ORAL ARGUMENT SCHEDULED FOR JANUARY 24, 2025

No. 22-1071

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION,
Petitioner,

v.

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

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

SUPPLEMENTAL BRIEF FOR RESPONDENT KC TRANSPORT, INC.

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Act or Mine Act	Federal Mine Safety and Health Act of 1977
ALJ	Administrative Law Judge
Commission	Mine Safety and Health Review Commission
EPA	Environmental Protection Agency
JA	Deferred Joint Appendix, Doc. #1970398 (D.C. Cir. Oct. 25, 2022)
MSHA	Mine Safety and Health Administration
OSHA	Occupational Safety and Health Administration
OSH Act	Occupational Safety and Health Act of 1970
Secretary	Secretary of Labor
Subsection (C)	30 U.S.C. § 802(h)(1)(C)
Suppl.	Petitioner, Secretary of Labor's Supplemental Brief, Doc. #2076348 (D.C. Cir. Sept. 23, 2024)

Background

The Mine Safety and Health Administration (MSHA) issued two citations to two trucks of KC Transport, Inc., undergoing repairs at KC Transport's repair shop, alleging noncompliance with the blocking regulation, 30 C.F.R. § 77.404(c). The proposed civil penalties for the two citations were $3,908 and $4,343. *Secretary of Labor v. KC Transport, Inc.*, 77 F.4th 1022, 1028 (D.C. Cir. 2023). The Administrative Law Judge held that MSHA had jurisdiction, but the Federal Mine Safety and Health Review Commission (Commission) held that MSHA lacked jurisdiction. *Id.* On MSHA's appeal to this Court, the Court vacated the Commission's decision by declining to interpret the operative statute, 30 U.S.C. § 802(h)(1), defining "coal or other mine." *Id.* at 1035.

KC Transport petitioned the Supreme Court for certiorari. The Supreme Court granted certiorari on the following two questions, vacated this Court's judgment, and remanded the case for "further consideration in light of *Loper Bright Enterprises v. Raimondo*," *KC Transport, Inc. v. Su*, 144 S.Ct. 2708, 2708 (July 2, 2024):

"1. Whether a truck or a truck repair shop that is not located at nor is adjacent to an extraction or processing site or an appurtenant road is a 'coal or other mine' under 30 U.S.C. § 802(h)(1)."

"2. Whether the D.C. Circuit's *Chevron* Step One-and-a-Half doctrine should be abrogated."

Cert. Pet., 2024 WL 645391, at *i (U.S. Feb. 12, 2024). This Court then issued an Order directing the parties to file supplemental briefs addressing five specific questions.

Pertinent Statute

At issue is the meaning of 30 U.S.C. § 802(h)(1): "'coal or other mine' means (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities. In making a determination of what constitutes mineral milling for purposes of this chapter, the Secretary shall give due consideration to the convenience of administration resulting from the delegation to one Assistant Secretary of all authority with respect to the health and safety of miners employed at one physical establishment[.]"

Summary of the Argument

Trucks are not mines, and truck-repair shops aren't mines, either—so long as they are not located at an extraction or processing site or an appurtenant road at the time the violation occurs. That is the best reading of "coal or other mine" as defined at 30 U.S.C. § 802(h)(1).

The Secretary has presented "shifting and self-serving interpretations" throughout this suit. *KC Transport, Inc.*, 77 F.4th at 1040 (Walker, J., dissenting). At the ALJ stage, the Secretary insisted that "each *truck* independently constituted a 'mine,'" a position the ALJ rejected as "absurd." *Id.* Then, on review before the Commission and this Court, the Secretary unsuccessfully "tweaked h[er] position," claiming "that KC's truck-repair *facility* is a 'mine.'" *Id.* The ALJ, the Commission, and all three Members of this Panel have firmly rejected the Secretary's interpretation of "coal or other mine." After a trip to the Supreme Court, the Secretary continues to insist that her thrice-rejected interpretation remains "permissible" and should be adopted by this Court. Suppl.12; Suppl.18.

But "permissible" constructions of statutes offered by an agency are as defunct as the doctrine that required this Court to give such constructions the weight of law: *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). *Loper Bright Enters. v. Raimondo*, 144 S.Ct. 2244, 2266 (2024), directs "courts [to] use every tool at their disposal to determine the best reading of the statute

and resolve the ambiguity" "instead of declaring a particular party's reading 'permissible' in such a case." Thus, the Secretary has precious little to offer other than repackaging *Chevron* deference, urging this Court to ignore *Loper*'s clear command, and calling it statutory construction.

The Court should instead apply the *Loper* rule: determine "'the reading the court would have reached' if no agency were involved." *Id.* at 2266. No "respect" is "due" the Secretary's thrice-rejected interpretation that she now once again requests this Court to adopt. *Id.* at 2257. *Loper* instructs that "due respect to Executive Branch interpretations of federal statutes" is "warranted" only "when an Executive Branch interpretation was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.* at 2257-58. The Secretary's interpretation here was manufactured during this litigation; it is not contemporaneous with the 1977 enactment of the Mine Act. Nor has it remained consistent over time, as the Secretary's shifting positions in this case alone demonstrate.

KC Transport answers the Court's questions thusly: **First**, an item listed in § 802(h)(1)(C) must be located at an extraction site, processing plant, or an appurtenant road at the time the violation occurs to be a "coal or other mine" under the Mine Act. **Second**, such an interpretation would not frustrate MSHA's inspection obligations but would bring much-needed clarity and containment to MSHA's broad but finite

authority by giving effect to the words Congress chose to define "coal or other mine." **Third**, nothing in the Mine Act suggests that movable property remains a "coal or other mine" when not physically located within the non-movable manifestations listed in § 802(h)(1)(A)-(C). **Fourth**, holding otherwise gives MSHA open-ended jurisdiction, makes it impossible to meet the Act's registration and identification obligations, renders other provisions of the Mine Act surplusage, and leads to absurd results. **Fifth**, there is no factual dispute in this case. The Court should reject any fact-intensive case-by-case snapshot theory to broaden the definition of "coal or other mine" to cover the trucks or the repair facility at issue in this case.

Argument

I. The ordinary meaning of "coal or other mine" controls

A. The best reading of the term is connected to location and driven by location

The plain meaning of the terms Congress defines in statutes carries interpretive weight, even where Congress has also provided specific definitions for those terms. It is for this reason that navigability is still relevant to the statutorily defined term "navigable waters," *Solid Waste Ag. of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172 (2001), and habitat to the statutorily defined term "critical habitat," *Weyerhaueser v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 19-21 (2018). Here, the plain meaning of "coal or other mine" is (i) a physical location

where (ii) some activity integral to mining occurs. The Secretary's interpretation ignores both (i) and (ii). The Secretary asks this Court to ignore the lines Congress drew because that "rigid line," Suppl.1, frustrates the unworkable interpretation offered by MSHA. The Secretary's interpretation takes the phrase "machines, tools, or other property" out of § 802(h)(1)(C), ignores context, and disregards the fact that all three subsections of § 802(h)(1) work in concert to define "coal or other mine." Suppl.3-10. The result is an interpretation that reads the word "mine" out of "coal or other mine."

This Court should not read the term "coal or other mine" to radically expand what would otherwise be the ordinary understanding of the term. In *Solid Waste Agency of Northern Cook County*, the Supreme Court declined to expand the statutorily defined term "navigable waters" to cover all "waters of the United States" without any reference to navigability. 531 U.S. at 172 (discussing 33 U.S.C. § 1362(7)). In *Sackett v. EPA*, the Court clarified that "construing statutory language is not merely an exercise in ascertaining the outer limits of a word's definitional possibilities"; rather, it is an investigation to identify the "one meaning [that] produces a substantive effect that is compatible with the rest of the law." 598 U.S. 651, 676 (2023) (simplified). The usual practice is "to consider the ordinary meaning of a defined term, particularly when there is dissonance between that ordinary meaning and the reach of the definition." *Id.* at 672 (quoting *Bond v. United States*, 572 U.S. 844, 861

(2014)) (simplified). There is much dissonance between the ordinary meaning of "coal or other mine" and trucks or truck-repair shops not located at a mine.

The operative term is "coal or other mine," which is necessarily location-based, as the Sixth Circuit held, and as Judge Walker in dissent said. *Maxxim Rebuild Co. v. Commission*, 848 F.3d 737 (6th Cir. 2017); *KC Transport*, 77 F.4th at 1038-39 (Walker, J., dissenting). *Maxxim* held that a repair shop that "is neither adjacent to nor part of a working mine" is plainly not a mine under the Act. 848 F.3d at 739. *Maxxim* "st[ood] by the text and context of § 802(h)(1), which limit the agency's jurisdiction to locations and equipment that are part of or adjacent to extraction, milling, and preparation sites." *Id.* at 744. Adjacency for movables, *Maxxim* noted, means "equipment and other things in, above, beneath, or appurtenant to active mines." *Id.* at 739. Judge Walker agreed with that approach when he said the Act's jurisdiction extends to extraction sites and "processing plants." 77 F.4th at 1038-39 (Walker, J., dissenting). That reading respects the ordinary meaning of the term "coal or other mine."

This Circuit, too, has underscored the importance of location in holding that a "processing facility" "immediately adjacent to a quarry" was within the purview of the Act. *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1548, 1552 (D.C. Cir. 1984). This strong focus on location flows directly and plainly from the statute's text. The three subsections of

§ 802(h)(1) thrice announce "[l]ocation, location, location." *Maxxim*, 848 F.3d at 742. All three subsections are "place connected and place driven." *Id.*

Under this approach, KC's Emmett facility is "neither adjacent to nor part of a working mine," a processing plant, or an appurtenant road. *Id.* at 739. Nor were the two citations that form the basis of this suit issued while KC's truck was adjacent to or located at a mine, a processing plant, or an appurtenant road. The Emmett facility is "about four to five miles away" from the nearest extraction site," "over one mile" from a coal processing plant, and "about 1,000 feet" from a "haulage road." *KC Transport*, 77 F.4th at 1027. MSHA lacks jurisdiction in such situations. That remains the outcome even where equipment is brought to an off-site shop from a mine. For example, in *Department of Labor v. Ziegler Coal Co.*, the Seventh Circuit held that MSHA lacked jurisdiction over an electrician in an electrical repair shop located more than a mile from the nearest coal extraction site repairing equipment brought to the shop from the mines. 853 F.2d 529, 536-37 (7th Cir. 1988).

This locational approach is supported by Judge Walker's exegesis. *KC Transport*, 77 F.4th at 1035-41. As Judge Walker explains, Subsection (C)'s list concerns mine-related places or things one would expect to find at a mine, viz., (i) structures found at extraction sites, (ii) structures found at preparation or processing sites, and (iii) generic items. *Id.* at 1037. The items in (iii) are not always found at mines, but

the canon *noscitur a sociis* suggests that those generic items should be limited by the mine-location-based items listed in § 802(h)(1). In *Yates v. United States*, for example, the Court declined to hold that fish could be a "tangible object" within the meaning of the Sarbanes-Oxley Act because the term "tangible object" occurred alongside "objects used to record or preserve information" and did not encompass every conceivable tangible object from pins to pianos. 574 U.S. 528, 544 (2015). So too, here. The best reading of Subsection (C) is based on the principle that a defined term cannot be read to make the ordinary meaning of the defined term itself irrelevant. *See Bond*, 572 U.S. at 861-62 (holding that the ordinary meaning of the defined term "chemical weapon" excludes common household items such as "detergent," "stain remover," or "vinegar").

Like *Maxxim*, which emphasized, "[l]ocation, location, location," 848 F.3d at 742, all Members of this Panel have already acknowledged that "location is central to the Mine Act." *KC Transport*, 77 F.4th at 1030; *id.* at 1038 (Walker, J., dissenting). And the Panel majority, again agreeing with the dissent, has already rejected the Secretary's submission that "all 'machines, tools,' and even singular pieces of 'equipment,' could constitute a 'mine'—no matter their location—so long as they either were, or will be, 'used in' mining activity." *Id.* at 1030. The Secretary once again offers the same explanation that this Court has already rejected, and implicitly asks the Court to trust MSHA to be reasonable under the now-rejected *Chevron* deference doctrine. *See*

Suppl.24 ("MSHA is pragmatic; it does not interpret these statutory requirements for mines in a way that makes no sense."). The Court should reject both the methodology and the explanation—the former because the Supreme Court so ordered in *Loper* and in granting, vacating and remanding this case, and the latter because there is much daylight between the "best reading" of the statute and the Secretary's self-serving we-know-it-when-the-Secretary-sees-it explanation.

B. A properly limited location-plus approach would be consistent with the ordinary meaning of "coal or other mine"

The Panel majority, while it seems to have endorsed the location-plus approach, declined to provide the best reading of § 802(h)(1). The Panel majority's statement that "[l]ocation is but one factor that *may* be relevant to this 'use-in-mining' analysis" expands the definition too far beyond the words Congress chose. 77 F.4th at 1032. "[L]ocation" must remain "central to the Mine Act." *Id.* at 1030. That said, the location-plus approach, when properly applied, is consistent with the ordinary meaning of "coal or other mine." Other Circuits, as explained below, have done just that.

The Seventh Circuit applies the location-plus approach to properly limit MSHA's authority, not expand it. For example, in *Jeroski v. Commission*, the Seventh Circuit held that MSHA lacked authority to regulate janitors working at a cement plant. 697 F.3d 651 (7th Cir. 2012). "[C]ement is made, not mined," Judge Posner wrote for the court. *Id.* at

652. And even though "minerals from which cement is made are mined, and the mined minerals are then milled" at the cement plant, *id.*—"coal or other mine" includes "facilities … used in … the milling of [extracted] minerals," 30 U.S.C. § 802(h)—"janitors" at the cement plant are not "engaged in milling," so MSHA lacked authority over the janitors. 697 F.3d at 652. *See also Herman v. Assoc. Elec. Co-op., Inc.*, 172 F.3d 1078, 1082 (8th Cir. 1999) (holding that § 802(h)(1) "is clear that every company whose business brings it into contact with minerals is not to be classified as a mine") (quoting *Carolina Stalite*, 734 F.2d at 1551); *Old Dominion Power Co. v. Donovan*, 772 F.2d 92, 93-94, 99 (4th Cir. 1985) (holding that MSHA lacked jurisdiction over the power company employee working at an electrical substation adjacent to a mine because the employee did not "perfor[m]" "the work of extracting … minerals … or the work of preparing coal or other minerals" at that location) (citing 30 U.S.C. §§ 802(d), 802(h)(1)).

So too, here. The work of repairing trucks is not an activity or function that can be performed only at mines, processing plants, or appurtenant roads. Nor does the work of repairing trucks constitute "the work of extracting … minerals … or the work of preparing coal or other minerals." § 802(h)(1). The Secretary's position that KC's trucks and its repair shop are both mines is doubly flawed under the location-plus approach of the Fourth, Seventh, and Eighth Circuits—it ignores both the location of the facility and the location of the trucks when the

violation occurred. And it ignores the obvious fact that the work of repairing trucks is not mining activity.

C. Other provisions of the Act show the location-limited scope of the term "coal or other mine"

First, Congress knew how to expressly give MSHA the authority to regulate mining equipment regardless of location. As the Sixth Circuit noted in *Maxxim*, Congress did just that in § 820(h)—MSHA has the authority to regulate equipment "sold to mines." 848 F.3d at 742. But § 820(h) does not apply in this setting. MSHA did not cite KC Transport for selling defective equipment to a mine; the two citations are for violations of the blocking regulation, 30 C.F.R. § 77.404(c). JA053; JA055. In other words, Congress did not think that MSHA would otherwise have the authority to regulate off-mining-site equipment, despite the high probability that the equipment would be "used in" mining activity when it returns to a mine site. 30 U.S.C. § 802(h)(1).

Second, because the Act imposes significant civil and even criminal liability for violating health or safety standards, 30 U.S.C. §§ 820(a), (d), the Court must expect Congress to speak clearly to sufficiently alert the regulated public to what is and what is not regulated. A location-based interpretation achieves that; MSHA's vague and changing fact-based inquiry about how close any given non-mining facility or equipment is related to a mining extraction or processing site cannot.

The Supreme Court has cautioned that where an agency's "interpretation gives rise to serious vagueness concerns in light of the [Act's] criminal penalties," "[d]ue process requires Congress to define penal statutes 'with sufficient definiteness that ordinary people can understand what conduct is prohibited' and 'in a manner that does not encourage arbitrary and discriminatory enforcement.'" *Sackett*, 598 U.S. at 680 (simplified). Ordinary people understand that repairing trucks is not mining activity. And ordinary people understand that a repair facility at a location where no mining occurs is not a mine. That ordinary understanding is both commonsensical and clear—an understanding that even MSHA shared until this episode of perhaps an overzealous mine inspector who went "looking for trucks" at the Emmett facility that MSHA "had never inspected, or even attempted to inspect." *KC Transport*, 77 F.4th at 1027. No contortion or "hyper-literal reading," Suppl.2, of Congress's words is needed to reach that ordinary understanding of the term "coal or other mine." MSHA's proposed case-by-case approach fails to "provide 'fair notice'" to the "regulated public" as to what conduct is prescribed or proscribed, which would run afoul of the due process of law. *General Electric Co. v. EPA*, 53 F.3d 1324, 1329-34 (D.C. Cir. 1995).

Third, a non-location-based interpretation produces absurd results. For example, Judge Walker noted the independent contractor who lives 200 miles from a mine but who would nevertheless potentially be subject

to regulation. 77 F.4th at 1038 (Walker, J., dissenting). *Maxxim* gave the example of the "Jeffrey Mining Manufacturing Company," which produced mining equipment hundreds of miles from any mine. 848 F.3d at 743. Nothing in the Act suggests such equipment or facilities would be a "coal or other mine"; "Congress deserves more credit than that." *Id.* The Act "is 'tailored to the dangers that arise from handling coal' and other minerals, not the generic dangers of making [or repairing] mining equipment." *Id.* (quoting *Power Fuels, LLC v. Commission*, 777 F.3d 214, 217 (4th Cir. 2015)).

Fourth, other provisions of the Mine Act support the reading that subsection (C)'s movables are not mines. For example, 30 U.S.C. § 811(a) directs the Secretary to promulgate mandatory health or safety measures "for the protection of life and prevention of injuries *in* coal or other mines." *See also* 30 U.S.C. § 801 (repeating variations of the formulation "*in* coal or other mines" throughout) (emphasis added). That phrasing shows that a "coal or other mine" is a physical location that humans can access. One cannot get inside most tools or equipment. And while one can sit inside a truck, the activity regulated by the safety standard at issue here was *outside* the truck. *See* JA053-JA058; 30 C.F.R. § 77.404(c).

Similarly, 30 U.S.C. § 803 states: "Each coal or other mine, the products of which enter commerce … shall be subject to the provisions of this chapter." One does not think of equipment or trucks as having "products," nor, for that matter, a truck repair facility. An extraction or

processing site has "products." Section 803 is thus another textual indication that "coal or other mine" means the physical site of mineral extraction or processing.

To be sure, Congress listed generic items in Subsection (C). The best reading of the movables included in the definition of "coal or other mine" is that Congress wanted to clarify that the health and safety standards would not be limited to the lands and rocks themselves but would extend to the equipment at mining sites that miners manipulate while engaging in mining activity.

II. A location-based approach would not frustrate MSHA's inspection obligations

Far from frustrating MSHA's inspection obligations, giving the term "coal or other mine" its ordinary, commonsense meaning clarifies MSHA's inspection obligations. MSHA has already conceded that it does not have nearly enough inspectors to regularly inspect movables. Petitioner's Opening Br., Doc. #1972351 at 35 (D.C. Cir. Nov. 7, 2022).

Under the location-based approach, MSHA would have jurisdiction to issue citations on extraction and processing sites and appurtenant roads while the movable equipment is at that location and if the violation occurs while the equipment is at that location. For example, if a truck violates the Act or regulation while it is on mine property, a citation issued for that violation is valid even if the truck is later moved; the original violation stands. For this reason, KC Transport asks the Court

to conclude the following: An item listed in § 802(h)(1)(C) must be located at an extraction site, processing plant, or an appurtenant road at the time the violation occurs to be a "coal or other mine" under the Mine Act. That is the best and ordinary meaning of the term "coal or other mine."

A location-based approach would also harmonize the Mine Act with the OSH Act. As *Maxxim* recognized, disputes of this nature are not about whether a party should be free of regulation but rather who has jurisdiction to regulate. 848 F.3d at 742-43. Congress created MSHA because it thought that workplace hazards *unique* to mining required a specialized response. *See* H.R. Rep. No. 95-312, at 1 (1977) ("Mining represents a small segment of the working population, yet the operation is of a nature that is so unique, so complex, and so hazardous as to not fit neatly under the Occupational Safety and Health Act."). Workplace hazards occurring off-site are much less likely to implicate any special mining safety expertise, and instead are much more likely to implicate plain-vanilla workplace safety concerns, which fall squarely within OSHA's domain. *Maxxim*, 848 F.3d at 742-43 (discussing the "point of [OSHA] is to regulate these kinds of safety and health matters, as its name suggests"). Then-Judge Clarence Thomas, writing for the Court, made the same point when he wrote that where MSHA lacks authority, it is possible for the Secretary to assert authority through OSHA. *Otis Elevator Co. v. Sec'y of Labor*, 921 F.2d 1285, 1287 (D.C. Cir. 1990).

There is nothing to suggest that KC Transport's cited violation here was unique to mining. The risk of harm presented by an unblocked hauling truck is not materially different from the harm presented by, say, an unblocked school bus. As *Maxxim* correctly observed, "[t]he statute is tailored to the dangers that arise from handling coal and other minerals, not the generic dangers of [repairing trucks]." 848 F.3d at 743 (simplified). Congress chose to draw this bright line. The Court should so hold.

III. Other provisions of the Mine Act show that the movables are not a "coal or other mine" when not located at the non-movable items listed in § 802(h)(1)

At least three sections of the Mine Act show that the movable items must be located at the non-movable items listed in § 802(h)(1) for MSHA to assert jurisdiction over the movable items.

First, § 813(a) requires MSHA to conduct "frequent inspections and investigations in coal or other mines each year." As already noted, *supra* at 15, it would be administratively impossible for MSHA to do this if movables were always considered mines because it wouldn't have the manpower and wouldn't know where the movables would be located, which also suggests that mines are not movable. As the Supreme Court held in *Utility Air Regulatory Group v. EPA*, an interpretation that renders a statute administratively unworkable is a good sign that the interpretation is not the best reading of the statute. 573 U.S. 302, 328

(2014) ("[T]he need to rewrite clear provisions of the statute" is a signal that "EPA … had taken a wrong interpretive turn."). Just like EPA, MSHA is not free to "adopt … unreasonable interpretations of statutory provisions and then edit other statutory provisions to mitigate the unreasonableness." *Id.* (simplified).

To mitigate its expansive reading of § 802(h)(1), MSHA suggests that the Court should trust that the agency will act reasonably, and that it will take a "pragmatic," "practical," "common sense," "case-by-case" approach to statutory interpretation. Suppl.2; Supp.13; Suppl.22; Suppl.24. But that's another attempt by MSHA to smuggle in deference-infused terminology and methodology of the sort that *Loper* discarded by overruling *Chevron*. Those bare assertions deserve no respect from the Court. And the Secretary's proffer of a hyper-literal reading of "coal or other mine," Suppl.3-10, because she promises not to read other provisions of the Act as Congress wrote them, Suppl.10-21, is inconsistent and reveals how the repackaged *Chevron* deference doctrine permeates the Secretary's submission here.

Second, § 819(a) requires each coal or other mine to have an "office" that is identified by a "conspicuous sign," and that a "bulletin board" containing various notices be posted at the office or "at a conspicuous place near an entrance of such mine." These requirements presuppose a generally fixed, physical site of operations and they suppose the conclusion that mines are not movable.

Third, § 820(d) requires each operator of a "coal or other mine" to register his mine with MSHA and to provide the latter the mine's address. One wouldn't normally think of movable items like trucks and equipment as having a physical address. And regulations issued by MSHA to implement § 820(d) require mine operators to fill out a Form 2000-7, known as the "legal identity report." 30 C.F.R. § 41.11. Among other things, this form requires a "Federal Mine Identification Number"; MSHA does not claim it has ever issued this number to any truck, much less to KC Transport's trucks or its Emmett facility. Legal Identity Report, https://shorturl.at/dpl3Q. By not issuing identification numbers, MSHA itself recognizes that facilities and movables outside of the extraction and processing sites listed in Subsection (C) do not qualify as mines. Supp.13-16.

IV. MSHA's interpretation would make it impossible for operators to comply with registration or identification obligations of §§ 819(a), (d)

If each truck or piece of equipment were a mine, or if each truck repair facility were a mine, it would become impossible to comply with the registration and identification obligations of §§ 819(a), (d). Such a reading would transform each gas station and each toolbox sitting in millions of residential garages throughout the nation into a mine that must meet the registration or identification requirements of the Act. It would transform each cafeteria or diner in mining towns and each chapel catering to miners' or a mine operator's physical and spiritual well-being

into a mine that must register with MSHA on the theory that the "first priority and concern" of the Act is the "health and safety of its most precious resource—the miner." 30 U.S.C. § 801(a). Trust us; we will be reasonable—that is the only explanation MSHA offers as a limiting construction of such an open-ended interpretation of the Act. That unworkable interpretation should be rejected. The Supreme Court "expect[s] Congress to speak clearly" when, as here, an agency's interpretation would significantly expand the scope of its authority and where, as here, significant penalties are on the line. *Utility Air*, 573 U.S. at 324. Congress has spoken clearly by limiting the Act's scope to physical locations where activity integral to mining occurs (obviously, with the use of tools and equipment); MSHA would have this Court lose sight of that.

A finite reading of § 802(h)(1) clarifies and makes workable the registration and identification obligations of §§ 819(a), (d). Section 819(a) requires an office "[a]t each coal or other mine." It is hard to imagine having an office "at each" hauling truck, mining equipment, or parking lot. Section 819(d) requires "[e]ach operator of a coal or other mine" to "file with the Secretary the name and address of such mine and the name and address of the person who controls or operates the mine." Again, it is hard to imagine the workability of "each operator"—who does not need to be the owner, per § 802(d)—of a hauling truck or a repair shop who would be required to file the requisite forms with the Secretary. And it is hard to read the Act as authorizing the Secretary to open registration booths

at every Home Depot or Lowe's to register and issue identification numbers to every piece of equipment that could be "used in" mining activities. 30 U.S.C. § 802(h)(1). Adopting MSHA's interpretation would make each failure to register or obtain an identification number a separate violation of the Act, and every American who ever owned a pickup truck a federal criminal subject, at the very least, to juryless MSHA prosecution for civil monetary fines. And that would be the very definition of unworkability and tyranny.

Granting MSHA open-ended jurisdiction over movables or off-mine facilities where no activity integral to mining occurs makes it impossible to meet the Act's registration and identification obligations, renders other provisions of the Act surplusage, and leads to absurd results. The Court should so hold.

V. There is no factual dispute in this case

The parties filed a joint stipulation of agreed-to facts. JA004-JA013. No factual dispute exists. Tellingly, the Secretary did not "apply to the court for leave to adduce additional evidence," nor has the Secretary "show[n] to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission." 30 U.S.C. § 816(a).

At day's end, any fact-bound snapshot theory, based on percentages or otherwise, to give jurisdiction to MSHA would prove unworkable. The fact-bound, case-by-case snapshot theory is yet another attempt by

MSHA to perpetuate *Chevron* deference on the theory that Congress implicitly garbed each mine inspector with the cloak of reasonableness. The mix of trucks and equipment parked in any parking lot or repair facility changes from day to day. That should not translate to ever-fluctuating MSHA jurisdiction over trucks or repair facilities. As the agreed-to facts in this case alone show, there were "two maintenance shipping containers" at the Emmett facility when the MSHA inspector came to visit. JA004-JA005. KC Transport had purchased gravel and stone elsewhere to maintain the parking area. JA005. There was palleted construction equipment for a new 60' x 70' metal building for a new maintenance shop. JA005. There's no dispute that MSHA had no jurisdiction over any of this "equipment" parked at the Emmett facility.

Moreover, the percentage of time a particular truck could be used in hauling mined material—or the percentage of the surface area of a repair shop that is occupied for a certain percentage of time by equipment that is more often than not used in mining activities—would be the kind of hyper-technical and unpredictable reading that would render any enforcement of the Act unworkable. A thought experiment is instructive. A cafeteria located at a mine is more dependent on the mine than KC Transport is dependent on any mine for its business. But that does not thereby make the cafeteria, or the janitors or food service employees of the cafeteria, subject to MSHA jurisdiction. *See Jeroski*, 697 F.3d 651

(holding that MSHA lacked authority to regulate janitors working at a cement plant).

As for the repair services that gave rise to this suit, it is not disputed that the risk involved in those repairs is the same as the generic risk involved in repairing any other truck, school bus, or recreational vehicle (RV). Such repairs will continue to be regulated under the OSH Act. Moreover, the act of repairing trucks is not one of the many acts that result in mining products, viz., "milling," "breaking, crushing, sizing, cleaning, washing, drying, mixing, storing," "loading," or in any manner constitute "the work of extracting … minerals." 30 U.S.C. §§ 802(h)(1)(C), 802(i). That being said, a location-centric interpretation would ensure that generic repair work performed at a "coal or other mine," such as, for example, an elevator company employee repairing an elevator installed at a mine to carry miners into mines, would remain under MSHA jurisdiction. *See Otis*, 921 F.2d 1285. A "coal or other mine" must, first and foremost, be a "mine"; otherwise, the Court risks reading the word "mine" out of the Mine Act. *See Weyerhaeuser*, 586 U.S. at 19 (holding that "'critical habitat' [a defined term in the Endangered Species Act] must also be 'habitat,'" which is not a statutorily defined term).

Such an ordinary, commonsense, location-connected, and location-driven reading of § 802(h)(1) remains the best reading of the Act. A movable item listed in § 802(h)(1)(C) must be located at an extraction site, processing plant, or an appurtenant road at the time the violation

occurs to be a "coal or other mine" under the Mine Act. The Court should so hold.

MSHA's argument to the contrary is illusory. MSHA posits that reading the Act in any way other than how MSHA reads it would leave a hole in the Act that would facilitate law evasion. Suppl.11-12. But the only example MSHA supplies—an operator refusing an inspection by driving the truck across the street—occurred on an appurtenant road over which MSHA had jurisdiction. *Id.* (citing *Sec'y of Labor v. Hoover Excavating & Trucking, Inc.*, 41 FMSHRC 761, 765 (ALJ 2019)). Both the assertion of jurisdiction and the merits of the violation were upheld by the ALJ in that case. 41 FMSHRC at 770.

Congress has an interest in maintaining workplace safety. But it has chosen to assert that interest in a particular way through the Mine Act and in another respect through the OSH Act. The Court should give full force and effect to that statutory scheme by not permitting the Mine Act to swallow ordinary truck repairs and truck repair shops.

Conclusion

The Court should affirm the Commission's vacatur of the citations based on the Commission's conclusion that the Secretary lacked

jurisdiction to issue Citation Nos. 9222038 and 9222040 carrying monetary penalties of $3,908 and $4,343. JA012-JA013, JA170.

DATED: October 23, 2024.

Respectfully submitted,

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Dated: October 23, 2024.

/s/ Aditya Dynar
ADITYA DYNAR

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