No. 10-507

In the Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP, ET AL.,
PETITIONERS

v.

LUISA L. VALLADOLID, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, extends workers' compensation coverage under the Longshore and Harbor Workers' Compensation Act (Longshore Act), 33 U.S.C. 901 *et seq.*, to the disability or death of an employee "resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of" exploiting the Shelf's natural resources. 43 U.S.C. 1333(b). The question presented is:

Does 43 U.S.C. 1333(b) extend Longshore Act coverage only to employees injured on the outer Continental Shelf itself?

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-34) is reported at 604 F.3d 1126. The decision and order of the Benefits Review Board of the United States Department of Labor (Pet. App. 35-52) is reported at 42 Ben. Rev. Bd. Serv. (MB) 67. The decision and order of the administrative law judge (Pet. App. 53-93) is reported at 41 Ben. Rev. Bd. Serv. (MB) 795.

JURISDICTION

The judgment of the court of appeals was entered on May 13, 2010. A petition for rehearing en banc was denied on July 19, 2010 (Pet. App. 94-95). The petition for a writ of certiorari was filed on October 13, 2010, and

was granted on February 22, 2011. 131 S. Ct. 1472. The jurisdiction of this Court rests on 28 U.S.C. 1254(l).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reprinted in the appendix to this brief. App., *infra*, 1a-5a.

STATEMENT

1. a. The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, and the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, were enacted in 1953 to provide "for the orderly development of offshore resources." *United States* v. *Maine*, 420 U.S. 515, 527 (1975). Subject to certain exceptions, the Submerged Lands Act extended the boundaries of coastal States to include the seabed within three miles of their coasts. 43 U.S.C. 1301, 1311(a), 1312. The OCSLA affirmed the federal government's primary authority over the outer Continental Shelf (Shelf or OCS), which it defined as "all submerged lands lying seaward and outside of [the Submerged Lands Act's three-mile limit], and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a), 1332(1).

The OCSLA created a body of substantive law to govern the Shelf and certain activities related to it. The statute did so by, among other things: "extend[ing]" federal "laws and civil and political jurisdiction * * * to the subsoil and seabed of the outer Continental Shelf," as well as "to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed" erected "for the purpose of exploring for, developing, or producing resources therefrom, or * * * transporting such resources," (collectively,

OCS platforms), 43 U.S.C. 1333(a)(1); adopting the civil and criminal laws of the adjacent State as federal law on the OCS and OCS platforms, 43 U.S.C. 1333(a)(2)(A); extending the National Labor Relations Act (NLRA), 29 U.S.C. 151 *et seq.*, to "any unfair labor practice * * * occurring upon any [OCS platform]," 43 U.S.C. 1333(c); authorizing the Coast Guard to regulate safety and health on OCS platforms and the surrounding waters, 43 U.S.C. 1333(d); extending the Army's authority to prevent navigation obstructions to OCS platforms, 43 U.S.C. 1333(e); and vesting the Secretary of the Interior with rulemaking authority "relating to the leasing of the [OCS]," 43 U.S.C. 1334.

b. One of the federal statutes specifically extended by the OCSLA is the Longshore and Harbor Workers' Compensation Act (LHWCA or Longshore Act), 33 U.S.C. 901 *et seq*. The Longshore Act was enacted in 1927 to create a federal workers' compensation regime after this Court ruled that state workers' compensation laws could not constitutionally cover longshore workers injured on the seaward side of a pier. See generally *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 256-258 (1977) (discussing history). At the time Congress enacted the OCSLA, the Longshore Act provided for compensation for "disability or death," "but only if the disability or death results from an injury occurring upon the navigable waters of the United States." 33 U.S.C. 903(a) (1952).[1] Like other workers' compensa-

[1] In 1972, Congress expanded the Longshore Act's situs requirement to include certain adjoining land areas and added a status test, limiting coverage to workers engaged in maritime employment. *Caputo*, 432 U.S. at 263-265; 33 U.S.C. 902(3), 903(a). In *Director, OWCP* v. *Perini North River Associates*, 459 U.S. 297 (1983), the Court held that the new status test did not withdraw coverage from workers injured

tion regimes, the Longshore Act benefits employees by providing compensation regardless of fault and benefits employers by providing immunity from ordinary tort liability for workplace injuries. See 33 U.S.C. 904(b), 905(a).

The OCSLA's extension of the Longshore Act to OCS workers was originally effected by 43 U.S.C. 1333(b) and (c) (1958), which provided, in pertinent part:

> (b) Jurisdiction of United States district courts
>
> The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf * * * .
>
> (c) Applicability of Longshoremen's and Harbor Workers' Compensation Act; definitions
>
> With respect to disability or death of an employee resulting from any injury occurring as the result of operations described in subsection (b) of this section, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

In 1978, the OCSLA was amended for various reasons unrelated to workers' compensation, and certain

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on the actual navigable waters who would have been covered prior to the 1972 amendments. See *id.* at 315; see also *id.* at 318 (Congress intended the new "status requirement" only "to define the scope of the extended landward coverage," not to impose an eligibility limitation with respect to those injured upon the actual navigable waters.).

provisions were reorganized. See H.R. Rep. No. 590, 95th Cong., 1st Sess. 53-55 (1977). Among the changes, Congress separated the district court jurisdictional provision (now found in 43 U.S.C. 1349) and the Longshore Act extension (now found in 43 U.S.C. 1333(b)). Since that time, Section 1333(b) has provided in relevant part:

> With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act.

43 U.S.C. 1333(b).

c. In a pair of decisions, the Fifth Circuit was the first court of appeals to consider Section 1333(b)'s application to employees injured in locations other than on OCS platforms. See *Stansbury* v. *Sikorski Aircraft*, 681 F.2d 948, cert. denied, 459 U.S. 1089 (1982); *Barger* v. *Petroleum Helicopters, Inc.*, 692 F.2d 337, cert. denied, 461 U.S. 958 (1983). Both cases involved fatal helicopter crashes into the high seas above the OCS during trips to or from OCS platforms. *Stansbury*, 681 F.2d at 950; *Barger*, 692 F.2d at 340. The high seas are not included in the OCSLA's definition of the outer Continental Shelf. See 43 U.S.C. 1331(a), 1333(b)(3); see also 43 U.S.C. 1332(2) ("[The OCSLA] shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas * * * shall not be affected.").

Both *Stansbury* and *Barger* rejected the contention that Section 1333(b) extends LHWCA coverage only to injuries occurring on the OCS or OCS platforms. *Stansbury*, 681 F.2d at 950 ("We have construed [Section 1333(b)] to apply to injuries occurring as a result of the operations described without regard to the physical situs of the injury.") (citing *Nations* v. *Morris*, 483 F.2d 577, 584 (5th Cir.), cert. denied, 414 U.S. 1071 (1973)); *Barger*, 692 F.2d at 340. Both decisions found that the deceased workers were covered by the Longshore Act, as extended by Section 1333(b), because their deaths would not have occurred "but for" operations on the OCS. *Stansbury*, 681 F.2d at 951 ("Stansbury was inspecting work done under his supervision on a fixed rig located on the OCS. His work furthered the rig's operations and was in the regular course of the extractive operations on the OCS. But for those operations, he would not have been in the helicopter. His death, therefore, occurred 'as a result of operations' as required by the OCSLA."); *Barger*, 692 F.2d at 340 ("Barger * * * would not have been killed in a helicopter crash in the Gulf of Mexico 'but for' the fact that he was employed to transport eleven workers to a fixed platform on the Shelf. His work furthered mineral exploration and development activities and was in the regular course of such activities.").

The Third Circuit followed the Fifth Circuit's approach in *Curtis* v. *Schlumberger Offshore Service, Inc.*, 849 F.2d 805 (1988). Curtis worked on an OCS drilling rig more than three miles from the New Jersey coast. *Id.* at 806. After a week on the rig, he returned to his employer's Rhode Island headquarters, but was immediately ordered back to the Shelf. *Ibid.* While driving a company car to meet the helicopter that would

take him back to the rig, he was struck by another vehicle and suffered serious injuries. *Ibid*. The Third Circuit held that Curtis's injury was covered by the Longshore Act, as extended by Section 1333(b), because the injury would not have occurred "but for" operations on the OCS; in that court's view, his injury thus "occurr[ed] as the result of operations" on the OCS. *Id.* at 809-811; 43 U.S.C. 1333(b).

The issue next arose in *Mills* v. *Director, OWCP*, 846 F.2d 1013 (5th Cir. 1988). Unlike Stansbury, Barger, and Curtis, Mills worked solely on land. *Mills* v. *McDermott, Inc.*, 17 Ben. Rev. Bd. Serv. (MB) 756, 758 (ALJ 1985). He was injured while welding a platform destined for the OCS. *Ibid*. A Fifth Circuit panel again held that Section 1333(b) has no situs-of-injury requirement, and concluded that Mills's injury was covered by the LHWCA as extended by Section 1333(b). *Mills*, 846 F.2d at 1015.

The Fifth Circuit granted rehearing en banc and reversed. See *Mills* v. *Director, OWCP*, 877 F.2d 356, 362 (1989) (en banc). The en banc court found Section 1333(b)'s "bare language" to be "open to interpretation," *id*. at 359, but concluded that the provision, "when read in light of the legislative history of OCSLA and the Congressional purpose underlying its enactment, impose[s] a situs requirement for LHWCA coverage[.]" *Id*. at 362. Specifically, the court in *Mills* held that Section 1333(b) extends the Longshore Act only to workers who "suffer injury or death on an OCS platform or the waters above the OCS." *Ibid*.[2]

[2] Because *Mills* defined the situs as including the waters above the OCS, it did not overrule *Stansbury* or *Barger*. *Mills*, 877 F.2d at 361-362.

2. Luisa L. Valladolid (respondent)[3] is the widow of Juan Valladolid (Valladolid), who was employed as a roustabout by petitioner Pacific Operators Offshore, LLP (Pacific Operators), an oil exploration and extraction company. J.A. 9, 25, 70. Valladolid spent approximately 98% of his time working on one of Pacific Operators' oil platforms on the OCS, more than three miles from the California coast. Pet. App. 3; J.A. 9, 26, 37, 40, 51. "As a roustabout, his work primarily consisted of cleaning and maintenance duties: picking up litter, emptying trash cans, washing decks, painting, fixing equipment, and helping load and unload the platform crane." Pet. App. 3.

Valladolid spent the remaining two percent of his working time at his employer's crude oil plant, called "La Conchita," in Ventura, California. J.A. 9, 40, 51, 75, 80. That plant received and processed crude oil slurry from Pacific Operators' two drilling platforms on the OCS. Pet. App. 3. Petitioner performed a variety of duties at La Conchita, "including painting, sandblasting, weed-pulling, cleaning drain-culverts, and operating a forklift." *Ibid.* On June 2, 2004, while working at La Conchita, Valladolid was ordered to use a forklift to clean up scrap metal debris that had been delivered to the plant from Pacific Operators' OCS platforms. J.A. 10, 13, 55-56, 77, 78-79. He was crushed by the forklift and killed.[4] J.A. 10-11, 14-15, 27.

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[3] The Director, Office of Workers' Compensation Programs, on whose behalf this brief is filed is also a respondent in this Court. But for ease of reference, this brief will refer to Ms. Valladolid as respondent.

[4] According to the accident report, at the time of his death, Valladolid had been cutting plantains from a tree at the worksite rather than moving scrap metal. J.A. 10-11, 13-15, 18-19. Only injuries "arising out

a. Following her husband's death, respondent received death benefits under California's workers' compensation program. Pet. App. 54. She also filed a claim for Longshore Act benefits, both directly and as extended by Section 1333(b). *Ibid.*[5] After the parties failed to resolve the claim voluntarily, it was referred to an administrative law judge (ALJ) for a formal hearing. See 33 U.S.C. 919(c) and (d).

b. The ALJ dismissed the claim for benefits on the ground that Valladolid's injury was not covered by Section 1333(b) because it occurred on land. Pet. App. 92-93.[6] The Department of Labor's Benefits Review Board

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of and in the course of employment" are compensable under the Longshore Act. 33 U.S.C. 902(2). Valladolid's apparent deviation from his assigned duties, however, does not necessarily defeat respondent's claim. Cf. *O'Leary* v. *Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 506-507 (1951) (33 U.S.C. 902(2) does not require "that the employee be engaged at the time of the injury in activity of benefit to his employer."). Pacific Operators submitted a claim and paid benefits under California's workers' compensation scheme immediately after Valladolid's death. Pet. App. 54. The California statute covers an employee's injuries occurring while "performing service growing out of and incidental to his * * * employment and * * * [while] acting within the course of his * * * employment." Cal. Lab. Code § 3600(a)(2) (West Supp. 1989). In any event, because the ALJ dismissed respondent's claim based on the situs-of-injury ground at issue in this case, the question whether Valladolid's injury arose out of his employment was not addressed below and is not before the Court.

[5] As a surviving spouse without dependents (J.A. 5), respondent would be entitled under the Longshore Act to $464.11 per week—50% of Valladolid's average weekly wage at the time of his death—until her death or remarriage. 33 U.S.C. 909(b); Pet. App. 38 n.2. If respondent ultimately obtains Longshore Act benefits, petitioners will be entitled to offset any payments made under the California law. 33 U.S.C. 903(e).

[6] The ALJ also denied respondent's direct Longshore Act claim, on two independent grounds. First, the ALJ found that Valladolid did not have "status" as a maritime employee under 33 U.S.C. 902(3) because

(Board) affirmed. *Id.* at 35-52. The Board agreed with the ALJ's conclusion that the OCSLA's extension of the Longshore Act contains a situs-of-injury requirement, declaring that Section 1333(a)(1) limits the coverage of all of the OCSLA to "'the subsoil and seabed of the [OCS] and to all * * * devices * * * attached to the seabed.'" *Id.* at 49 (quoting 43 U.S.C. 1333(a)(1)).

c. The court of appeals reversed, holding that "the language of [Section] 1333(b) is unambiguous in not including a situs-of-injury requirement." Pet. App. 18. The court focused on Section 1333(b)'s text, which "provides workers' compensation benefits for 'any injury occurring *as the result of* operations conducted on the outer Continental Shelf.'" *Id.* at 15 (quoting 33 U.S.C. 1333(b)). The court explained:

> The situs-of-operations requirement is clear; the *operations* must be conducted on the [OCS.] However, the only limitation on the *injury* is that it be "the result of" operations on the [OCS]. * * * [T]he phrase "as the result of" simply denotes causation. Thus, the most natural reading of [Section] 1333(b)

"[w]hatever loading and unloading [he] did was incidental to his primary role as a roustabout on the offshore platforms and the La Conchita site." Pet. App. 79. Second, the ALJ concluded that the La Conchita facility was not an LHWCA-covered "situs" because it was not "upon the navigable waters of the United States" or an "adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel." *Id.* at 82 (quoting 33 U.S.C. 903(a)). The Benefits Review Board and court of appeals affirmed the ALJ's finding that the La Conchita facility was not a Longshore Act-covered situs. *Id.* at 32, 42-43. Neither decision addressed Valladolid's status as a maritime employee. *Id.* at 34, 43 n.5. Respondent's direct Longshore Act claim is not before the Court.

> provides coverage for any injury *caused by* [OCS] operations regardless of where the injury occurred.

Pet. App. 15 (internal citations omitted).

The court of appeals found further support for its conclusion by comparing Section 1333(b) with its neighbor, Section 1333(c), which extends the NLRA to "any unfair labor practice * * * occurring upon any [OCS platform,]" 43 U.S.C. 1333(c). The lack of similar situs language in Section 1333(b), the court of appeals reasoned, "reflects an intent not to limit that subsection in the same manner." Pet. App. 17. The court of appeals found nothing in the OCSLA's legislative history to overcome its natural reading of Section 1333(b)'s text, and it rejected petitioners' policy arguments as irrelevant in the face of the provision's plain language. *Id.* at 22-24.[7]

While the court of appeals joined the Third Circuit in rejecting a situs-of-injury requirement, it declined to adopt that court's "but for" causation test for determining whether the Longshore Act applies to a particular off-Shelf injury. Pet. App. 28 (citing *Curtis*, 849 F.2d at 811). In the court of appeals' view, a "but for" test was overly broad because "[i]njuries with a tenuous connection to the [OCS]" should not be covered. *Ibid.* Accordingly, the court of appeals concluded that Section 1333(b) extends Longshore Act coverage only to injuries

[7] The court of appeals also rejected petitioners' separate argument, adopted by the Board, that Section 1333(a)(1) establishes a situs requirement for all of Section 1333, including Section 1333(b). Pet. App. 24-25; see *id.* at 49. The court found that theory to be unsupported by Subsection (a)'s text and undermined by the fact that Subsections (c) and (d) have situs requirements that differ from Subsection (a)'s. *Id.* at 24-26. Petitioners do not renew their argument based on Section 1333(a)(1) before this Court.

with a "substantial nexus" to OCS operations, explaining:

> To meet the standard, the claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. An injury sustained during employment on the outer continental shelf itself would, by definition, meet this standard. However, an accountant's workplace injury would not be covered even if related to outer continental shelf operations, while a roustabout's injury in a helicopter en route to the outer continental shelf likely would be.

Ibid. Because the ALJ and the Board had denied respondent's OCSLA claim only because it did not satisfy the situs-of-injury requirement that the court of appeals rejected, the court remanded the case to the Board to apply the court's "substantial nexus" test and determine in the first instance whether respondent was entitled to benefits. *Id.* at 30, 34.

SUMMARY OF ARGUMENT

The court of appeals correctly concluded that 43 U.S.C. 1333(b)'s extension of the Longshore Act is not limited to injuries occurring on the Outer Continental Shelf. Employees who spend a substantial portion of their work time on the Shelf should be covered for all their work-related injuries, even if those injuries occur in a different location.

1. a. The OCSLA extends workers' compensation coverage under the Longshore Act to the "disability or death of an employee resulting from any injury occurring *as the result of operations conducted on* the outer Continental Shelf." 43 U.S.C. 1333(b) (emphasis added). The phrase "as the result of operations conducted on"

cannot fairly be read to mean "on" or to otherwise establish a location-based requirement for the "injury." The plain language of Section 1333(b) requires only that the "operations" take place on the Shelf and that there be some form of causal nexus between those operations and the injury.

This natural reading of Section 1333(b) is confirmed by comparing it to neighboring provisions in Section 1333 that include explicit situs requirements. For example, Section 1333(a)(1) extends federal law "to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed." 43 U.S.C. 1333(a)(1). Section 1333(c) extends the NLRA to unfair labor practices "occurring upon any artificial island, installation, or other device referred to in subsection (a)." 43 U.S.C. 1333(c). The lack of similar language in Section 1333(b)—which covers "injur[ies]" that "occur[] as the result of operations conducted on the [OCS]," instead of only injuries that occur "on" or "upon" the OCS—demonstrates that Congress did not intend to impose a situs-of-injury requirement in that provision.

b. Contrary to petitioners' contentions, this Court's decisions in *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207 (1986) and *Herb's Welding, Inc.* v. *Gray*, 470 U.S. 414 (1985), do not support a situs-of-injury requirement. Neither case involved Section 1333(b). In *Offshore Logistics*, the Court declined to extend an adjacent State's wrongful death statute to the high seas above the OCS because those waters are not among the locations enumerated in 43 U.S.C. 1333(a)(2)(A) where state law governs. 477 U.S. at 217-220. That holding has no bearing on the meaning of Section 1333(b). In *Herb's Welding*, the Court held that the Longshore Act

did not directly cover a worker injured on an oil platform in state territorial waters because the worker was not engaged in "maritime employment," as required by 33 U.S.C. 902(3). 470 U.S. at 424-427. The "maritime employment" requirement, however, does not apply to Section 1333(b)'s extension of the Longshore Act. Dicta in the two decisions stating that Section 1333(b) includes a geographic limitation are consistent with the view that the provision includes a situs requirement, but that the situs requirement applies to the relevant *operations*, not the resulting injuries.

c. Petitioners' legislative history arguments are irrelevant because the text of Section 1333(b) precludes a situs-of-injury requirement. Even if the legislative history were considered, however, it is inconclusive on the question presented. Petitioners correctly point out that Section 1333(b) was designed, at least in part, to provide a workers' compensation regime for the OCS itself, and workers who spend a substantial amount of their time on the Shelf are properly included in such a regime. But petitioners point to no clear evidence demonstrating that Congress intended to accomplish only the goal of providing compensation for on-Shelf injuries, and the controlling statutory text indicates that Congress intended a wider scope of coverage.

Petitioners' policy arguments in favor of its "bright-line" situs-of-injury rule likewise do not justify imposing on the text of Section 1333(b) a limitation it does not contain. In any event, the rule proposed in this brief by the Director of the Office of Workers' Compensation Programs (Director), which would cover workers who spend a substantial portion of their overall work on the Shelf, would be easy to administer and would not make coverage determinations contingent on what

employment-related task the worker was performing at the time of the injury. Although petitioners complain that the Director's interpretation of the statute would require dual workers' compensation coverage under some circumstances, petitioners' interpretation would do the same—requiring LHWCA coverage for employees while working on the Shelf and state coverage for the same employees while working elsewhere.

2. Because Section 1333(b) does not impose a situs-of-injury test, it extends Longshore Act coverage to at least some injuries suffered off the Shelf. The text of Section 1333(b) does not compel one specific answer as to which particular offshore injuries are covered, but the Director believes that it is most sensibly interpreted to extend Longshore Act coverage to only the off-Shelf injuries of those workers who spend a substantial portion of their work time on the OCS engaging in operations to exploit the Shelf's natural resources. This proposed status test is consistent with Section 1333(b)'s text because it limits that provision's landward extension to workers so closely connected with operations on the Shelf that their employment, and therefore their employment-related injuries, can reasonably be said to occur "as the result of" those operations.

To determine whether an employee is a member of this class, the Director suggests adapting the status test developed in *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 368 (1995), which limits Jones Act coverage to employees with a connection to a vessel or fleet that is both substantial in nature and substantial in duration. The test would also be relatively easy to administer, would provide predictability to employees and employers, and would harmonize the scope of OCSLA coverage for employees working on fixed offshore oil rigs with the scope

of Jones Act coverage for those who work on floating rigs.

If the Court does not adopt the Director's status-based test, the court of appeals' "substantial nexus" test is the best alternative. Although the court of appeals' test would create some uncertainty and could potentially extend benefits to workers who never actually work on the Shelf and are injured on land, it is at least faithful to the statute's text and would often yield the same results as the Director's proposed test.

Either the Director's test or the court of appeals' test is preferable to the Third Circuit's standard, which extends compensation to all employee injuries that would not have occurred "but for" operations on the Shelf. *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809, 811 (1988). In a variety of contexts, the Court has interpreted causation-based language like that found in Section 1333(b) not to require simplistic "but for" tests, which can lead to overly broad coverage. Similarly, it is unlikely that Congress intended OCSLA to extend Longshore Act coverage to employees with only tenuous connections to operations on the Shelf.

ARGUMENT

I. THE OCSLA'S EXTENSION OF LONGSHORE ACT COVERAGE IS NOT LIMITED TO INJURIES OCCURRING ON THE OUTER CONTINENTAL SHELF ITSELF

In the OCSLA, Congress extended Longshore Act coverage to all injuries "occurring as the result of operations conducted on the [OCS]." 43 U.S.C. 1333(b). That phrase, especially when read in light of neighboring provisions of the statute using contrasting language, requires that the "operations" take place on the Shelf, but not that the injury occur there as well. This provision is

best interpreted to cover all work-related injuries, including those occurring off the Shelf, to employees who spend a substantial amount of their time on the Shelf furthering their employers' operations there. That interpretation is consistent with both Congress's textual choice not to impose a situs-of-injury requirement and its goal of providing comprehensive coverage to OCS workers.[8]

A. Section 1333(b) Precludes A Situs-Of-Injury Requirement

1. The question of Section 1333(b)'s meaning "begins where all such inquiries must begin: with the language of the statute itself." *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). "In this case it is also where the inquiry should end, for where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Ibid.* (quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917)).

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[8] This brief is filed on behalf of the Director of the Department of Labor's Office of Workers' Compensation Programs (OWCP), who administers the Longshore Act and its extensions, such as the extension made by the OCSLA. See *Metropolitan Stevedore Co.* v. *Rambo*, 521 U.S. 121, 136 (1997). The Director is a party-respondent when a petition is filed seeking judicial review of a decision of the Benefits Review Board. See *Ingalls Shipbuilding, Inc.* v. *Director, OWCP*, 519 U.S. 248, 262-270 (1997). The Director's interpretation of Section 1333(b) is entitled to *Skidmore* deference. *Rambo*, 521 U.S. at 136 (citing *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944)). The fact that the Benefits Review Board gave a different interpretation to the Act (Pet. Br. 35) is irrelevant. See *Potomac Elec. Power Co.* v. *Director, OWCP*, 449 U.S. 268, 278 n.18 (1980) (The Board "is not a policymaking agency; its interpretation of the LHWCA thus is not entitled to any special deference from the courts.").

Section 1333(b) extends workers' compensation coverage under the Longshore Act to the "disability or death of an employee resulting from any injury occurring *as the result of* operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources * * * of the outer Continental Shelf." 43 U.S.C. 1333(b) (emphasis added). This provision has only one location-based requirement: the "operations" from which the employee's injury results must be located "on the outer Continental Shelf." *Ibid.* Nothing in Section 1333(b) establishes the additional location requirement petitioners advocate, *i.e.*, that the "injury" also take place on the OCS. Pet. Br. 23-26.

The phrase, "as the result of operations conducted on the outer Continental Shelf," cannot fairly be read to mean "on the outer Continental Shelf" or to otherwise establish a situs-of-injury test. Instead, the phrase "as the result of" is one of causation. See *Brown* v. *Gardner*, 513 U.S. 115, 119 (1994) (observing that the phrase "as a result of" in 38 U.S.C. 1151 "is naturally read simply to impose the requirement of a causal connection"). Even petitioners ultimately acknowledge that "as the result of operations" is a "phrase suggesting a causal relationship." Pet. Br. 22.

2. The absence of a situs-of-injury requirement in Section 1333(b) is confirmed by comparing that subsection with the others in Section 1333. Unlike Section 1333(b), those provisions impose express situs requirements on their subject matter. See 43 U.S.C. 1333(a)(1) (extending the Constitution, laws, and jurisdiction of the United States "to the subsoil and seabed of the [OCS] and to all artificial islands, and all installations and other devices permanently or temporarily attached to

the seabed"); 43 U.S.C. 1333(c) (applying NLRA to unfair labor practices "*occurring upon* any artificial island, installation, or other device referred to in subsection (a)") (emphasis added); 43 U.S.C. 1333(d)(1) (empowering Coast Guard to promulgate and enforce safety regulations "*on* the artificial islands, installations, and other devices referred to in subsection (a)" and "*on* the waters adjacent thereto") (emphasis added).

The absence of such a location limitation in Section 1333(b) with respect to covered injuries is also underscored by contrasting that provision with the Longshore Act itself. Congress's obvious goal in drafting what is now Section 1333(b) was to extend Longshore Act coverage, so the language and structure of that underlying statute was clearly before Congress at the time it enacted the OCSLA in 1953. At that time, the Longshore Act provided that "[c]ompensation shall be payable under this chapter in respect of disability or death of an employee, *but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock)*." 33 U.S.C. 903(a) (1952) (emphasis added). The fact that Congress in the OCSLA made "compensation * * * payable" under the Longshore Act, but substituted an "as the result of" test for the express "occurring upon" test in the incorporated statute, cannot be attributed to mere happenstance.

The other subsections in Section 1333, as well as the Longshore Act, show that Congress would have used different language had it wanted to extend Longshore Act coverage only to injuries incurred on OCS structures themselves. For example, Congress could have written Section 1333(b) to include a situs-of-injury requirement by providing coverage for "disability or death

of an employee resulting from any injury occurring on the outer Continental Shelf," or for "disability or death of an employee resulting from any injury occurring on the outer Continental Shelf as a result of operations conducted on the Shelf." *Mills* v. *Director, OWCP*, 877 F.2d 356, 363 n.1 (5th Cir. 1989) (en banc) (Duhe, J., dissenting). Congress did not do so, however, and that choice should be given effect.

Petitioners argue that the neighboring provisions in Section 1333 reflect Congress's particular concern with OCS structures and that those provisions' situs requirements should therefore be read into Section 1333(b) as well. Pet. Br. 23-26. Well-settled principles of statutory construction point in the opposite direction. "[W]here 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." *Kucana* v. *Holder*, 130 S. Ct. 827, 838 (2010) (internal citation omitted).

3. Petitioners contend that the court of appeals improperly "decoupled" the terms "injury" and "operations" in Section 1333(b). Pet. Br. 15. But the court of appeals properly linked those terms the same way Congress did: with the phrase "occurring as the result of." Petitioners have no convincing explanation for why Congress extended Longshore Act coverage to injuries occurring "as the result of" operations on the OCS if Congress meant only to cover injuries occurring "on" OCS platforms.

Petitioners argue that there is no difference between these formulations, asserting that it is impossible, as a matter of "common sense," for an off-OCS injury to result from operations on the Shelf. Pet. Br. 15, 26. That

is incorrect. As the court of appeals pointed out, the "results of an operation may regularly extend beyond its immediate physical location." Pet. App. 16. For example, if an explosion at a platform on the Shelf hurled debris into neighboring state waters, a resulting injury would be a "result of operations conducted" on the Shelf. 43 U.S.C. 1333(b). Yet the injury would not have "occurr[ed] on the shelf." Pet. Br. 15. Likewise, other injuries can plainly "result," in the word's natural causal sense, from operations on the Shelf even if they occur elsewhere.

In an attempt to explain why Congress used the phrase "occurring as the result of" in Section 1333(b), petitioners speculate that Congress "likely" wanted to ensure that workers injured by exposure to harmful substances on the OCS would be covered by the Longshore Act, even if the injury did not manifest itself as a disabling condition until the worker returned to land. Pet. Br. 16. Petitioners point to no legislative history or other evidence suggesting that Congress was concerned about latent injuries when drafting Section 1333(b). Nor would there have been any need for a special statutory phrase to address a concern about latent injuries. The Longshore Act already defined "injury" to include both "accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury." 33 U.S.C. 902(2) (1952). Under that broad definitional provision, a latent injury is an "injury" for purposes of Section 1333(b), and there would have been no need for Congress to provide another textual route to that same destination.

Petitioners' theory about Congress's supposed desire to make special provision in the OCSLA for latent injuries is thus inconsistent with the definitional provisions of the Longshore Act itself. Moreover, at the time the OCSLA was enacted, the Longshore Act applied only to injuries occurring "upon the navigable waters of the United States." 33 U.S.C. 903(a) (1952). If petitioners were correct that the "resulting from" phrase in the OCSLA was necessary to provide coverage for latent injuries, then the absence of such a phrase in the Longshore Act would have meant that disabilities were covered only if they became manifest when the claimant happened to be upon the navigable waters of the United States. Nothing in Longshore Act case law at the time even hints at such a requirement. See *Bernatowicz* v. *Nacirema Operating Co.*, 142 F.2d 385, 387 (3d Cir. 1944) (affirming award of compensation for gangrene manifesting itself seven months after accident on navigable waters); *Fidelity & Cas. Co. of N.Y.* v. *Henderson*, 128 F.2d 1019, 1019-20 (5th Cir. 1942) (affirming award for psychiatric condition manifesting itself after accident).

Petitioners also speculate that Congress included the phrase "occurring as the result of operations" in order to deny recovery for "injuries occurring offshore but with no nexus to operations conducted for the purposes specified in the statute." Pet. Br. 16. Congress could have easily accomplished that goal while also including an express situs-of-injury requirement by covering "disability or death of an employee resulting from any injury occurring on the outer Continental Shelf as a result of operations conducted on the Shelf." *Mills*, 877 F.2d at 363 n.1 (Duhe, J., dissenting). Congress, however, did not do so. In any event, it would have been unnecessary

for Congress to place special protection against recovery for non-work-related injuries in Section 1333(b) because the definition of injury in the Longshore Act was already limited to one that "aris[es] out of and in the course of employment." 33 U.S.C. 902(2) (1952). There is no reason to believe that Congress was concerned about a hypothetical category of employee injuries on the OCS that would arise out of employment but not "occur[] as the result of operations conducted on the [OCS] for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources" of the OCS, 43 U.S.C. 1333(b).

B. This Court's Decisions In *Offshore Logistics* And *Herb's Welding* Do Not Support Petitioners' Contention That Section 1333(b) Imposes A Situs-Of-Injury Requirement

Petitioners acknowledge that neither *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207 (1986), nor *Herb's Welding, Inc.* v. *Gray*, 470 U.S. 414 (1985), directly involved Section 1333(b), but argue that those decisions nevertheless "point the way to the proper resolution of this case." Pet. Br. 27. The dicta in those opinions upon which petitioners rely do not alter the plain meaning of Section 1333(b) and, in any event, are consistent with the court of appeals' rejection of a situs-of-injury test.

1. *Offshore Logistics* involved Section 1333(a)(2)(A), which generally incorporates as federal law the civil and criminal laws of the adjacent State for the adjoining "portion of the subsoil and seabed of the [OCS], and artificial islands and fixed structures erected thereon." 43 U.S.C. 1333(a)(2)(A). After two OCS workers were killed when a helicopter transporting them back to land crashed into the high seas above the OCS, their widows filed suit against the helicopter operator and claimed

damages available under Louisiana's wrongful death statute, contending that it was applicable by operation of Section 1333(a)(2)(A). *Offshore Logistics*, 477 U.S. at 218. The Court held that Section 1333(a)(2)(A) was not applicable because the accident took place on the high seas, not on the OCS seabed or an attached structure, as required by that provision. *Id.* at 218-220. The widows were accordingly limited to the remedies made available by the Death on the High Seas Act, 46 U.S.C. 761 *et seq.* See 477 U.S. at 220.

In reaching its conclusion, the Court rejected the contention that Section 1333(a)(2)(A) should apply because of the employees' status as OCS workers. *Offshore Logistics*, 477 U.S. at 219. The Court noted that "Congress determined that the general scope of OCSLA's coverage * * * would be determined principally by locale, not by the status of the individual injured or killed." *Ibid.* In a footnote, the Court pointed out that only Section 1333(b) "superimposes a status requirement on the otherwise determinative OCSLA situs requirement." *Id.* at 219 n.2.

There is no inconsistency between the quoted statement and the court of appeals' rejection of a situs-of-injury requirement. Under the court of appeals' interpretation, Section 1333(b) includes both a "determinative * * * situs requirement" (*Offshore Logistics*, 477 U.S. at 219 n.2)—the operations from which the injury results must be "conducted *on* the [Shelf]," 43 U.S.C. 1333(b) (emphasis added)—and a "status requirement" (*Offshore Logistics*, 477 U.S. at 219 n.2)—the injured individual must be an "employee," 43 U.S.C. 1333(b). *Offshore Logistics* provides no support for petitioners' specific conception of Section 1333(b)'s situs requirement, *i.e.*, that the "injury" also must take place

on the Shelf. See Pet. App. 10-11. And in any event, the Court in *Offshore Logistics* was quick to emphasize after its observation about Section 1333(b) that "because this case does not involve a suit by an injured employee against his employer pursuant to § 1333(b), this provision has no bearing on this case." 477 U.S. at 220 n.2. The Court's discussion of Section 1333(b) was therefore "textbook dictum." Pet. App. 9.

2. Petitioners' reliance on dicta in *Herb's Welding* is similarly misplaced. The employee in that case was injured while working on an oil platform in state waters, not on the OCS. 470 U.S. at 416-417. He filed claims for Longshore Act benefits both directly and as extended to OCS workers by Section 1333(b). The Court, however, addressed only his LHWCA claim, emphasizing that it "express[ed] no opinion on his argument that he is covered by 43 U.S.C. § 1333(b)." *Id.* at 427. Finding the employee's work to be "far removed" from traditional LHWCA activities, the Court concluded that he was not directly covered by the Longshore Act because he was not engaged in "maritime employment," as required by 33 U.S.C. 902(3). 470 U.S. at 419-427.

In response to the employee's argument that denying LHWCA benefits under the circumstances of his case would lead to workers oscillating in and out of coverage during their work day, the Court observed that "the inconsistent coverage here results primarily from the explicit geographic limitation to the [OCSLA]'s incorporation of the LHWCA." *Herb's Welding*, 470 U.S. at 426-427. The Court did not elaborate on what it meant by the OCSLA's "geographic limitation," which was not at issue in that case. The Court's statement, however, is consistent with Section 1333(b)'s geographic limitation on covered *operations*. In fact, the injured worker in

Herb's Welding spent roughly three-quarters of his time on platforms in state waters, *id.* at 416, and therefore did not have the sort of substantial connection to the OCS that the Director believes is necessary to bring a worker under OCSLA coverage for off-Shelf injuries. See pp. 32-35, *infra*. In any event, petitioner's contention that the Court meant that statement to express its considered view that the OCSLA contains a situs-of-injury requirement is inconsistent with the Court's subsequent statement that it "express[ed] no opinion" on the argument by the employee—who was injured in State waters, not on the waters above the OCS—"that he [was] covered by 43 U.S.C. § 1333(b)." 470 U.S. at 427. That question, the Court made clear, remained open on remand. *Id*. at 426 n. 12.[9]

[9] Petitioners also claim to find support in *Small* v. *United States*, 544 U.S. 385, 388 (2005), and *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991), which discuss the well-established presumption against interpreting statutes to apply extraterritorially. Pet. Br. 23. Petitioners ask the Court to apply an inverted version of that rule, under which the OCSLA should be presumed not to cover "domestic situations" because it is primarily concerned with the OCS. *Ibid*. As petitioners' own authority explains, the presumption against extraterritoriality is designed "to protect against unintended clashes between our laws and those of other nations which could result in international discord." *EEOC*, 499 U.S. at 248. OCSLA, by contrast, applies to submerged lands "of which the subsoil and seabed appertain *to the United States* and are subject to *its* jurisdiction and control," 43 U.S.C. 1331(a) (emphases added), and foreign relations concerns obviously play no part in the present case. There is accordingly no basis to apply the rule of statutory construction petitioner proposes.

C. Petitioners' Legislative History And Policy Arguments Do Not Undermine The Plain Meaning Of Section 1333(b)

1. Petitioners, like the Fifth Circuit in *Mills*, attempt to find support for a situs-of-injury requirement in the OCSLA's legislative history. See Pet. Br. 17-18, 22; *Mills*, 877 F.2d at 359-360. Because the text of Section 1333(b) on its face precludes a situs-of-injury test, there is no reason to resort to legislative history in this case. See *Chamber of Commerce of U.S.* v. *Whiting*, 131 S. Ct. 1968, 1980 (2011) ("Congress's authoritative statement is the statutory text, not the legislative history.") (internal citation omitted); *Milner* v. *Department of Navy*, 131 S. Ct. 1259, 1266 (2011) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text. We will not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language.").

In any event, the OCSLA's legislative history is at best inconclusive on the question presented. It is true that the OCS was in many respects a "jurisdictional no-man's land" prior to the OCSLA, and that filling that void was one of the statute's central goals. Pet. Br. 16-17. Congress's decision to extend Longshore Act coverage to operations on the OCS may therefore have been designed, at least in part, to fill an "obvious void in the law governing the OCS[, namely] * * * the lack of a workers' compensation scheme for thousands of workers employed in the dangerous oilfield extraction industry." *Mills*, 877 F.2d at 358. But both the Director's proposed test and the court of appeals' "substantial nexus" test fill that void in the same way as petitioners' situs-of-injury test; any injury by an employee on the Shelf itself would

plainly satisfy all three tests. The question in this case is whether the OCSLA's coverage extends *beyond* such injuries. The legislative history is silent on that question, but, as discussed above, the statutory text is not. The text requires only that the "operations," not the "injury," occur on the Shelf.

The OCSLA's legislative history suggests that Congress did not choose to pursue the goal of filling any gaps left by state workers' compensation schemes at the expense of all other goals, such as establishing a comprehensive federal system of benefits for Shelf workers. As petitioners acknowledge, an express anti-overlap provision that would have limited the OCSLA's extension of the Longshore Act only to injuries or deaths not covered by state workers' compensation laws "was deleted from an early version of OCSLA." Pet. Br. 20. As the court of appeals pointed out, that deletion "seriously undercut[s] the conception of § 1333(b) as a gap-filler." Pet. App. 20.

Petitioners suggest that Congress deleted the anti-overlap provision because it did not want to deprive OCS workers of more-generous Longshore Act benefits when adjacent state workers' compensation schemes happened to extend to operations on the Shelf. Pet. Br. 21; see *Mills*, 877 F.2d at 360. That rationale for the deletion simply would demonstrate that "gap-filling" was not Congress's exclusive goal; Congress sought to achieve a comprehensive and coherent system of coverage, even if in doing so it extended benefits to workers who would already have been covered by a state scheme.

In all events, "it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998); see *Lewis* v.

City of Chicago, 130 S. Ct. 2191, 2200 (2010) ("It is not for us to rewrite the statute so that it covers only what we think is necessary to achieve what we think Congress really intended."). Regardless of Congress's principal concern in enacting the OCSLA, it directed that the Longshore Act be extended to any "disability or death of an employee resulting from any injury occurring as the result of operations conducted" on the Shelf. 43 U.S.C. 1333(b). That language, not petitioner's hypotheses about why Congress enacted it, controls.

2. Petitioners contend that their situs-of-injury test should be adopted because it would "clarify precisely when employers must purchase insurance covering LHWCA benefits," Pet. Br. 33, and would provide an "easy-to-apply, bright-line rule[]," *id.* at 30. These policy arguments do not advance petitioners' cause and, in any event, are properly addressed to Congress, not this Court.

First, as discussed below, Section 1333(b) is best read to cover the onshore injuries of only those employees who spend a substantial portion of their work time on the OCS. See pp. 32-35, *infra*. That interpretation of the statute does not include a situs-of-injury requirement, but would still be relatively easy to apply and would minimize disputes over coverage.

Moreover, petitioners' proposed interpretation of the statute would itself require employers to "purchas[e] insurance * * * under both the state worker's compensation and the federal compensation acts." Pet. Br. 33-34. As the facts of this case demonstrate, OCS workers sometimes work off the Shelf (whether on land or in a State's territorial waters). Additionally, even OCS workers who spend all their work time on the Shelf must be transported there, and accidents can happen en

route. Under petitioners' strict situs-of-injury interpretation, employers would therefore be required to maintain dual coverage for all their workers—LHWCA coverage for their time on the OCS and state workers' compensation or other coverage for their time spent elsewhere.

Some degree of overlap between state workers' compensation and LHWCA coverage has long been part of the statutory scheme. Indeed, the Longshore Act expressly contemplates that coverage will sometimes overlap; Congress amended the statute in 1984 to manage such overlap by requiring that compensation paid pursuant to "other workers' compensation law" be credited against employers' Longshore Act liability. 33 U.S.C. 903(e); see Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. No. 98-426, § 3(b), 98 Stat. 1641. The possibility of overlapping coverage similarly would not have been a surprise to the Congress that enacted the OCSLA. At that time, this Court had recognized "a twilight zone" of injuries and "marginal employment" that could be compensable both under the Longshore Act and state workers' compensation programs. *Davis* v. *Department of Labor*, 317 U.S. 249, 256 (1942); see *Director, OWCP* v. *Perini N. River Assocs.*, 459 U.S. 297, 309 (1983) (noting that *Davis* recognized an area of "concurrent jurisdiction"). And nine years after enactment of the OCSLA, this Court in *Calbeck* v. *Travelers Ins. Co.*, 370 U.S. 114 (1962), "created further overlap between federal and state coverage for injured maritime workers." *Perini*, 459 U.S. at 309. In construing the Longshore Act, the Court has thus not allowed concerns about potentially overlapping coverage to steer it away from what it considers the best reading of the statute. See *id.* at 308 n.18 (recognizing that in some

circumstances "both state and federal remedies are available to injured workers, and employers with employees working on the shore would have to contribute to state compensation funds in the event that an employee covered by the LHWCA's shoreline extension sought state compensation, or an employee was deemed for whatever reason not to be eligible for LHWCA relief").[10]

In any event, petitioners' policy arguments in favor of a situs-of-injury requirement are beside the point. See *Harris Trust & Sav. Bank* v. *Salomon Smith Barney Inc.*, 530 U.S. 238, 254 (2000) (declining to consider argument about "policy consequences" when "statutory language provide[d] a clear answer") (internal citation omitted). Congress did not include such a requirement in the text of Section 1333(b), and it is for Congress to decide whether limiting coverage in that way is good policy.

[10] Additionally, adopting a situs-of-injury requirement would not automatically provide an easy-to-administer, bright-line rule, as the Fifth Circuit's experience demonstrates. In *Mills*, that court said that its situs-of-injury requirement extended to "oilfield workers injured on waters above the OCS." 877 F.2d at 361. Yet in *Demette* v. *Falcon Drilling Co.*, 280 F.3d 492 (2002), the Fifth Circuit defined the covered situs to *exclude* the waters over the OCS. See *id.* at 497; see also *Diamond Offshore Co.* v. *A&B Builders, Inc.*, 302 F.3d 531, 543 (5th Cir. 2002). That court recently recognized that it had essentially adopted two different and competing situs tests—one in *Mills* and another in *Demette*. See *Becker* v. *Tidewater, Inc.*, 586 F.3d 358, 367 n.6 (5th Cir. 2009). The confusion in the Fifth Circuit's case law is understandable, given that it is applying a situs-of-injury requirement that does not appear in the statute and that therefore does not have legislatively prescribed contours.

II. SECTION 1333(B) EXTENDS LONGSHORE ACT COVERAGE TO OFF-SHELF INJURIES SUFFERED BY EMPLOYEES WHO SPEND A SUBSTANTIAL AMOUNT OF TIME ON THE OCS

There is no dispute in this case that the OCSLA extends workers' compensation benefits under the Longshore Act to all employees injured while working on the OCS for the purposes enumerated in Section 1333(b). As explained above, however, the statute's coverage is not limited to just those injuries; it extends to "any injury occurring as the result of operations conducted on the [OCS]." 43 U.S.C. 1333(b). It is thus necessary to determine what category of off-Shelf injuries are covered. The text of Section 1333(b) does not compel one specific answer to that question. But in the Director's view, it is most sensibly interpreted to afford Longshore Act coverage to off-Shelf injuries of those workers who spend a substantial portion of their work time on the OCS engaging in operations to exploit the Shelf's natural resources.

A. 1. The Director believes that Section 1333(b) should be interpreted to incorporate a status test extending the Longshore Act to off-Shelf injuries of only those employees who spend a substantial amount of time working on the Shelf. That class of OCS workers would retain their Longshore Act coverage while on duty, wherever their work takes them. Employees not in that class would be covered only for injuries that actually occur on the OCS itself.

This interpretation is consistent with the statutory text. The OCSLA extends Longshore Act coverage to "disability or death of an employee resulting from any injury occurring as the result of operations conducted on

the [OCS]." 43 U.S.C. 1333(b). In the Director's view, an "injury" can "result[]" from Shelf operations in one of two ways. First, an injury to an employee taking place on the Shelf or the high seas above it would qualify. Cf. *Parker* v. *Motor Boat Sales*, 314 U.S. 244, 247 (1941) (Under the Longshore Act, "habitual performance of other and different duties on land cannot alter the fact that at the time of the accident [claimant] was riding in a boat on a navigable river, and it is in connection with that clearly maritime activity that the award was here made.") (footnote omitted); *Perini*, 459 U.S. at 315 (same rule for post-1972 Longshore Act). Second, an off-Shelf injury to an employee who spends a substantial amount of his time on the Shelf furthering the employer's "operations" there also "result[s]" from Shelf operations because those operations are the basis for his employment. *Ibid.*

2. To determine whether an employee is a member of this class, the Director suggests using a test analogous to that developed in *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 368 (1995) (*Chandris*), for making parallel determinations under the Jones Act, ch. 250, 41 Stat. 988. The Court has previously recognized the connection between the Jones Act and the LHWCA, and there is precedent for using them as mutual interpretive aids. See *Chandris*, 515 U.S. at 356 ("[I]t is odd but true that the key requirement for Jones Act coverage now appears in another statute," *i.e.*, the LHWCA.) (citation omitted); *Stewart* v. *Dutra Constr. Co.*, 543 U.S. 481, 488 (2005) ("[T]he Jones Act and the LHWCA are complementary regimes that work in tandem: The Jones Act provides tort remedies to *sea*-based maritime workers, while the LHWCA provides workers' compensation to *land*-based maritime employees.").

At the time of *Chandris*, the Jones Act "provide[d] a cause of action in negligence for 'any seaman' injured 'in the course of his employment.'" 515 U.S. at 354 (quoting 46 U.S.C. App. 688(a)); see 46 U.S.C. 30104 (current version). In *Chandris*, the Court rejected an "activity-based" test under which "anyone working on board a vessel for the duration of a 'voyage' in furtherance of the vessel's mission has the necessary employment-related connection to qualify as a seaman." 515 U.S. at 358. Instead, the Court adopted a "status-based standard that, although it determines Jones Act coverage without regard to the precise activity in which the worker is engaged at the time of the injury, nevertheless best furthers the Jones Act's remedial goals." *Ibid.* Such a test, the Court explained, would "avoid engrafting upon the statutory classification of a 'seaman' a judicial gloss so protean, elusive, or arbitrary as to permit a worker to walk into and out of coverage in the course of his regular duties." *Id.* at 363 (citation and some internal quotation marks omitted).

Under the standard adopted in *Chandris*, the Jones Act applies to all workers whose "duties * * * contribute to the function of the vessel or to the accomplishment of its mission" and who "have a connection to a vessel * * * that is substantial in terms of both its duration and its nature." 515 U.S. at 368 (internal quotation marks, citation, and brackets omitted). The first requirement "is very broad"; it makes "[a]ll who work at sea in the service of a ship' * * * *eligible* for seaman status." *Ibid.* (internal quotation marks and citation omitted). The second, temporal element of the *Chandris* test recognizes that "[a] maritime worker who spends only a small fraction of his working time on board a vessel is fundamentally land based and therefore not a

member of the vessel's crew, regardless of what his duties are." *Id.* at 371; see *ibid.* (noting that an "appropriate rule of thumb for the ordinary case" is that a "worker who spends less than about 30 percent of his time in the service of a vessel in navigation should not qualify as a seaman."). At the same time, "maritime workers who obtain seaman status do not lose that protection automatically when on shore and may recover under the Jones Act whenever they are injured in the service of a vessel, regardless of whether the injury occurs on or off the ship." *Id.* at 360.

The Director proposes a similar test for OCS workers, which would provide OCSLA coverage for off-Shelf injuries only for those employees whose duties contribute to operations on the Shelf and who perform work on the Shelf itself that is substantial in terms of both its duration and its nature. Cf. *Chandris*, 515 U.S. at 368. Thus, only employees who spend a substantial amount of time on the OCS working to exploit its mineral wealth would qualify. Cf. *Nunez* v. *B&B Dredging, Inc.*, 288 F.3d 271, 277 (5th Cir. 2002) (employee who spent "100% of her time furthering the mission or function of [a] vessel" does not satisfy *Chandris* test "because the time she spent aboard the vessel was insubstantial"). This class of Shelf workers would be covered for all work-related injuries, no matter where they occur, and the workers would thus not move in and out of coverage throughout the work day depending on their location.[11]

[11] Petitioners err in contending that the Director's test "suffers from [a] lack of simplicity and predictability" because it would require "that an employee [be] 'perform[ing] OCS-related work on land' " in order to be covered. Pet. Br. 38 (quoting Gov't Br. in Opp. 15). The cited requirement would be satisfied if the employee suffered the injury in the course of employment, just as the Jones Act requirement that

3. Unlike the court of appeals' or petitioner's tests, the Director's test would allow workers who, like Valladolid, spend a substantial portion of their time on the Shelf furthering the employer's extraction operations there to know what benefits to expect in the case of serious disability or death, and therefore to make informed decisions about private insurance or other contingency plans. Likewise, employers would have a greater degree of certainty about which employees would be covered by the LHWCA, without those employees' moving in and out of coverage throughout the work day.

Petitioners observe that this test would grant Longshore Act benefits to an OCS worker injured on land while leaving a non-OCS worker injured on land performing the same task with only a state compensation remedy, and question whether this result "can be squared with Congress'[s] purpose to provide protection for 'workers employed in the dangerous oil field extraction industry.'" Pet. Br. 36-37 (quoting *Mills*, 877 F.2d at 358); see Pet. Br. 21-22. The question contains its own answer. For purposes of the OCSLA, OCS workers like Valladolid—who necessarily spend a substantial portion of their time on the OCS, and are therefore reg-

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seamen off the vessel be "injured in the service of a vessel" to recover, *Chandris*, 515 U.S. at 360, is satisfied if the injury occurs in the course of employment. See *Braen* v. *Pfeifer Oil Transp. Co.*, 361 U.S. 129, 132-133 (1959); *Higginbotham* v. *Mobil Oil Corp.*, 545 F.2d 422, 432 (5th Cir. 1977) (citing *Braen* for the proposition that "once it is established that the claimant is a seaman, the Jones Act permits recovery even if he sues for injuries received while off ship and engaged in temporary work for his employer unrelated to service of the ship"), rev'd on other grounds, 436 U.S. 618 (1978). The Director's test for covered work off the Shelf would therefore be straightforward to administer and predictable in its application.

ularly exposed to the particular dangers of offshore work—are not similarly situated with workers who spend little or no time on the OCS.[12] There is no reason to believe Congress wanted those workers to lose the benefit of the more-generous Longshore Act system simply because their employer ordered them to perform a particular task on land for a brief period of time.

4. The Director's test would also harmonize the treatment of employees who work on the two principal types of offshore oil rigs: fixed and floating. See *Herb's Welding*, 470 U.S. at 416 n.2. Floating rigs are "vessels," and thus those who work on such rigs are "seamen" with Jones Act remedies. *Ibid.*; see *Stewart*, 543 U.S. at 489 (interpreting "vessel" broadly for purposes of Jones Act coverage); *Offshore Co.* v. *Robison*, 266 F.2d 769, 773-781 (5th Cir. 1959).[13] Accordingly, offshore workers with a substantial connection to floating rigs are covered by the Jones Act throughout their work day and even if they are injured off the rig. See *Chandris*, 515 U.S. at 360. The Director's test would provide parallel comprehensive coverage under the Longshore Act for offshore workers with a substantial connection to fixed platforms. Under each of the applicable regimes, workers would not "walk into and out of

[12] Indeed, a central purpose of the *Chandris* test is to identify workers who are "regularly expos[ed] * * * to the perils of the sea," and who are therefore entitled to the benefit of the Jones Act. 515 U.S. at 368. It is similarly reasonable for Section 1333(b) to reserve the benefits of amphibious Longshore Act coverage to workers regularly exposed to the particular dangers of OCS work.

[13] Such individuals would not be covered by the OCSLA even if a floating rig were located on the Shelf because the OCSLA's extension of Longshore Act coverage expressly excludes "a master or member of a crew of any vessel." 43 U.S.C. 1333(b)(1).

coverage in the course of [their] regular duties." *Id.* at 363 (citation omitted).

B. If the Court does not adopt the Director's status-based test, the Director suggests that the Court adopt the court of appeals' interpretation, which provides that Section 1333(b) extends Longshore Act coverage to employees injured on land when there is "a substantial nexus between the injury and extractive operations on the shelf." Pet. App. 28. To meet that standard:

> [T]he claimant must show that the work performed directly furthers outer continental shelf operations and is in the regular course of such operations. An injury sustained during employment on the outer continental shelf itself would, by definition, meet this standard. However, an accountant's workplace injury would not be covered even if related to outer continental shelf operations, while a roustabout's injury in a helicopter en route to the outer continental shelf likely would be.

Ibid.

For the reasons stated above, the Director believes a status-based test is preferable to a test that would make the coverage determination depend on what the employee was doing at the time of the injury. Under the latter approach (just as under petitioners'), the employee could oscillate in and out of coverage throughout the work day. Moreover, while petitioners' concerns on this score are overstated, the court of appeals' test could present some line-drawing problems about what tasks are sufficiently related to OCS operations to qualify. See Pet Br. 31-32. It also would create the possibility that certain injuries to workers who never actually work

on the Shelf would be covered. Pet. App. 29-30 (favorably citing the panel decision in *Mills*, which extended Longshore Act benefits to a purely land-based worker). Nonetheless, the court of appeals' test reflects a reasonable interpretation of the statutory language; it would cover all injuries to employees taking place on the Shelf; and it would likely cover the lion's share of injuries that Shelf workers incur when they are off the Shelf.

C. In the Director's view, either his proposed status-based test or the court of appeals' "substantial nexus" test is preferable to the Third Circuit's potentially broad standard. In the Third Circuit's view, an employee's injury is covered if it would not have occurred "but for" operations on the Shelf. *Curtis* v. *Schlumberger Offshore Serv., Inc.*, 849 F.2d 805, 809, 811 (1988). The Director agrees with the court of appeals in this case that the Third Circuit's test is inadequate because it would seemingly cover "[i]njuries with a tenuous connection to the [OCS]." Pet. App. 28.

While the bare statutory text is susceptible to the Third Circuit's interpretation, it is unlikely that Congress intended to provide for such open-ended LHWCA coverage. This Court has sensibly interpreted similar language in other statutes more narrowly. For example, the liability provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, at issue in *Holmes* v. *Securities Investor Protection Corp.*, 503 U.S. 258, 265-266 (1992), gave a private right of action to "[a]ny person injured in his business or property by reason of a violation of [a particular RICO Act provision]." *Id.* at 265 (quoting 18 U.S.C. 1964(c)). The Court acknowledged that "[t]his language can, of course, be read to mean that a plaintiff is injured 'by reason of' a RICO violation, and therefore may recover,

simply on showing that the defendant violated § 1962, the plaintiff was injured, and the defendant's violation was a 'but for' cause of plaintiff's injury."*Id.* at 265-266 (footnote omitted). The Court went on to note, however, that "[t]his construction is hardly compelled * * *, and the very unlikelihood that Congress meant to allow all factually injured plaintiffs to recover persuades us that RICO should not get such an expansive reading." *Id.* at 266 (footnote omitted); see also *Associated Gen. Contractors of Cal., Inc.* v. *California State Council of Carpenters*, 459 U.S. 519, 529, 545-546 (1983) (acknowledging that a "literal reading of [the Clayton Act's private right of action, 15 U.S.C. 15, which gives a private right of action to "[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws"] is broad enough to encompass every harm that can be attributed directly or indirectly to the consequences of an antitrust violation," but declining to adopt that interpretation); cf. *CSX Transp., Inc.* v. *McBride*, 131 S. Ct. 2630, 2643 (2011) (noting that juries in cases under Federal Employers' Liability Act, 45 U.S.C. 51 *et seq.*, will not award damages in "far out 'but for' scenarios" if properly instructed).

A simplistic "but for" test could effectively extend LHWCA coverage to all or substantially all employees of an employer that is engaged in extractive operations on the Shelf, no matter where those employees work and what they do. Those workers' duties, and thus their injuries, might not exist "but for" the employer's operations on the OCS. See *Holmes*, 503 U.S. at 266 n.10 ("In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond.") (quoting W. Page Keeton *et al.*, *Prosser and Keeton on the Law of*

Torts § 41, p. 264 (5th ed. 1984)). It is unlikely that Congress intended the OCSLA to extend so broadly. Instead, 43 U.S.C. 1336(b) should be interpreted to focus on those workers on whom Congress was focused: those who spend a substantial amount of their time working on the OCS.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

43 U.S.C. 1333 provides:

Laws and regulations governing lands

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within

the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting[1] any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) Longshore and Harbor Workers' Compensation Act applicable; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore

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[1] So in original. Probably should be "settling".

and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.]. For the purposes of the extension of the provisions of the Longshore and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) National Labor Relations Act applicable

For the purposes of the National Labor Relations Act, as amended [29 U.S.C.A. § 151 et seq.], any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.

(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations

(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

(e) Authority of Secretary of the Army to prevent obstruction to navigation

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

(f) Provisions as nonexclusive

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and

other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.