

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

MOSenecaManufacturer, LLC,  
doing business as American  
Tripoli,

Petitioner,

v.

Federal Mine Safety and  
Health Review Commission;  
Secretary of Labor,

Respondents.

No. 25-1349

MSHA Case No. CENT 2023-0251

**PETITIONER'S RESPONSE TO SECRETARY OF LABOR'S  
MOTION TO DISMISS**

The Secretary's motion to dismiss should be denied because this Court has jurisdiction under 30 U.S.C. § 816(a)(1). The Commission's January 17 and February 12, 2025, orders—vacating review and denying reconsideration—render the Administrative Law Judge's (ALJ's) decision a final Commission order subject to judicial review.

**Procedural Background**

The Secretary filed a complaint against MOSenecaManufacturer, LLC, doing business as American Tripoli (Tripoli), with the Federal Mine Safety and Health Review Commission (Commission) under 30 U.S.C. § 815(c). App.008–017; A.R.1–10. The ALJ of the Commission ruled against Tripoli. App.020–071; A.R.3322–3373.

The Commission then *sua sponte* directed review of the ALJ's decision under 30 U.S.C. § 823(d)(2)(B) and granted Tripoli's petition for discretionary review under 30 U.S.C. § 823(d)(2)(A)(i). App.072–077; A.R.3374–3376; A.R.3387–3389.

The Commission then vacated these two orders for review on January 17, 2025. App.132–136; A.R.3589–3593. The Commission also denied Tripoli's petition for reconsideration on February 12, 2025. A.R.3677. Tripoli then filed a *pro se* petition for review in this Court on February 18, 2025 for review of the “January 17, 2025, and the ... February 12, 2025” Commission orders. Pet. Rev. at 1.

The Commission filed the administrative record, which includes the entire record, including the ALJ and Commission orders, on April 7, 2025. And Tripoli filed the opening brief with the date of service noted as June 5, 2025.

On May 30, 2025, the Court granted the Secretary of Labor's (Secretary's) motion for leave to file its motion to dismiss out of time and set June 9, 2025, as the deadline for Petitioner's response to the motion to dismiss.

### **Argument**

The Secretary correctly acknowledges that “[a]n aggrieved party can seek review of an order of the Commission in the court of appeals,” and that where, as here, “the Commission declines to review an ALJ's decision or vacates review, the ALJ's decision becomes a final order of the

Commission.” Mot. Dismiss at 2. That concession resolves the jurisdictional question. Under 30 U.S.C. § 816(a)(1),

[a]ny person adversely affected or aggrieved by an order of the Commission issued under this chapter may obtain review of such order in [the appropriate circuit court] by filing in such court within 30 days following the issuance of such order a written petition praying that the order be modified or set aside.

Tripoli did just that.

Tripoli’s petition for review satisfies each requirement of the statute:

First, the Commission’s two orders at issue here—vacatur of the two directions for review and denial of reconsideration—are “order[s] of the Commission” and Tripoli is “adversely affected or aggrieved by” those Commission orders because their effect is to leave in place the ALJ’s adverse decision. App.020–071; A.R.3322–3373.

Second, the two Commission orders at issue here are “issued under this chapter,” i.e., the Mine Act. 30 U.S.C. § 816(a)(1).

Third, venue is proper in this Court. The Eighth Circuit is the appropriate circuit court for Tripoli to file its petition for review because the alleged violation occurred in Missouri. *See* 30 U.S.C. § 816(a)(1) (“circuit in which the violation is alleged to have occurred”).

Fourth, the petition was timely filed “within 30 days following the issuance of [the Commission’s] order.” 30 U.S.C. § 816(a)(1).

The Secretary does not dispute any of these elements. That should end the matter.

The Secretary's theory would create an illogical trap: when the Commission affirms an ALJ ruling via procedural dismissal, the aggrieved party would have no avenue for judicial review—despite suffering final agency action. Nothing in the Mine Act supports that result.

Indeed, the Eighth Circuit has already recognized this jurisdictional pathway. In *Pattison Sand Co. v. FMSHRC*, the court confirmed that “if the Commission declines to exercise [discretionary review], the ALJ’s decision becomes the Commission’s final decision,” and that decision “is appealable to a United States Court of Appeals.” 688 F.3d 507, 510 (8th Cir. 2012). That is precisely the posture here.

Nonetheless, the Secretary argues that (1) the Commission’s orders at issue here “are not reviewable orders under the Mine Act,” Mot. Dismiss at 7, because (2) the “Petitioner does not seek review of the ALJ decision issued in May 2024” that the Commission declined to review, Mot. Dismiss at 9. That argument is without merit.

First, the Secretary does not cite any case supporting its unusual reading of 30 U.S.C. § 816(a)(1). In the Secretary’s lead case, *Marshall County Coal Co. v. FMSHRC*, 923 F.3d 192 (D.C. Cir. 2019), Mot. Dismiss at 8–9, the petition for review listed only the Commission’s two orders and attached to the petition only the Commission’s two orders that were

listed in the petition for review. Petition for Review, No. 18-1098 (D.C. Cir. Apr. 12, 2018) (available on PACER). The D.C. Circuit had no trouble “review[ing] the ALJ’s decision” in that circumstance, 923 F.3d at 206, even if it ultimately agreed with the ALJ, *id.* at 201 (“Substantial evidence supports the finding of interference[.]”) (capitalization altered).

*Eagle Energy, Inc. v. Secretary of Labor*, 240 F.3d 319 (4th Cir. 2001), Mot. Dismiss at 8–9, is similarly inapposite. There, the Commission’s order (which was the basis for the petition for review) denied only a partial motion and did not dispose of “the entire case.” 240 F.3d at 325. Here, by contrast, the Commission’s vacatur and dismissal disposed of the entire matter, making the ALJ’s ruling the final decision by operation of law.

Second, the plain text of 30 U.S.C. § 816(a)(1) authorizes review of “order[s] of the Commission,” not ALJ decisions standing alone. The two Commission orders at issue here simply affirm the ALJ’s decision adverse to Tripoli. Commission inaction that finalizes an adverse outcome remains judicially reviewable. That is exactly what 30 U.S.C. § 816(a)(1) provides—and exactly what Tripoli seeks.

## Conclusion

The Court should deny the Secretary's motion to dismiss.

DATED: June 9, 2025.

Respectfully submitted,

/s/ Aditya Dynar

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DATED: June 9, 2025

/s/ Aditya Dynar  
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*Attorney for Petitioner*

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on June 9, 2025. I certify further that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

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