No. 13-56

In the Supreme Court of the United States

HORNBECK OFFSHORE SERVICES, LLC, ET AL.,
PETITIONERS

v.

SALLY JEWELL, SECRETARY OF THE INTERIOR, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a court may punish with contempt sanctions conduct that violates the "purpose" of a court order but not its terms.

2. Whether, in reviewing a contempt finding, the court of appeals should give deference to a district court's interpretation of its own prior order.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 713 F.3d 787. The district court's opinion (Pet. App. 51a-59a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 2013, and the court of appeals sua sponte denied rehearing on that date (Pet. App. 84a-89a). The petition for a writ of certiorari was filed on July 8, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Exercising its powers under the Constitution's Property Clause, U.S. Const. Art. IV, § 3, Cl. 2, Congress has provided in the Outer Continental Shelf

Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, that the United States has "jurisdiction, control, and power of disposition" over the outer continental shelf, 43 U.S.C. 1332(1), which is "a vital national resource" that should be developed "subject to environmental safeguards," 43 U.S.C. 1332(3).

Congress expected that drilling operations on the outer continental shelf would employ "technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, * * * or other occurrences which may cause damage to the environment or to property." 43 U.S.C. 1332(6). Congress therefore directed the Secretary of the Interior (Secretary) to prescribe regulations to govern drilling operations, prevent waste, conserve natural resources, and protect health and safety. See 43 U.S.C. 1334(a).

In particular, OCSLA directs the Secretary to promulgate rules addressing "the suspension or temporary prohibition of any operation" where there is "a threat of serious, irreparable, or immediate harm" to human or aquatic life, to property, "or to the marine, coastal, or human environment." 43 U.S.C. 1334(a)(1)(B). Regulations implementing that provision authorize the Department of the Interior (Department) to direct a suspension if it determines that "activities pose a threat of serious, irreparable, or immediate harm or damage" to human or animal life or to "property, any mineral deposit, or the marine, coastal, or human environment," or when it determines such suspension is "necessary for the installation of safety or environmental protection equipment." 30 C.F.R. 250.172(b) and (c).

2. On April 20, 2010, the crew of the drilling rig Deepwater Horizon was preparing to temporarily abandon BP's exploratory well at the Macondo Prospect in the Gulf of Mexico. Pet. App. 2a; Gov't C.A. Br. 7. A fire and explosion on the rig caused 11 fatalities and several injuries. *Ibid.* The rig sank two days later, resulting in a large-scale and uncontrolled release of massive amounts of oil into the Gulf, with severe economic and environmental consequences. *Ibid.*; see generally *id.* at 64a n.2 (recounting "the tragic facts" of the spill, including deaths and injuries of workers, uncontrolled "spew[ing] [of] endless gushes of crude oil into the Gulf," "oil muck that * * * spread across thousands of square miles and * * * damag[ed] sensitive coastlines, wildlife, and the intertwined local economies," and the closure of nearly one-third of the Gulf of Mexico to fishing).

On April 30, 2010, as large quantities of oil continued spilling into Gulf waters, the President ordered the Secretary to conduct a thorough review of the incident and to report within 30 days on additional precautions and technologies that would improve the safety of drilling operations on the outer continental shelf. Pet. App. 2a-3a. On May 27, 2010, the Secretary issued a report entitled "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (Safety Report). *Id.* at 3a. The Safety Report recognized that other investigations were ongoing, but explained that already-available information supported the need for interim measures to improve offshore drilling safety. Safety Report iii, 1. The Safety Report thus recommended measures to ensure the effectiveness of blowout preventers, to promote well integrity, to enhance well control, and to

facilitate safety within the offshore drilling industry. *Id.* at i-iv, 18-28.

In addition to the Safety Report, the Secretary reviewed other sources of information, including information about the unique challenges of offshore drilling, the quality and sufficiency of blowout preventers, and well integrity and well-control procedures. 2:10-cv-01663 Docket entry (Docket entry) No. 28-1, at 4-5 (June 16, 2010). That information "revealed a need to implement new safety measures and to install additional safety equipment." *Id.* No. 28-2, at 4-5 (June 16, 2010). The information considered by the Secretary, as well as the Deepwater Horizon disaster itself, also showed a need to gather and analyze more information "on issues such as wild-well intervention techniques" and new "safety and training requirements." *Id.* at 5.

After reviewing that information and given the ongoing emergency caused by the still-uncontrolled spill, the Secretary, on May 28, 2010, concluded that "at this time and under current conditions * * * offshore drilling of new deepwater wells poses an unacceptable threat of serious and irreparable harm to wildlife and the marine, coastal, and human environment"—as is required to invoke the suspension authority provided by OCSLA and its implementing regulations. Pet. App. 4a; see p. 2, *supra*. The Secretary also determined that "the installation of additional safety or environmental protection equipment" at deepwater drilling rigs is "necessary to prevent injury or loss of life and damage to property and the environment." Pet. App. 66a.

The Secretary thus directed the Department to implement a six-month suspension of drilling in waters

more than 500 feet deep. Pet. App. 4a. The Department implemented that directive, the "Suspension of Outer Continental Shelf (OCS) Drilling of New Deepwater Wells" (May Directive), by sending temporary suspension letters to each of the 33 affected operators and by issuing a Notice to Lessees (NTL No. 2010-N04) informing the operators of the suspension and the reasons for it. *Id.* at 4a-5a.

3. On June 7, 2010, petitioners, which are businesses that provide support services for deepwater oil and gas development operations in the Gulf of Mexico, filed this suit challenging the May Directive as arbitrary and capricious under the Administrative Procedure Act (APA), 5 U.S.C. 551-559, 701-706), and as beyond the Secretary's authority under OCSLA. Pet. App. 5a, 63a n.1. Petitioners sought a preliminary injunction on an expedited schedule. *Id.* at 5a, 68a.

The district court granted the requested preliminary injunction, Pet. App. 63a-83a, addressing only petitioners' APA claim, *id.* at 76a-77a. The court concluded that petitioners had "established a likelihood of successfully showing that the Administration acted arbitrarily and capriciously in issuing the moratorium" and had also established the other factors necessary for injunctive relief. *Id.* at 81a-82a. In particular, the court determined that the government had not adequately explained its decision to issue the moratorium in light of "the facts developed during the thirty-day review." *Id.* at 81a.

As relevant here, the district court's preliminary injunction provided that the Secretary and other government officials:

> are hereby immediately prohibited from enforcing the Moratorium, entitled "Suspension of Outer

> Continental Shelf (OCS) Drilling of New Deepwater Wells," dated May 28, 2010, and NTL No. 2010-N04 seeking implementation of the Moratorium, as applied to all drilling on the OCS in water at depths greater than 500 feet[.]

Pet. App. 61a-62a.

4. The Department immediately complied with the order by notifying its employees not to enforce the May Directive and associated Notice to Lessees, and by notifying operators that had received suspension letters that the suspension no longer had legal effect. Pet. App. 6a. At the same time, with the spill continuing and no identified means to stop it, the Secretary publicly expressed his intention to issue a new suspension of drilling with a revised explanation. See *id.* at 5a-6a. On June 22, 2010, the same day that the district court issued its preliminary injunction order, the Secretary stated: "I will issue a new order in the coming days that eliminates any doubt that a moratorium is needed, appropriate, and within our authorities." *Id.* at 6a. The next day, while testifying before a Senate subcommittee, the Secretary reaffirmed his intention to issue a new suspension directive, stating that "we will, and in the weeks and months ahead, take a look at how the moratorium in place can be refined" and that "it is important that this . . . moratorium stay[s] in place." *Id.* at 13a; C.A. R.E. Tab 14, at 1.

The government also appealed the district court's preliminary injunction and moved for a stay pending appeal. Pet. App. 6a-7a. In its motion for stay pending appeal and at oral argument on the motion, the government informed the court of appeals that the Secretary planned to issue a new suspension directive

that would provide a more thorough explanation of the need for a suspension. See 10-30585 Order & Reasons 3-4; 10-30585 Gov't Mot. for Stay 15-16. The court of appeals ultimately denied the motion for stay. Pet. App. 7a.

In the meantime, the Department worked on a new directive that would provide the reasoned explanation that the district court found lacking in the previous one. On July 12, 2010, the Secretary rescinded the May Directive and issued a new suspension directive that mirrored the May Directive in scope and substance (July Directive). The July Directive more thoroughly explained the reasons for the suspension and its duration and relied on a new, more extensive, administrative record. Pet. App. 7a.

The court of appeals then dismissed the government's appeal of the preliminary injunction as moot, finding that it could no longer offer any effective relief because the Secretary had rescinded the May Directive. Pet. App. 8a. The district court refused to dismiss the underlying suit, concluding that the "voluntary cessation" exception to mootness applied. *Id.* at 7a-8a. But, in light of the court of appeals' decision dismissing the government's appeal as moot, the district court denied petitioners' motion to enforce the preliminary injunction. *Id.* at 8a.

On October 12, 2010, three weeks after the Macondo well was plugged, the Secretary lifted the suspension of drilling imposed by the July Directive because significant progress had been made in addressing drilling safety, subsea blowout containment, and spill response. Lifting the suspension essentially ended the litigation on the merits of petitioners' claims. Pet. App. 8a; Gov't C.A. Br. 13.

5. Petitioners subsequently filed a motion for recovery of more than a million dollars in attorneys' fees and costs, contending that they incurred litigation costs because the government had acted in contempt of the preliminary injunction order by issuing the second suspension order. Pet. App. 57a-59a; Gov't C.A. Br. 13. On February 2, 2011, the district court issued an opinion finding the government in civil contempt and awarded petitioners attorneys' fees on that basis. Pet. App. 53a, 59a.

As an initial matter, the district court rejected petitioners' contention that the July Directive "amounts to a flagrant and continuous disregard of the Court's [preliminary injunction] Order." Pet. App. 57a-58a. The court explained that petitioners, in making that argument, read the injunction "too broadly" and that the injunction had rested on a finding that petitioners had shown they were likely to succeed in proving that the "process leading to the first moratorium was arbitrary and capricious." *Ibid.* In this regard, the court noted the government's explanation that the July Directive "merely met the Court's concerns and resolved each of the procedural deficiencies the Court found in the first" directive. *Id.* at 58a. The court thus concluded that, "[u]nder these facts alone," it could not find "clear[] and convincing[]" evidence of civil contempt. *Ibid.*

The district court nevertheless found the government to be in "civil contempt based on the government's determined disregard" of the preliminary injunction order. Pet. App. 59a. The court reasoned as follows:

> [T]he government did not simply reimpose a blanket moratorium; rather, each step the government

> took following the Court's imposition of a preliminary injunction showcases its defiance: the government failed to seek a remand; it continually reaffirmed its intention and resolve to restore the moratorium; it even notified operators that though a preliminary injunction had issued, they could quickly expect a new moratorium. Such dismissive conduct, viewed in tandem with the reimposition of a second blanket and substantively identical moratorium and in light of the national importance of this case, provide this Court with clear and convincing evidence of the government's contempt of this Court's preliminary injunction Order.

Id. at 58a-59a. The district court later specified that the government's contempt ran from June 22, 2010, the date of the preliminary injunction order and the Secretary's first statement, until September 29, 2010, the date of the court of appeals' order declaring the injunction "dead." *Id.* at 8a; see Docket entry No. 278, at 2 (Aug. 4, 2011).

The district court referred briefing on the amount of fees to a magistrate judge, who recommended awarding petitioners $440,596.68 in attorneys' fees and $444.33 in costs. Pet. App. 59a; Docket entry No. 265, at 3 (June 1, 2011). After entertaining cross-objections to the magistrate judge's report and recommendation, the district court increased the attorneys' fee award and entered final judgment entitling petitioners to $528,801.18 in fees and $444.33 in costs. Pet. App. 51a-52a.

6. On the government's appeal, the court of appeals reversed the finding of civil contempt and corresponding award of attorneys' fees. Pet. App. 1a-18a; cf. *id.* at 19a (Elrod, J., dissenting). The court re-

viewed the contempt order as a whole for abuse of discretion, while noting that it reviewed factual findings for clear error and interpreted the scope of the injunction de novo. *Id.* at 9a.

The court of appeals observed that an injunction's terms must be clear in order to provide a basis for contempt, but recognized that a district court issuing an injunction "need not anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated." Pet. App. 10a (citation and internal quotation marks omitted). Thus, "a district court is entitled to a degree of flexibility in vindicating its authority against actions that, while not expressly prohibited, nonetheless violate the reasonably understood terms of the order." *Ibid.*

The court of appeals determined, as had the district court, that reimposing a suspension of operations through the July Directive did not violate the injunction. Pet. App. 14a-15a; accord *id.* at 57a-58a. Because the "sole justification" for the preliminary injunction was the Secretary's failure to adequately explain the reasons for the May Directive, that injunction did not prohibit the Secretary from issuing a new suspension order with an adequate explanation. *Id.* at 15a. Petitioners' original complaint had alleged that the six-month moratorium exceeded the Secretary's statutory authority, but the court of appeals emphasized that the district court had not addressed that claim when it issued the injunction. *Ibid.* The court of appeals recognized that "[h]ad the May Directive been enjoined on that basis, this would be a very different case." *Ibid.* Because the actual injunction was based just on failure-to-explain grounds, however, the in-

junction "did not explicitly prohibit a new, or even an identical, moratorium." *Ibid.*

The court of appeals also concluded that none of the other actions mentioned by the district court supported a contempt finding. Pet. App. 11a-14a. First, the injunction did not impose an express or "clearly inferrable obligation" to seek a remand to the Department before issuing the July Directive. *Id.* at 11a-12a. Second, the court determined that public statements indicating that the Department would impose a new moratorium and its communications to the regulated industry to that effect also did not violate the order. Because issuing a new moratorium with a revised explanation was not a violation of the injunction, the court explained, "harboring [an] intent" to issue such a moratorium (and disclosing that intent to interested parties) could not violate the order. *Id.* at 14a. In sum, the court concluded that "Interior's actions did not violate the injunction as drafted and reasonably interpreted." *Id.* at 16a.

The court of appeals denied rehearing en banc, with five judges dissenting. Pet. App. 84a-89a.

ARGUMENT

Petitioners contend that the contempt finding should have been upheld because the government's actions violated what they assert was the preliminary injunction's "purpose"—but not its terms—and that the court of appeals should have reviewed the district court's construction of the injunction deferentially. Petitioners made neither of these arguments below, and a ruling in petitioner's favor on them would not alter the outcome here. Further review is unwarranted.

1. Petitioners first contend (Pet. 16) that this Court should grant review to resolve a division of authority about whether a court may punish conduct with contempt sanctions if the allegedly contumacious conduct violates the purpose of a court order, but not its express terms. Petitioners waived that argument below; its resolution would not alter the outcome in this case; and no such division of authority exists.

a. This Court has explained that the "contempt power * * * uniquely is liable to abuse." *International Union, United Mine Workers* v. *Bagwell*, 512 U.S. 821, 831 (1994) (citations and internal quotation marks omitted). "Unlike most areas of law, where a legislature defines both the sanctionable conduct and the penalty to be imposed, civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Ibid.* "Contumacy often strikes at the most vulnerable and human qualities of a judge's temperament, and its fusion of legislative, executive, and judicial powers" creates the potential for abuse. *Ibid.* (citations and internal quotation marks omitted); see *Bloom* v. *Illinois*, 391 U.S. 194, 202-208 (1968).

Accordingly, the Court has recognized that "[t]he judicial contempt power is a potent weapon" and that when "it is founded upon a decree too vague to be understood, it can be a deadly one." *International Longshoremen's Ass'n* v. *Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 76 (1967). Rule 65(d)(1) of the Federal Rules of Civil Procedure addresses that danger by requiring that every order granting an injunction "state its terms specifically; and describe in reasonable detail * * * the act or acts restrained or re-

quired." Fed. R. Civ. P. 65(d)(1)(B)-(C). This requirement is an important procedural safeguard designed "to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt* v. *Lessard*, 414 U.S. 473, 476 (1974) (per curiam) (citations omitted).

b. Petitioners contend (Pet. 18-20) that the Third, Seventh, and Eleventh Circuits allow a district court to enter contempt sanctions for conduct that violates "the purpose of an injunction," but not its plain terms. They further contend (*ibid.*) that this atextual approach to contempt is the correct one.

As an initial matter, this contention does not merit review because petitioners did not advance it in the court of appeals. In fact, they said just the opposite when they recognized "the requirement that a finding of contempt must be based upon a violation of a definite and specific term of an existing court order." Pet. C.A. Br. 25 ("[T]o support a contempt finding in the context of temporary injunctive relief, 'the order must delineate 'definite and specific' mandates that the defendants violated.'" (quoting *American Airlines, Inc.* v. *Allied Pilot Ass'n*, 228 F.3d 574, 578 (5th Cir. 2000), cert. denied, 531 U.S. 1191 (2001))). Rather than arguing for some different, purpose-based rule (as they do now), petitioners in the court of appeals contended that "the district court correctly concluded that Interior's conduct in defiance of the preliminary injunction order met the definite and specific contempt requirement." *Ibid.* Petitioners' express request that the court of appeals apply the rule they now seek to challenge is reason enough to deny re-

view. Petitioners also stated that "[t]he district court need not anticipate every action to be taken in response to its order, nor spell out in detail the means in which its order must be effectuated." *Ibid.* (quoting *American Airlines, Inc.*, 228 F.3d at 578). The court of appeals recited that principle, word-for-word. See Pet. App. 10a.

In any event, a rule permitting punishment for conduct purportedly violative of an injunction's asserted "purpose" but not its terms would not comport with Rule 65(d)(1) and this Court's cases. It is therefore not surprising that, contrary to petitioners' suggestion, no court of appeals has actually adopted it. Each of the courts of appeals cited by petitioners applies the same standard as the court of appeals in this case, along with the First, Second, and Tenth Circuits: they all require that conduct be specifically prohibited by the terms of an order, as reasonably interpreted in light of the purpose of the order. See Fed. R. Civ. P. 65(d); Pet. App. 18-23. Under that standard, as explicitly recognized by the court of appeals in this case, even an act that is not "expressly prohibited" by an injunction may lead to contempt if it "violate[s] the reasonably understood terms of the order." Pet. App. 10a.

For example, in *Harris* v. *City of Philadelphia*, 47 F.3d 1342 (1995), the Third Circuit held that, to support contempt, the purpose of an order must be grounded in the "clarity of language that * * * is a predicate for any contempt ruling." *Id.* at 1352. The Third Circuit thus distinguished between acts that no express term of the order specifically prohibited, which could not support a finding of contempt even where contrary to an asserted "purpose" of the order,

id. at 1351-1352, and acts that *were* specifically prohibited when the express terms of the order were interpreted in light of the "thrust" of the provisions at issue, *id.* at 1353-1354. The court explained that only the latter are punishable by contempt sanctions. *Ibid.*

The Seventh and Eleventh Circuits also agree that injunctions must be construed according to their terms and state that they "have no quarrel with the general rule" and "intend no departure from" it. *Alley* v. *United States Dep't of Health & Human Servs.*, 590 F.3d 1195, 1206-1207 (11th Cir. 2009) ("The text of an injunction is 'subject to reasonable interpretation,' though it 'may not be expanded beyond the meaning of its terms absent notice and an opportunity to be heard'" (citation omitted)); see *Schering Corp.* v. *Illinois Antibiotics Co.*, 62 F.3d 903, 906 (7th Cir. 1995), cert. denied, 516 U.S. 1140 (1996). In each of the cases cited by petitioners, the "purpose" of the order as determined by the court was grounded in the express terms of the provision at issue. *Alley*, 590 F.3d at 1207-1208; *Schering Corp.*, 62 F.3d at 906.[1] None of those courts held that contempt may lie for conduct

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[1] See *Alley*, 590 F.3d at 1207-1208 (holding order that prohibited disclosure of amounts physicians received in Medicare reimbursements also prohibited disclosure of data on procedures for which Medicare reimbursed physicians because amounts could be calculated from data on procedures); *Schering Corp.*, 62 F.3d at 906 (finding contempt where injunction prohibited selling gentamicin sulfate dissolved in water and party had sold it in solution form); *Harris*, 47 F.3d at 1353-1354 (finding contempt where contemnors reading of injunction's terms was not "reasonable"); *United States* v. *Christie Indus., Inc.*, 465 F.2d 1002, 1005-1006 (3d Cir. 1972) (finding contempt where injunction prohibited selling "firecracker assembly-kits" and party sold components of kits individually and shipped them in same box).

not prohibited or required by an actual term of a court order.

c. Even if there were a division of authority in the courts of appeals on this question, petitioners' claim (Pet. 17) that "a district court may sanction conduct that violates the clear purpose, but not the explicit terms, of an injunction" would not merit review in this case because they fail to demonstrate that such a rule would make any difference here. Tellingly, petitioners never identify the purportedly "clear purpose" of the injunction that the government's actions supposedly violated. By contrast, the court of appeals (which recognized that acts that are not "expressly prohibited" by an injunction may still "violate the reasonably understood terms of the order," Pet. App. 10a) *did* identify the injunction's purpose: to bar enforcement of the May Directive because of *that directive's* "procedural failure to explain." *Id.* at 15a. The "purpose" of the injunction was not also to bar enforcement of all future moratoria, even those with different explanations. *Ibid.*[2]

Nor could such an open-ended injunction properly have been granted in a suit under the APA. That statute authorizes suits challenging a particular and

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[2] The court of appeals said that "*[i]f* the purpose [of the injunction] were to assure the resumption of operations until further court order," it did not say so expressly. Pet. App. 16a (emphasis added). One would certainly expect such an important term to be expressly stated, especially in an APA suit challenging specific final agency action. In making that observation, the court of appeals was not saying that resumption-until-further-court-order was *actually* the injunction's purpose. Both the court of appeals and the district court said the opposite. See Pet. App. 14a-16a; see also *id.* at 57a-58a (finding petitioners' construction of the injunction was "too broad[]").

discrete "final agency action," 5 U.S.C. 704; see *Norton* v. *Southern Utah Wilderness Alliance*, 542 U.S. 55, 61-62, 64, 66-67 (2004); *Lujan* v. *National Wildlife Fed'n*, 497 U.S. 871, 890-894 (1990)—here the May Directive, not potential future orders. A fortiori, in an APA suit, a *preliminary* injunction could not properly extend beyond the particular final agency action before the court. Cf. 5 U.S.C. 705.

2. Petitioners also contend (Pet. 23-26) that the court of appeals erred by reviewing de novo the district court's construction of its preliminary injunction order. They argue (Pet. 31) that the court of appeals should have instead deferred to the district court's interpretation. This contention does not merit review.

a. There are several threshold defects regarding this claim.

First, petitioners did not argue for any such deference before the court of appeals. See generally Pet. C.A. Br. 1-37.

Second, there is an inherent contradiction between the arguments petitioners advance on their two questions presented. The premise of the first question presented is that the government's conduct did *not* violate the "injunction's text" but instead only its "understood purpose," Pet i. Under petitioners' own view of the case, the second question presented is therefore not relevant. In other words, no question involving "the district court's interpretation of the wording of its own order" (Pet. 23 (citation omitted)), or the level of deference owed to such an interpretation, is presented under petitioner's theory.

Third, and relatedly, petitioners studiously avoid identifying any particular district court interpretation of any particular term of the injunction that they

believe was entitled to deference. That is not surprising, given that the district court *rejected* petitioners' interpretation of the injunction's terms, concluding that they read those terms "too broadly" when they contended that the government's new moratorium violated the injunction's plain terms. Pet. App. 57a-58a. The court of appeals agreed with the district court's interpretation, see *id.* at 14a-15a, and a *more* deferential standard of review obviously would not have changed that result. The question of standard of review might theoretically matter in a case in which the parties contested the meaning of a particular term of the injunction before the district court; the district court offered an interpretation of that disputed term; and then the court of appeals was called on to review that particular interpretation. This is not such a case.

b. In all events, the division of authority invoked by petitioners is not as pronounced as they suggest. Notably, several of the decisions they invoke did not involve contempt proceedings. See *Hartis* v. *Chicago Title Ins. Co.*, 694 F.3d 935, 947 (8th Cir. 2012) (cited at Pet. 24); *Alley*, 590 F.3d at 1202 (cited at Pet. 24-25); *Harvey* v. *Johanns*, 494 F.3d 237, 241-242 (1st Cir. 2007) (cited at Pet. 23); *WRS, Inc.* v. *Plaza Entm't, Inc.*, 402 F.3d 424, 428 (3d Cir. 2005) (cited at Pet. 24); *G.J.B. & Assocs., Inc.* v. *Singleton*, 913 F.2d 824, 831 (10th Cir. 1990) (cited at Pet. 24); *Martha's Vineyard Scuba Headquarters, Inc.* v. *Unidentified, Wrecked & Abandoned Steam Vessel*, 833 F.2d 1059, 1066-1067 (1st Cir. 1987) (cited at Pet. 23). Because the "contempt power * * * uniquely is liable to abuse," *Bagwell*, 512 U.S. at 831 (citations and internal quotation marks omitted), a general rule calling for deference to a district court's interpretation of its

orders (such as a scheduling order, see, *e.g.*, *Hartis*, 694 F.3d at 947) may not apply in the same way when the interpretation in question is the basis for imposition of contempt sanctions, cf. *United States* v. *Local 1804-1, Int'l Longshoremen's Ass'n*, 44 F.3d 1091, 1096 (2d Cir. 1995) ("In light of [the] restraints on the district court's contempt power, [an appellate court's] review of a contempt order for abuse of discretion is more rigorous than would be the case in other situations in which abuse-of-discretion review is conducted.").

It is true that a handful of circuits have stated that deference is owed to a district court's construction of its order in a contempt case. See *In re Grand Jury Subpoena (T-112)*, 597 F.3d 189, 195 (4th Cir. 2010), cert. denied, 131 S. Ct. 1470 (2011); *Kendrick* v. *Bland*, 931 F.2d 421, 423-424 (6th Cir. 1991); *Arenson* v. *Chicago Mercantile Exch.*, 520 F.2d 722, 725 (7th Cir. 1975). And a handful of other circuits reviewing contempt orders have recited the rule of de novo interpretation of injunctions. See Pet. App. 9a; *United States* v. *Philip Morris USA Inc.*, 686 F.3d 839, 844 (D.C. Cir. 2012); *Latino Officers Ass'n City of New York, Inc.* v. *City of New York*, 558 F.3d 159, 164 (2d Cir. 2009); *Abbott Labs.* v. *TorPharm, Inc.*, 503 F.3d 1372, 1381-1382 (Fed. Cir. 2007), cert. denied, 128 S. Ct. 2424 (2008); *United States* v. *State of Wash.*, 761 F.2d 1419, 1421 (9th Cir. 1985). But it is not apparent that these boiler-plate recitations of standard of review made a difference in any of those cases. And given that all circuits apply an abuse of discretion standard to the bottom-line question of whether impo-

sition of contempt sanctions was warranted,[3] this subsidiary standard-of-review question would not be of sufficient importance to warrant review by this Court even if this case properly presented it.

c. Finally, even if this case actually did present a question of interpretation of the injunction, the court of appeals would have reached the same conclusion under any standard of review. The injunction prohibited the Department from enforcing the May Directive and associated Notice to Lessees, and the Department complied at all times with that order. After the district court issued its preliminary injunction order, the Department immediately notified all of its employees that the court had issued a preliminary injunction and instructed them not to take any actions to enforce the May Directive. Pet. App. 6a. The Department also informed deepwater drilling operators that the suspension had been enjoined and was therefore no longer effective. *Ibid.* After the district court issued its injunction, the Department never took any action to enforce that suspension under its authority at 30

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[3] See *United States* v. *Winter*, 70 F.3d 655, 659 (1st Cir. 1995), cert. denied, 517 U.S. 1126 (1996); *E.E.O.C.* v. *Local 638*, 81 F.3d 1162, 1171 (2d Cir.), cert. denied, 519 U.S. 945 (1996); *Delaware Valley Citizens' Council for Clean Air* v. *Pennsylvania*, 678 F.2d 470, 478 (3d Cir.), cert. denied, 459 U.S. 969 (1982); *Ashcraft* v. *Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000); Pet. App. 9a; *Rolex Watch U.S.A., Inc.* v. *Crowley*, 74 F.3d 716, 720 (6th Cir. 1996); *United States* v. *Berg*, 20 F.3d 304, 312 (7th Cir. 1994); *International Bhd. of Elec. Workers* v. *Hope Elec. Corp.*, 293 F.3d 409, 415 (8th Cir. 2002); *General Signal Corp.* v. *Donallco, Inc.*, 787 F.2d 1376, 1379-1380 (9th Cir. 1986); *FG Hemisphere Assocs., LLC* v. *Democratic Republic of Congo*, 637 F.3d 373, 379 (D.C. Cir. 2011); *Merial Ltd.* v. *Cipla Ltd.*, 681 F.3d 1283, 1292-1293 (Fed. Cir. 2012).

C.F.R. 250.1402-1464. None of the actions it did take —exercising statutory authority to issue another suspension order (resting on a more extensive record and explanation) and expressing its intent to revisit its suspension order and provide a better explanation— served to enforce the May Directive.

The Department in fact rescinded the May Directive on July 12, 2010, and replaced it with the July Directive after further evaluating the risks associated with ongoing deepwater drilling operations. Pet. App. 7a. That action was fully within the Department's authority. See *Monsanto Co.* v. *Geertson Seed Farms*, 130 S. Ct. 2743, 2758-2761 (2010) (holding that a court abused its discretion when it enjoined an agency from issuing a new decision "pursuant to the authority vested in the agency by law"). And that action was not barred by the district court's preliminary injunction. In short, at no time after issuance of the preliminary injunction order did the Department enforce the May Directive or the associated Notice to Lessees— the only actions that would have violated the order.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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