* The MSHA inspector issued two citations to petitioner for violations of a Mine Act regulation stating that "[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); see Pet. App. 104a.

Petitioner used the two trucks at issue exclusively "to haul coal from the five Ramaco mines to the [Ramaco] prep plant." Pet. App. 94a. But the trucks "were not hauling coal or on a haul-road" at the time of the citations. *Id.* at 104a.

3. Petitioner contested the two citations before the Commission, which assigned the matter to an ALJ. The parties stipulated to the relevant facts. Pet. App. 90a-100a. Petitioner also agreed that those stipulated facts "would constitute violations of 30 C.F.R. 77.404(c)," if the Mine Act applied, and that the appropriate total amount of penalties for the violations would be $8,251. *Id.* at 90a. But petitioner contended that the citations were nonetheless invalid on the theory that the maintenance site did not come within the Mine Act's definition of "coal or other mine," 30 U.S.C. 802(h)(1), and that the haul trucks were not subject to the Act when located there. Pet. App. 105a. The Secretary maintained, by contrast, that the haul trucks were subject to the Mine Act regardless of the status of the maintenance site because, on the particular facts here, the trucks themselves constituted "equipment that [was] used in the extraction and preparation of coal." *Id.* at 105a-106a.

The ALJ entered summary judgment for the Secretary, upholding the two citations and the agreed-upon penalties of $8,251. Pet. App. 88a-123a. Applying the framework set forth in *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984), the ALJ concluded that "Congress has directly spoken to the precise question at issue," Pet. App. 108a. The ALJ explained that the Mine Act's definition of "'coal or other mine'" is, by design, "broad, sweeping and expansive." *Id.* at 111a (citation omitted). By its plain terms, the ALJ reasoned, the definition extends to "a broad variety of lands, roads, structures, facilities, and equipment" that might not be described as mines in ordinary English. *Ibid.* The ALJ observed, for example, that the Commission had held in a "seminal case" that a "central supply shop used to repair and maintain electrical and mechanical equipment

at nearby mines" was encompassed by the Act's definition of "'mine.'" *Id.* at 113a (discussing *MSHA* v. *Jim Walter Res., Inc.*, 22 F.M.S.H.R.C. 21 (2000)). Applying the logic of that and other precedents, the ALJ concluded that the "off-site maintenance facility" at issue here constituted a mine for purposes of the Act and that the haul trucks were therefore subject to the reach of the Act—as equipment used in mining—when undergoing repairs there. *Id.* at 120a; see *id.* at 120a-121a. Although the ALJ thus sustained the Secretary's exercise of regulatory authority over the haul trucks, the ALJ disagreed with the Secretary's view that the trucks themselves were covered by the Act at the time regardless of whether the maintenance facility was. See *id.* at 108a, 122a.

In a 2-1 decision, the Commission reversed the ALJ's decision, granted summary judgment to petitioner, and vacated the two citations. Pet. App. 41a-87a. Like the ALJ, the Commission viewed the dispute as governed by the *Chevron* framework. See *id.* at 47a-48a & n.7. At the first step of that framework, however, the Commission rejected the Secretary's argument that the "'plain meaning'" of the "definition of a 'mine' in the Mine Act" encompassed the haul trucks when located at the maintenance site, which the Secretary also argued was encompassed by the definition (as the ALJ had concluded). *Id.* at 48a (citation omitted). In the majority's view, the phrase "equipment * * * used in" mining, 30 U.S.C. 802(h)(1)(C), would be "absurd" if read to mean that mining equipment is covered by the Mine Act even when it is removed for maintenance to an off-site location that is not itself an area of mineral excavation. Pet. App. 49a. The majority also declined to afford the Secretary's contrary view any deference under the second

step of the *Chevron* framework. *Id.* at 52a-53a. The majority instead concluded that the Mine Act's definition of a "mine" encompasses equipment used in mining only when the equipment is located on "lands used in mining and appurtenant roads." *Id.* at 60a; see *id.* at 53a-60a.

The Chair of the Commission dissented. Pet. App. 70a-85a. In his view, "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," *id.* at 71a (quoting 30 U.S.C. 802(h)(1)(C)), and he saw no sound basis for reading an implicit locational requirement into that portion of the definition—although he noted that the location of equipment can provide "circumstantial evidence" about whether the equipment is, in fact, used or to be used in mining, *id.* at 80a n.11. The Chair also observed that "[p]owered haulage accounts for a large percentage of the fatal injuries in mining," and that the effect of the majority's decision would be to make the "maintenance and operation of mining equipment at off-site facilities or on-site separate facilities * * * more dangerous." *Id.* at 81a.

4. The Secretary petitioned for review in the D.C. Circuit. The court of appeals granted the petition, vacated the Commission's decision, and remanded for further agency proceedings, over Judge Walker's dissent. Pet. App. 1a-38a.

The Secretary principally argued that the Mine Act's definition of "coal or other mine," 30 U.S.C. 802(h)(1), "unambiguously grants MSHA jurisdiction over both the trucks and the maintenance facility" because the definition encompasses facilities and equipment used in mining. Pet. App. 12a. The Secretary therefore urged the court of appeals to "uphold the citations as a proper

exercise of MSHA's jurisdiction under a plain reading of the statute." *Ibid.* The court rejected that argument, finding instead that the statutory definition is ambiguous with respect to equipment and facilities used in mining but located off the premises of an extraction site or appurtenant road. *Id.* at 14a-16a. The court stated that "location is central to the Mine Act" because other provisions in the Act require operators to identify the address of any mine and require the Secretary to inspect mines regularly—obligations that, in the court's view, would be difficult to square with reading the definition of "mine" to encompass mobile mining equipment lacking a fixed address. *Id.* at 15a.

On the other hand, the court of appeals also found that the Commission's interpretation "cannot be harmonized" with the statutory text. Pet. App. 16a. As the court explained, clause (C) in the statutory definition of "mine" encompasses "lands, excavations, underground passageways, 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" mining, 30 U.S.C. 802(h)(1)(C), and the inclusion of those items would serve no obvious purpose if the Act applies to them only when located on the physical premises already "separate[ly] and independent[ly]" covered by clauses (A) and (B) of the same definition. Pet. App. 16a. The court also observed that its own precedent construing the Mine Act had already rejected the Commission's "narrow view" and had recognized that the Act "extends beyond structures on extraction sites." *Id.* at 17a; see *id.* at 17a-18a.

The Secretary had argued in the alternative that her interpretation should be given effect under *Chevron* if the court of appeals found the statutory definition to be

ambiguous. Pet. App. 18a. The court declined to affirm on that basis, determining instead that the Secretary had not adequately considered the interpretive question in light of the full extent of the ambiguity identified by the court. *Id.* at 18a-21a. The court therefore "vacate[d] the Commission's decision and remand[ed] for the Secretary to reconsider [her] position pursuant to a revised interpretation" of the definition, "after recognizing its ambiguity." *Id.* at 25a.*

Judge Walker would have denied the Secretary's petition. Pet. App. 25a-38a. Although he acknowledged that clause (C) in the statutory definition "has no express geographic limit," *id.* at 29a, he nonetheless would have held that the items listed in clause (C) "must be located at an extraction site or a processing plant to count as a 'mine' under the Act," *id.* at 33a.

DISCUSSION

The court of appeals, the Commission, and the ALJ all viewed the question of statutory interpretation at issue here through the framework set forth in *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984). This Court is presently considering whether to overrule or modify the *Chevron* framework in two cases, both of which were argued on January 17, 2024. See *Relentless, Inc.* v. *Department of Commerce*, No. 22-1219, and *Loper Bright Enters.* v. *Raimondo*, No. 22-451. Because the Court's resolution of those cases could bear

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* The court of appeals separately determined that the Commission had exceeded its authority insofar as it had held that petitioner was not functioning as an "operator" within the meaning of the Mine Act at the time of the citations. Pet. App. 23a-24a. That issue had not been raised or decided in the proceedings before the ALJ and was not properly before the Commission, and petitioner did not defend that aspect of the Commission's decision on appeal. *Id.* at 23a.

on the correct disposition of this case, the petition for a writ of certiorari in this case should be held pending the Court's decisions in *Relentless* and *Loper* and then disposed of as appropriate in light of those decisions. See Pet. 26-28. Further review is otherwise unwarranted.

1. The Mine Act defines a "coal or other mine" to include "facilities, equipment, machines, tools, or other property used in, or to be used in" mining. 30 U.S.C. 802(h)(1)(C). In this case, the Secretary interpreted that definition to extend to petitioner's two haul trucks and maintenance facility, after an inspector encountered the trucks being repaired in concededly unsafe conditions at the facility. Petitioner used the two trucks exclusively to haul coal from coal excavation sites to a coal preparation plant along a private haul road. See pp. 4-6, *supra*. On the particular facts here, the trucks constituted "equipment * * * used in" mining under the plain meaning of the statutory definition. 30 U.S.C. 802(h)(1)(C). Petitioner's nearby maintenance facility was constructed and used to repair the equipment that petitioner was using to haul coal from the coal extraction sites to the coal preparation plant, and the facility itself was therefore also encompassed by the definition, which expressly includes any "structures, facilities, * * * or other property * * * used in" mining. *Ibid.*

That conclusion is consistent with the text, structure, purpose, and history of the Mine Act, as well as prior decisions by the Commission and the courts of appeals. See Gov't C.A. Br. 21-38. Indeed, to read the Mine Act otherwise would render the express inclusion of "facilities" and "equipment * * * used in" mining largely pointless, if not superfluous. 30 U.S.C. 802(h)(1)(C). The relevant definition already encompasses the "area of land from which minerals are extracted." 30 U.S.C.

802(h)(1)(A). If mining facilities and equipment were subject to regulation under the Act only when located on the physical premises where mineral extraction is occurring, then Congress would have had no need to separately include the facilities and the equipment in the definition of a "coal or other mine." Moreover, the statutory definition *does* contain an express geographical limitation in clause (B) for "private ways and roads," which are defined as "'mine[s]'" only if they are "appurtenant to" an area of land from which minerals are being extracted. 30 U.S.C. 802(h)(1)(B). The inclusion of an express geographical limitation in that clause forecloses reading an implicit geographical limitation into clause (C), which is focused primarily on the function of the equipment and facilities rather than their location. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted).

Nonetheless, it would be appropriate to hold the petition in this case pending the Court's decisions in *Relentless* and *Loper*. Although the Secretary urged the court of appeals to sustain the citations in this case at step one of the *Chevron* framework, the court concluded that the statutory definition of "coal or other mine" is ambiguous, at least as applied to potentially mobile mining equipment like haul trucks, and that the Secretary should be afforded an opportunity to address the perceived ambiguity in the first instance. See Pet. App. 14a-22a. The court therefore vacated and remanded "for the Secretary to reconsider its position pursuant to a revised interpretation of subsection (C)." *Id.* at 25a.

In doing so, the court of appeals relied on circuit precedent under which deference at the second step of the *Chevron* framework is inappropriate if an agency "advances an interpretation" that the agency mistakenly believed to be "compelled by Congress when the statute is in fact ambiguous." Pet. App. 14a (emphasis omitted). In those circumstances, the court has stated that its precedent "requires * * * that [the reviewing court] withhold *Chevron* deference and remand to the agency so that it can fill in the gap." *PDK Labs. Inc.* v. *United States Drug Enforcement Admin.*, 362 F.3d 786, 798 (D.C. Cir. 2004); see, *e.g.*, *Secretary of Labor* v. *National Cement Co. of Cal., Inc.*, 494 F.3d 1066, 1073, 1077 (D.C. Cir. 2007). The remand ordered in this case thus presupposes the continued vitality of the *Chevron* framework, and this Court's decisions in *Relentless* and *Loper* could affect the proper disposition of the case.

2. To the extent that petitioner requests plenary review, that request should be denied. Petitioner principally contends (Pet. 10-19) that this case implicates a division of authority within the courts of appeals regarding the application of the Mine Act to equipment or facilities used in mining but not located on a site that itself separately constitutes a "mine" for purposes of the Act. But petitioner overstates the degree of any tension in the case law and, in any event, this case would be an unsuitable vehicle in which to address petitioner's statutory-interpretation question because the D.C. Circuit did not actually resolve it here—instead remanding for reconsideration. Cf. *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (observing that this Court generally sits as "a court of review, not of first view").

Petitioner alternatively contends (Pet. 20-26) that certiorari is warranted to consider the D.C. Circuit's

practice, discussed above, of vacating and remanding for additional agency proceedings when an agency adopts an interpretation that the agency mistakenly believes to be compelled by the statutory language, if the reviewing court instead concludes that the language is ambiguous for *Chevron* purposes. That practice is consistent with this Court's decision in *Negusie* v. *Holder*, 555 U.S. 511 (2009), in which the Court remanded under similar circumstances, see *id.* at 523-524 (concluding that the agency "ha[d] not yet exercised its *Chevron* discretion," and "find[ing] it appropriate to remand to the agency for its initial determination of the statutory interpretation question"). And in doing so, this Court quoted with approval a D.C. Circuit decision reflecting the practice that petitioner challenges here. See *id.* at 523 ("If an agency erroneously contends that Congress' intent has been clearly expressed and has rested on that ground, we remand to require the agency to consider the question afresh in light of the ambiguity we see.") (quoting *Cajun Elec. Power Coop., Inc.* v. *FERC*, 924 F.2d 1132, 1136 (D.C. Cir. 1991)) (brackets omitted). Petitioner does not contend that the D.C. Circuit's practice conflicts with the practice of another court of appeals. Nor does petitioner identify any other sound basis for further review, particularly given the pendency of *Relentless* and *Loper*.

Petitioner also errs in contending (Pet. 24-25) that the Mine Act's split-enforcement regime counsels against any deference to the Secretary. This Court's precedent makes clear that only an interpretation adopted by the Secretary, not the adjudicative Commission, may be eligible for deference. See *Martin* v. *OSHRC*, 499 U.S. 144, 152 (1991) (discussing the analogous split-enforcement regime established by the Occu-

pational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*); cf. Pet. App. 12a (citing *Martin*, 499 U.S. at 157).

CONCLUSION

The petition for a writ of certiorari should be held pending the Court's decisions in *Relentless, Inc.* v. *Department of Commerce*, No. 22-1219 (argued Jan. 17, 2024), and *Loper Bright Enterprises* v. *Raimondo*, No. 22-451 (argued Jan. 17, 2024), and then disposed of as appropriate in light of those decisions.

Respectfully submitted.

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