No. 10-507

IN THE
SUPREME COURT OF THE UNITED STATES

PACIFIC OPERATORS OFFSHORE, LLP, ET AL.
Petitioners,
v.

LUISA L. VALLADOLID, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT VALLADOLID IN OPPOSITION TO PETITION FOR CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the workers'-compensation provision of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b), imposes a situs-of-injury requirement for its coverage.

2. If not, how the "occurring as the result of operations conducted on the [OCS]" test explicitly stated in the provision should be interpreted.

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BRIEF ROR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Louisa Valladolid hereby urges the Court to deny the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW and JURISDICTION

Contrary to Petitioners' characterization of the Administrative Law Judge's and Benefits Review Board's decisions below as "unpublished," Pet. 1, the former (Pet. App. 53) is reported at 41 Ben. Rev. Bd. Serv. (MB) 795(ALJ), and the latter (Pet. App. 35) is reported at 42 Ben. Rev. Bd. Serv. (MB) 67. Petitioners accurately recite, Pet. 1, the report of the court of appeals's opinion below (604 F.3d 1126) and the bases on which this Court's jurisdiction is invoked.

STATEMENT

1. The Longshore and Harbor Workers' Compensation Act[1] is the only federal private-sector workers'-compensation law. Its benefit provisions are based closely on those of state laws on the same subject; it imposes no-fault liability on the employer, for medical benefits and for periodic benefits for disability or death resulting from injuries "arising out of and in the course of employment" and from occupational diseases. Longshore Act §§ 2(2), 3(a), 7-9, 33 U.S.C. §§ 902(2), 903(a), 907-909. As a general proposition, the Longshore Act forecloses tort remedies

[1] Act of Mar. 4, 1927, c. 509, 44 Stat. 1424, *as amended*, 33 U.S.C. §§ 901-50 ("Longshore Act").

against an insured employer, and also recovery from a vessel owner or operator (whether or not it is the employer) based on "unseaworthiness," for injuries within its coverage. *Id.* § 5(a), (b), 33 U.S.C. § 905(a), (b).

The Longshore Act's own "coverage" is now limited principally by the requirement that the injured worker have been "engaged in maritime employment" (*id.* § 2(3), *as amended*, 33 U.S.C. § 902(3); *see, e.g., Director, OWCP v. Perini North River Assoc.*, 459 U.S. 297 (1983); *Chesapeake & Ohio R. Co. v. Schwalb*, 493 U.S. 40 (1989)), but not a "member of a crew of any vessel" (*id.* § 2(3)(G)). That coverage has been extended, however, by the Defense Base Act, 42 U.S.C. §§ 1651-54; the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b); and the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §§ 8171-73.[2] This case concerns the scope of the extension by the Outer Continental Shelf Lands Act ("OCSLA" or "Lands Act"), whose only relevant provision is that the Longshore Act applies:

> [w]ith 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[.]

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[2] The Longshore Act's former application to private employment in the District of Columbia (District of Columbia Workmen's Compensation Act of 1928, 45 Stat. 600) has been supplanted by District "home-rule" legislation since 1982 (*see generally, e.g., Railco Multi-Construction Co. v. Gardner*, 902 F.2d 71, 73-74 & nn.2-4 (D.C. Cir. 1990)).

43 U.S.C. § 1333(b).[3]

2. Petitioners' recitation of the underlying facts is essentially accurate. In short, Petitioner Pacific Operators Offshore operates two fixed platforms, on the outer continental shelf (beyond state waters) off the Southern California coast, and a "flocculation plant" on the coast to which well fluids are transported by pipeline and processed. It transports its workers, and materials and equipment, to and from the platforms by a one-hundred-foot crew- and supply boat, which uses another oil company's pier about three miles north of the flocculation plant property. Respondent Valladolid's husband Juan was killed in the course of his employment as a roustabout – a general oilfield laborer – for Pacific Operators. Although he spent about 98 percent of his time working on one of the platforms, he had occasional assignments to work at the plant property ashore. His death occurred during such an assignment. More particularly, on the afternoon of June 2, 2004, he was assigned to retrieve a forklift at that property and consolidate scattered piles of scrap metal (worn-out pipes, tanks, catwalks, etc.) – which had been brought ashore from the platforms by boat, trucked from the pier to the plant, and dumped in vacant areas of the plant's yard, accumulating over a couple of years – for pick-up by a scrap-metal dealer. He was found dead, crushed under the wheels of the forklift, an hour and a quarter later.[4]

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[3] The provision, like the Longshore Act itself, excludes members of vessels' crews. 43 U.S.C. § 1333(b)(1).

[4] Petitioners mention – accurately, but irrelevantly – that the accident report stated that he had apparently been standing on the tines of the forklift, ten feet off the track leading from where he had picked up the forklift to the plant's back yard

3. Pacific Operators's workers'-compensation insurer paid Respondent Valladolid some death benefits under California law (the record does not reveal when or in what amounts), but she sought the greater benefits payable under the Longshore Act, either of its own force or through its extension by the Lands Act. So far as now relevant,[5] the ALJ who decided the case under the authority of Longshore Act § 19(c)-(d), 33 U.S.C. § 919(c)-(d), recognized the conflict between the Third and Fifth Circuits on whether the Lands Act compensation provision "contains a situs[-of-injury] requirement," Pet. App. 88-92, and concluded

> . . . that Fifth Circuit precedent . . . is the most persuasive. In order to be covered by the OCSLA, an employee must have suffered an injury on the subsoil and seabed of the outer

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where the scrap metal lay, attempting to pick a bunch of plantains, when it moved, casting him to the ground and rolling onto him. Pet. 5. The ALJ mentioned this fact in passing (Pet. App. 54), and the Benefits Review Board mentioned it obliquely (Pet. App. 37), but it played no part in any of the decisions below; Petitioners have never contended that the putative brief deviation from the decedent's assigned task took him out of the "course of employment" so as to make his death noncompensable as beyond the definition of a covered "injury" in Longshore Act § 2(2), 33 U.S.C. § 902(2); nor does it rely on anything about that putative circumstance in urging this Court's review.

[5] The ALJ, the Board, and the court of appeals each also addressed, and rejected, Respondent Valladolid's alternative argument that the Longshore Act itself applied to the worker's death based on the proposition that the scrap metal was the "cargo" of the supply boat that brought it ashore, and that its consolidation for pick-up in the plant yard was the final step in the "overall process of unloading" it. The claimant has not sought this Court's review of that ruling.

> continental shelf, or the artificial islands and structures erected thereon [or] the waters above it.

App. 92. Accordingly, he granted Pacific Operators's motion for summary decision denying the claim. App. 93.

On the widow-claimant's appeal under Longshore Act § 21(b)(3), 33 U.S.C. § 921(b)(3), the Benefits Review Board affirmed. Again so far as relevant, the Board addressed "the issue [as] whether the OCSLA [compensation-law provision] applies only if the employee's injury or death occurs on the OCS," Pet. App. 44, and found on the basis of a *dictum* in a Ninth Circuit decision that that court was "more closely aligned with the Fifth Circuit than the Third Circuit on th[is] issue," Pet. App. 51; *see id.* 44-51.

4. The court of appeals, on review under § 21(c) of the Longshore Act, 33 U.S.C. § 921(c), reversed. It found:

> The theory that [§ 1333](a) provides a situs requirement applicable to all of § 1333 is simply inconsistent with its plain language, statutory structure, and legislative history. Subsection (a) merely extends federal jurisdiction and federal and state law to the outer continental shelf. It has no applicability beyond that purpose, other than to provide a situs definition that several other provisions expressly incorporate. Because subsection (b) does not incorporate (a), that provision has no bearing on our analysis.
>
> We hold that § 1333(b) may apply to injuries occurring outside the situs of the outer continental shelf, so long as they occur "as the re-

> sult of operations conducted on the outer continental shelf."

Pet App. 27. It reasoned, however, that, rather than a "simple 'but for' test," the "occurring as a result of operations conducted on the [OCS]" test of § 1333(b) requires

> . . . a substantial nexus between the injury and extractive operations on the shelf. 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. . . .. We leave more precise line-drawing to the specific factual circumstances of later cases.

Pet. App. 28. It "remand[ed] the OCSLA [coverage] question to the BRB for further consideration" focused on that test. Pet. App. 30.

REASONS FOR DENIAL OF THE WRIT

I. At Least at the Present Stage of the Proceedings, This Case Is an Inappropriate Vehicle for Resolution of the Intercircuit Conflict on the Basic Question Whether the OCSLA Compensation-Law Provision Contains a Situs-of-Injury Requirement.

A. The Well-Defined Conflict on the Asserted Situs-of-Injury Requirement

Clearly there is a conflict among the courts of appeals regarding whether the coverage of the compensation-law provision of the Lands Act is subject to a situs-of-injury requirement.

No one disagrees that there is a situs-of-*operations* requirement, explicit in the provision's terms: the mineral-extraction operations "as the result of"

which the injury or death occurs must be "conducted on" the OCS. Until 1989, the Fifth Circuit, offshore of which the overwhelming majority of such operations have always been conducted, had uniformly and repeatedly held that there was *not* an additional situs-of-*injury* requirement. This Court had clarified that admiralty law did not apply to the "fixed platforms" or "artificial islands" erected on the seabed of the Shelf, to which the Lands Act's *choice-of-law* provision – making adjacent-state law applicable as surrogate federal law, to the extent not inconsistent with otherwise applicable federal law, on such platforms, now § 1333(a)(2)(A) – applied. *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352 (1969). But it had likewise clarified that adjacent-state tort law did not apply through § 1333(a)(2)(A) to injuries or deaths of OCS platform workers in the *waters over* the OCS. *Offshore Logistics v. Tallentire*, 477 U.S. 207, 217-220 (1986). But the Fifth Circuit adhered to its longstanding view that the *compensation-law* provision of the Act, now § 1333(b), unlike the choice-of-law provision of § 1333(a), does *not* depend on where the injury or death occurs; "[o]bviously Congress purposefully established a [compensation] system [in what is now § 1333(b), then § 1333(c)] that would apply without regard to physical location." *Nations v. Morris*, 483 F.2d 577, 584 (5th Cir.), *cert. denied*, 414 U.S. 1071 (1973). *See also, e.g., Stansbury v. Sikorski Aircraft*, 681 F.2d 948, 950-951 (5th Cir.) ("We have construed this section to apply to injuries occurring as a result of the operations described without regard to the physical situs of the injury. . . .. Stansbury meets the status criteria set out in OCSLA. [He] 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' [on the OCS] as required by the OCSLA."), *cert. denied*, 459 U.S. 1089 (1982); *Barger v. Petroleum Helicopters, Inc.*, 692 F.2d 337 (5th Cir.), *cert. denied*, 461 U.S. 958 (1982). Thus, offshore fixed-platform workers, and helicopter pilots engaged in transporting such workers to and from OCS platforms, injured or killed on the high seas in the course of such transportation, were limited to the Longshore Act compensation remedy, rather than being entitled to admiralty tort remedies, against their employers or fellow employees. *See* Longshore Act §§ 5(a), 33(*i*), 33 U.S.C. §§ 905(a), 933(*i*).

In *Mills v. Director, OWCP*, 846 F.2d 1013 (5th Cir. 1988), the Court applied the same principles to hold that the OCSLA compensation-law provision applied to a worker injured in the course of his work "engaged in welding operations [at a shipyard] on shore fabricating a platform destined for use on the Outer Continental Shelf," *id.* at 1014.

> [T]he platform Mills worked on was specifically designed for and being built solely for use in operations on the Shelf; consequently, but for operations on the Shelf, this particular platform would not have been built. Like the workers in *Barger* and *Stansbury*, Mills' injury would not have occurred but for the operations on the Shelf.

Id. at 1015. The court clarified that its "but for" test

> . . . is not the simple '*causa sine qua non*' test of tort law, but includes the requirement that the claimant show a nexus between the work being done and operations on the shelf similar to the

> proximate cause test in tort law; it requires that the work 'further[s] the operation of a fixed rig on the shelf *and [is] in the regular course of extractive operations on the shelf*.' Construction of a platform specifically destined for the Shelf is included in this test.

Id. at 1015 (emphasis by the court).

In *Curtis v. Schlumberger Offshore Service, Inc.*, 849 F.2d 805 (3d Cir. 1988), the Third Circuit likewise followed *Nations v. Morris* and its progeny to hold the Lands Act's extension of the Longshore Act applicable to an OCS worker's injury ashore – there, in the course of driving to meet a helicopter that would take him to the offshore rig. It pointed out that the Ninth Circuit as well had "noted that 'in the absence of any other limitation on the face of the statute or in the legislative history of the [OCSLA], section 1333(b) should be construed as extending [Longshore Act] coverage to all victims of disabling or fatal injuries sustained while working to develop the mineral wealth of the [outer continental shelf].'" *Id.* at 810, *quoting Kaiser Steel Corp. v. Director, OWCP*, 812 F.2d 518, 520 (9th Cir. 1987) (dictum). It "agree[d] with the Fifth Circuit position that the 'but for' test is appropriate in establishing whether [a claimant]'s injury occurred as a result of operations on the outer continental shelf." *Id.* at 811.

Meanwhile, however, the Fifth Circuit granted rehearing *en banc* in *Mills* and overruled the panel's decision. *Mills v. Director, OWCP*, 877 F.2d 356 (5th Cir. 1989) (11 to 3 decision). It reasoned that the compensation-law provision, like the rest of the OCSLA, was limited to a "gap-filling" role, and that

> [o]ne obvious void in the law governing the OCS was the lack of a workers' compensation scheme

> for thousands of workers employed in the dangerous oilfield extraction industry. Congress filled that void in § 1333(b) when it adopted the LHWCA's benefits provision to cover non-seamen employed in the oil patch on the OCS.

877 F.2d at 358. Thus, the legislative purpose "did not encompass already-regulated workers on state soil." *Id.* at 359; *see also id.* at 362 ("This interpretation is compelling in light of Congress' objective: filling voids in the law governing mineral extraction on the OCS."). It quoted this Court's statement in *Tallentire* that "Congress determined that the general scope of OCSLA's coverage . . . would be determined principally by locale, not the status of the individual injured or killed," and bolstered its conclusion by pointing out:

> The [*Tallentire*] Court followed this discussion of § 1333(a)'s coverage with a comparison to § 1333(b). The Court states, "Only [§ 1333(b)] . . . *superimposes* a status requirement on the otherwise determinative OCSLA situs requirement. . . ." [477 U.S.] at 219 n. 2 (emphasis added). We cannot accept the Director's explanation that the Court meant to "replace" situs with status when it used "superimposes." The Court could not have made it clearer that a worker must demonstrate status and situs to recover LHWCA benefits under § 1333(b).

877 F.2d at 361. It dismissed the long line of its own authority stating that the compensation-law provision imposed no situs-of-injury test as "dicta [that] may be overly broad," and despite *Tallentire*'s unmistakable holding that § 1333(a)'s choice-of-law provision had no application to injuries on the high seas *over* the OCS, held that § 1333(b) applied to OCS

workers' injuries sustained there, as its previous decisions had held on the basis of the no-situs-of-injury-requirement reasoning. *Id.* at 361-62.

The court of appeals in the present case, on the other hand, found the *Tallentire* footnote to be "textbook dictum," "of the unconsidered variety not entitled to special deference," particularly as the footnote concluded by pointing out that the compensation-law provision "has no bearing on this case" and as its scope "was not before the Court, was not briefed by the parties, and had no relevance to the case before it." Pet. App. 8-10. It added that the "import" of the *Tallentire* footnote's reference to "the otherwise determinative OCSLA situs requirement" is "debatable," as "it is not clear that the Court's statement requires a 'situs-of-injury,' as opposed to [the clear and undisputed] 'situs-of-operations,' test." Pet. App. 10. It also found unpersuasive the dicta in previous Ninth Circuit opinions that did not present the issue, which pointed in contrary directions. Pet. App. 11-13. The court thoroughly examined § 1333 as a whole (including the subsequent subsections stating a variety of criteria for the application of other federal statutes and authorities, some explicitly limited to occurrences *on* OCS platforms and others explicitly extending beyond them, Pet. App. 14-15, 16-17, 25-26), its legislative history (showing that the *Mills* reasoning that the compensation provision was intended only as a gap-filler made no sense as state laws were always applicable to injuries on the platforms, *id.* at 19-21, and that *Mills* had otherwise relied on legislative history that, for multiple reasons, provided no reliable evidence of intent on the question at issue under the version of the statute enacted, *id.* at 21-22 & n.6), and the policy considerations relied upon by the *Mills* majority (finding them unper-

suasive, speculative, and irrelevant, *id.* at 23-24). It concluded that the terms of § 1333(b) are "unambiguous" and "clear in not containing a situs-of-injury requirement." Pet. App. 18, 23. Subsection (b) "does not incorporate" either of the differing situs descriptions of subsections (a)(1) and (a)(2) as a situs-of-injury requirement, nor was the *Mills* court's expansion of the subsection (a)(2) description, to encompass the high seas as well within its invented situs-of-injury requirement for application of subsection (b), capable of being harmonized with *Tallentire.* Pet. App. 24-27. In sum, like the pre-*Mills* Fifth Circuit decisions and *Curtis*, the court concluded "that § 1333(b) may apply to injuries occurring outside the situs of the outer continental shelf, so long as they occur 'as the result of operations conducted on the outer continental shelf.'" Pet. App. 27.[6]

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[6] Commentators have roundly criticized the *Mills* decision for its departure from the statutory terms and sound past precedent interpreting and applying them, and its application of the different terms of § 1333(a)(2)(A) to the scope of § 1333(b). *See, e.g.*, Thomas J. Schoenbaum, 1 ADMIRALTY AND MARITIME LAW § 3-9, at 396 (3d ed. & pocket part) (*Mills* "go[es] against the plain language of section 1333(b) [which] has no situs requirement," but *Mills* and the subsequent revision of its "test" in *Demette v. Falcon Drilling Co.*, 280 F.3d 492 (5th Cir. 2001), "completely re-interpreted the law regarding operations on the outer continental shelf and the relationship of the LHWCA and the OCS Lands Act."); David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 26 TUL. MAR. L. J. 193, 246 n.505 (2001) ("The notion that § 1333(b) . . . has the same 'situs' criteria as § 1333(a)(1) is challenged by the language of § 1333(b)[.]"); Joseph M. Perez, *Case Note, To Be or Not to Be, a Situs Requirement Under the Outer Continental Shelf Lands Act: Mills v. Director, Office of Worker's Compensation Programs*, 12 GEO. MASON U. L. REV. 383

B. Prematurity in the Present Case

Although the consideration does not affect this Court's *jurisdiction*, it is surely a strong prudential consideration with respect to this Court's exercise of its scarce *certiorari* authority that the question on

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(1990) (analyzing *Mills*'s novel imposition of a situs-of-injury requirement on § 1333(b) coverage).

Indeed, even since *Mills*, the Fifth Circuit has noted that the

> . . . legislative history [of the original passage of OCSLA] stat[es] that the phrase "waters above the [OCS]" was deleted from the situs requirement of what became section 1333(b) in order "to make more definite the application of the [LHWCA] to workers other than those employed on vessels." SEN. REP. NO. 411, 83D CONG., 1ST SESS. 16, 23 (1953). . . . [T]he situs requirement that this deletion left behind was later deleted, *leaving no situs requirement in the enacted version of that subsection.* As noted above, section 1333(b) contains only a status requirement.

Demette v. Falcon Drilling Co., 280 F.3d 492, 500 n.29 (5th Cir. 2002) (emphasis added). Ironically, the court there parsed the subtle differences in the terms of different parts of § 1333(a), ruling that it must "give effect to the different wording of the two phrases by reading them differently," *id.* at 498. That approach is hardly consistent with the fact that *Mills*, as *Demette* recognized, had held that "in order for the LHWCA to apply by virtue of Section 1333(b), . . . the injured worker must satisfy the 'status' requirement of Section 1333(b) *as well as the situs requirement of Section 1333(a)(1)*," *id.* (emphasis added), thereby *denying* effect to the fact that the terms of § 1333(b) *do not impose any* "situs requirement" other than that applicable to the mineral-extraction "operations" to which the work must pertain. *And compare* § 1333(b) (no reference to injury "occurring upon" covered platform) *with* § 1333(c) (making National Labor Relations Act applicable to "[a]ny unfair labor practice *occurring upon* any artificial island, installation, or other device referred to in subsection (a)"). *Demette* only emphasizes the inconsistency between *Mills* and the statute.

which the circuits are divided may not even determine the outcome of this case. The administrative tribunals, because they relied on the *Mills* situs-of-injury requirement to deny the claim, have not addressed its satisfaction of the "result of operations on the [OCS]" test that everyone agrees is required for application of the Longshore Act under § 1333(b). The court of appeals did not do so either; it merely provided a measure of guidance on the proper approach to that requirement as a "substantial nexus" test, and remanded the case for consideration of the question. The scope and consequent effect on this case of the court of appeals's intended "nexus" test thus remains for determination on (and no doubt after) remand to the ALJ; if it were resolved against the claimant, the issue Petitioners seek to present would be moot in this case. There is thus a chance – which Petitioners would no doubt characterize as at least serious – that the issue will not even be outcome-determinative of Respondent Valladolid's claim. Even if the situs-of-injury-requirement issue is otherwise appropriate for resolution by this Court, the Court should not entertain it in this case until and unless further proceedings establish that it makes a difference to the outcome.

C. Limited Impact of the Conflict

The extremely limited impact of the intercircuit conflict whose resolution Petitioners seek further counsels against issuance of the writ. The overwhelming majority of the OCS oil and gas exploration and extraction activity for over half a century has occurred offshore of Louisiana and Texas, both within the jurisdiction of the Fifth Circuit. Only two cases presenting the question, over twenty years apart, have reached any court of appeals other than

that circuit. Al-though political winds appeared to be shifting in the direction of opening up such activity on other coastlines until last April, the *Deepwater Horizon* tragedy now seems to have stalled that shift, and it would be speculative to expect any such expansion of operations covered by the Lands Act outside its established scope within Fifth Circuit jurisdiction within the foreseeable future. Even within the Fifth Circuit itself, the issue rarely arises, almost exclusively in the context of helicopter or crewboat casualties on the way between offshore platforms and the coast; the coastal-rig-construction context presented by *Mills* itself, while it may once have had broader application, has decreased in importance as most platform-construction work has shifted from the West Gulf Coast to East and Southeast Asia. Petitioners do not elaborate at all on their naked characterization of the question as an "important" one (Pet. 8). The question on which the conflict exists arises too infrequently outside the Fifth Circuit, or even, so far as appears, within it, to warrant this Court's attention.

II. The Conflict Asserted by Petitioners Concerning the Content of the "Result of Operations" Requirement, Which All Agree Is a Condition for Application of the Longshore Act Under Its Extension by OCSLA, Is Illusory and, If It Exists at All, Insufficiently Developed to Warrant This Court's Review.

Petitioners' assertion of a further three-way conflict on the meaning of the "result of [OCS] operations" requirement, Pet. i, 8-10, is baseless. It depends on a mischaracterization of the Third Circuit's decision in *Curtis* as having "h[e]ld" that "[w]hen an [OCS] worker is injured *on land*, . . . he (or his heir)

[is] *always* eligible for compensation, because his employer's operations on the shelf are the but for cause of his injury." Pet. I (emphasis by Petitioners); *cf.* Pet 8-9. In fact, the Fifth Circuit early adopted what it denominated the "but for" test for satisfaction of the "occurring as the result of operations on the [OCS]" requirement that all agree is either *the* or *one of the two* requirements for application of § 1333(b); that court's panel decision in *Mills* (quoted more fully at p.8 *supra*) "clarified" that the "'but for' test" "is not the simple '*causa sine qua non*' test of tort law," but a "nexus" test that "requires that the work 'further[s] the operation of a fixed rig on the shelf *and [is] in the regular course of extractive operations on the shelf.*'" Except in that decision finding the test satisfied by platform-construction work in a shipyard (vacated by the grant of rehearing *en banc*), the Fifth Circuit has held it satisfied only by injuries in the course of travel to and from OCS platforms. The Third Circuit in *Curtis* adopted the "but for" test for the "result of operations" requirement *as articulated in Fifth Circuit law*, finding it satisfied *in that same context*, without further elaboration. The Ninth Circuit in the decision below adopted the same "substantial nexus" test, in terms plainly contemplating (because its focus is on the "work performed") that it would similarly be satisfied by injuries in the course of such travel to and from platforms, and "le[ft] more precise line-drawing to the specific factual circumstances of [particular] cases." Pet. App. 28. It "decline[d] to adopt[] the Third Circuit's decision in *Curtis*" only "to the extent *that it requires only a 'but for' test of causation.*" *Ibid.*

There is no indication in any of the circuits' law that they would disagree with the proposition that injuries in the course of OCS workers' travel to or from OCS platforms satisfy the relevant test, nor that any of

them would apply a loose "*causa sine qua non*" standard that would apply the provision to those whose work bears only a remote connection to OCS "operations." Whether the circuits might develop a disagreement in the course of "more precise line-drawing," and whether any such disagreement might be sufficiently significant to warrant resolution by this Court, are presently unknowable. Such "precise line-drawing" is certainly an unwarranted task for this Court in advance of further development of the content of the requirement in the courts of appeals and the emergence of a significant conflict affecting some substantial number of cases.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be denied.

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