No. 20-1676

In the Supreme Court of the United States

PUBLIC WATCHDOGS, PETITIONER

v.

SOUTHERN CALIFORNIA EDISON COMPANY, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the judicial-review provisions in the Atomic Energy Act and the Administrative Orders Review Act preclude a federal district court from exercising general federal-question jurisdiction over federal- and state-law claims against private parties when those claims either (1) challenge the U.S. Nuclear Regulatory Commission's final orders in nuclear-reactor-licensing proceedings or (2) challenge decisions by the Commission that are preliminary, ancillary, or incidental to those orders.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-49a) is reported at 984 F.3d 744. The order of the district court (Pet. App. 62a-113a) is not published in the Federal Supplement but is available at 2019 WL 6497886.

JURISDICTION

The judgment of the court of appeals was entered on December 29, 2020. The petition for a writ of certiorari was filed on May 28, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A. Legal Background

1. Under the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, the U.S. Nuclear Regulatory Commission (NRC or Commission) has broad authority to

regulate civilian use of radioactive materials, including to generate nuclear power, 42 U.S.C. 2201(b).

In exercising that authority, the NRC has promulgated detailed regulations governing the issuance of licenses to construct and operate nuclear power plants. See 10 C.F.R. Pts. 50, 52; Pet. App. 8a. After issuing a license, the Commission may issue orders amending, suspending, or revoking the license. 10 C.F.R. 2.202. The NRC has established a process through which "[a]ny person" may request that the agency take such actions on a license. 10 C.F.R. 2.206. Similarly, any person may petition the Commission to issue, amend, or rescind any regulation in 10 C.F.R. Ch. 1 (which includes nuclear-licensing regulations discussed above). 10 C.F.R. 2.802. Finally, the NRC exercises extensive oversight, including through routine safety inspections and enforcement actions, over the activities of nuclear-power-plant licensees. See, *e.g.*, 42 U.S.C. 2282 (authorizing imposition of civil penalties); Pet. App. 9a.

The AEA also authorizes the NRC to regulate the interim storage of spent nuclear fuel, once the fuel is no longer useful and is removed from the nuclear reactor. 42 U.S.C. 2071-2075, 2111-2114; 10 C.F.R. Pt. 72. When spent fuel is first removed from a reactor, it is held for cooling in deep pools of continuously circulating water. Pet. App. 9a. After cooling, the spent fuel is often moved to a "dry" storage system composed of casks or canisters made of steel and concrete. *Id.* at 10a. The reactor licensee typically stores the casks or canisters onsite in specially built facilities called "independent spent fuel storage installations." *Ibid.*; see 10 C.F.R. 72.210, 72.212.

To authorize the onsite storage of spent nuclear fuel, the Commission can either (1) grant a site-specific license through a safety review of the technical requirements and operating conditions, or (2) issue a "Certificate of Compliance" for a specific dry-storage system based on a similar safety review. Pet. App. 10a. Before the NRC grants a Certificate of Compliance for a dry-storage system, it subjects the system to a rigorous approval process, including public scrutiny through notice-and-comment rulemaking. See, *e.g.*, 10 C.F.R. 72.232, 72.236. The NRC approves only those systems that meet its strict requirements for safely storing spent fuel. See 10 C.F.R. 72.236.

When the NRC issues a Certificate of Compliance, it adds the approved dry-storage system to its regulations, and power-reactor licensees may then use the system under a general license. Pet. App. 10a-11a; see 10 C.F.R. Part 72, Subpart K (granting the general license). The Commission followed that process for the canister-based system (the Holtec System) that is at issue in this case, which is designed and manufactured by private respondent Holtec International, Inc. 10 C.F.R. 72.214 (listing approval of Certificate Number 1040 for the Holtec System); 10 C.F.R. 72.212(b) (imposing twelve requirements on a licensee to ensure that the design and use of the dry-storage system complies with the Certificate of Compliance).

2. Under the AEA, the NRC's final orders in a proceeding "for the granting, suspending, revoking, or amending of any license," as well as any final order in any proceeding for the "issuance or modification of rules and regulations dealing with the activities of licensees," are subject to judicial review "in the manner pre-

scribed in" the Administrative Orders Review Act (commonly known as the Hobbs Act), 42 U.S.C. 2341 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* 42 U.S.C. 2239(a)(1) and (b).

As relevant here, the Hobbs Act vests federal courts of appeals with "exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of" the NRC orders made reviewable by the AEA. 28 U.S.C. 2342(4); see 42 U.S.C. 5841(f) (transferring certain functions of the former Atomic Energy Commission to the NRC). Under the Hobbs Act, a court of appeals' jurisdiction is "invoked by filing a petition," 28 U.S.C. 2342, "within 60 days after" entry of the reviewable order, 28 U.S.C. 2344.

B. Factual Background

In 1963, Congress established the San Onofre Nuclear Generating Station (SONGS) within the Camp Pendleton military base in California. Pet. App. 12a. Three nuclear generating units operated at SONGS, with the first shutting down in 1992 and the other two shutting down in 2013. *Ibid.* Those units were operated pursuant to licenses issued by the NRC to private respondents Southern California Edison Company and San Diego Gas & Electric Company. *Ibid.*

After ceasing operations at SONGS, those licensees sought the NRC's approval to decommission the two units that had been shut down in 2013. In 2015, the Commission granted amendments to the respective operating licenses (the License Amendments) directing the licensees to "[t]ake actions necessary to decommission the plant and continue to maintain the facility, including . . . the storage, control and maintenance of the spent fuel, in a safe condition." Pet. App. 13a. The

NRC's review of the License Amendments was open to intervention, see *ibid.*, but no party sought to intervene.

As part of decommissioning SONGS, the licensees planned to move the spent nuclear fuel from the two units shut down in 2013—which was then in wet-storage pools—and store it in dry canisters in the onsite fuel-storage installation. Pet. App. 13a. The licensees chose the Holtec System that the NRC had approved for storing spent nuclear fuel. *Ibid.*; see p. 3, *supra*. As part of its approval process, the NRC solicited and responded to public comments regarding the Holtec System. See 80 Fed. Reg. 12,073 (Mar. 6, 2015) (10 C.F.R. 72.214); see also 80 Fed. Reg. 35,829 (June 23, 2015) (soliciting comment on a direct final rule reflecting enhanced seismic analysis for the Holtec System); Pet. App. 14a. In response to comments, the Commission emphasized that the Holtec System's design was "robust," and the agency concluded that the system "will safely store [spent nuclear fuel] and prevent radiation releases and exposure consistent with regulatory requirements." 80 Fed. Reg. at 12,074-12,075.

In January 2018, after obtaining the NRC's approval of the License Amendments and the Certificate of Compliance, the licensees began loading canisters into the Holtec System. Pet. App. 67a.[1]

C. Proceedings Below

1. In August 2019, petitioner sued the NRC and private respondents in district court, seeking to enjoin the decommissioning activities at SONGS. Pet. App. 15a. In an amended complaint, petitioner alleged that the

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[1] In August 2020, the licensees completed the transfer of spent nuclear fuel from wet storage to dry storage. See https://www.songscommunity.com/decomm-digest/spent-fuel-pools-and-decommissioning.

NRC's grant of the License Amendments was arbitrary and capricious, and that the Commission's approval of the Holtec System recklessly or consciously disregarded safety problems. *Id.* at 16a. Petitioner also alleged that the licensees were negligently conducting the decommissioning activities at SONGS, and that the NRC's oversight and enforcement actions were inadequate. *Id.* at 16a-18a.[2]

Based on those allegations, petitioner asserted four claims: (1) a claim against the NRC under the APA; (2) a claim against the licensees under the Price-Anderson Act, 42 U.S.C. 2210(n)(2); (3) a claim against the licensees and Holtec under California's public nuisance law, Cal. Civ. Code §§ 3479-3480 (West 2016); and (4) a claim against Holtec under a strict products liability theory. Pet. App. 18a. Petitioner also moved for a preliminary injunction and a temporary restraining order, seeking to stop any further transfers of spent nuclear fuel from wet storage to dry storage until a full hearing on the decommissioning plan had occurred. *Id.* at 18a, 71a-72a. Respondents opposed petitioner's motions and moved to dismiss the amended complaint. *Id.* at 71a-72a.

2. Meanwhile, petitioner filed with the NRC a petition under 10 C.F.R. 2.206 (2.206 petition), requesting

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[2] In particular, petitioner "highlight[ed]" two instances when the licensees had allegedly mishandled spent-nuclear-fuel canisters while transferring them from wet storage to the dry-storage system—incidents that the licensees had allegedly failed to report to the Commission. Pet. App. 17a. After the second incident, in August 2018, the NRC conducted a special inspection and review process to evaluate the licensees' spent-nuclear-fuel transfer procedures. See *ibid.* At the time, the licensees voluntarily paused the transfer of spent nuclear fuel until the NRC completed its inspection and review. *Ibid.* In July 2019, the licensees announced that they were resuming the transfer operations. *Id.* at 18a.

that the NRC suspend the licensees' decommissioning activities at SONGS. See Pet. App. 72a. Petitioner later filed a petition for a writ of mandamus in the Ninth Circuit, asking the court to stay decommissioning activities until the NRC resolved the 2.206 petition. *Id.* at 20a.

3. The district court dismissed the case on multiple grounds, including for lack of subject-matter jurisdiction. Pet. App. 62a-116a.

Relying on this Court's decision in *Florida Power & Light Co.* v. *Lorion*, 470 U.S. 729 (1985), and decisions of the courts of appeals, the district court held that the Hobbs Act precluded petitioner's APA claim against the NRC. Pet. App. 84a-89a. Specifically, the court held that the claim challenged the License Amendments and Certificate of Compliance for the Holtec system, as well as other NRC actions (see p. 6 n.2, *supra*) that touched on "issues preliminary or ancillary to the" License Amendments and Certificate of Compliance, and that the Hobbs Act therefore barred the claim from proceeding in district court. *Lorion*, 470 U.S. at 743; see Pet. App. 84a-89a. As an additional basis for declining to adjudicate petitioner's APA claim, the court separately held that the challenged NRC oversight and enforcement actions were not reviewable under the APA because the actions were "committed to agency discretion by law." 5 U.S.C. 701(a)(2); see Pet. App. 89a-91a.

As to the claims against private respondents, the district court similarly determined that the claims "all trace back to actions that were taken pursuant to or that were incidental to the NRC's issuance of the" License Amendments or the Certificate of Compliance, and that those agency actions "must be challenged before the Ninth Circuit pursuant to the Hobbs Act." Pet. App.

94a. The court also noted petitioner's pending 2.206 petition filed with the Commission and petitioner's mandamus petition in the Ninth Circuit, stating that it was "troubled" that petitioner had sought the "same relief—a temporary cessation of the decommissioning efforts at SONGS—simultaneously before [the district court], the NRC, and the Ninth Circuit." *Id.* at 88a n.4. The district court observed that petitioner's "scattershot approach" had "resulted in duplicative review of issues that may be rendered moot by the NRC's action on [petitioner's] 2.206 petition." *Ibid.* As an independent ground for its dismissal of the claims against private respondents, the district court held that petitioner's allegations against those entities failed to state a claim on which relief could be granted. *Id.* at 94a-102a, 106a-114a. The court further held that the state-law claims against private respondents were preempted by the AEA. *Id.* at 102a-106a.[3]

4. Petitioner appealed the district court's decision. Before it resolved that appeal, the Ninth Circuit denied petitioner's request for mandamus relief, stating that the NRC should have more time to consider the 2.206 petition. Pet. App. 20a. The Commission later denied that petition, explaining that reasonable safety and other measures were in place to address petitioner's concerns. *Id.* at 54a-61a. Petitioner then filed a sepa-

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[3] The district court also dismissed the claims against private respondent Sempra Energy (Sempra), the parent company of San Diego Gas & Electric Company, because Sempra was not an owner or licensee of SONGS and because the amended complaint did not include allegations establishing that Sempra should be held liable under a veil-piercing theory. Pet. App. 97a-99a. Petitioner did not appeal that holding and does not challenge it here.

rate petition for review of that decision in the Ninth Circuit. *Id.* at 22a-23a; see *id.* at 50a-53a (different court of appeals panel addressing that petition for review).

The court of appeals affirmed the district court's dismissal of petitioner's claims. Pet. App. 1a-49a. The court held that, because petitioner's claims against both the Commission and private respondents "challenge[] final orders of the NRC related to licensing, NRC enforcement decisions related to NRC licenses and certifications, and conduct licensed or certified by the NRC," the "action falls squarely within the scope of the Hobbs Act" and therefore was outside the jurisdiction of the district court. *Id.* at 6a-7a.

The court of appeals first addressed petitioner's claim against the NRC. The court observed that the complaint on its face challenged the 2015 License Amendments and Certificate of Compliance, which implicated the Hobbs Act, and that petitioner's challenge to five "other agency actions" also fell within the Hobbs Act's scope as an indirect challenge to the Commission's 2015 actions. Pet. App. 29a-36a (capitalization altered). The court further explained that those claims were subject to the Hobbs Act because the relief sought—suspending the decommissioning activities authorized by the License Amendments—should first be pursued in a 2.206 petition before the NRC. *Id.* at 36a-40a.

The court of appeals held that petitioner's claims against private respondents also were subject to the Hobbs Act because those claims challenged the 2015 License Amendments and the Certificate of Compliance. Pet. App. 42a-49a. Although petitioner had framed its claims as a "challenge to private entities' alleged mishandling of nuclear waste," the court held that the

claims were "properly viewed, in part, as a veiled challenge to the 2015 License Amendments and the Certificate of Compliance for the Holtec System." *Id.* at 44a; see *id.* at 47a ("Despite [petitioner's] artful pleading, it is clear its claims against the [private respondents] are an attempt to challenge the 2015 License Amendments, the Certificate of Compliance for the Holtec System, and actions taken by the licensees under the authority of both of those final NRC orders."). The court added that its "conclusion that [petitioner's] claims against the [private respondents] fall within the scope of the Hobbs Act" was "bolstered by [petitioner's] decisions to file a § 2.206 petition that addressed the *same* conduct * * * and sought the *same* remedy as the district court action *and* its decision to appeal that [NRC] order *directly* to" the court of appeals. *Id.* at 48a.

Because the court of appeals affirmed the dismissal on jurisdictional grounds, it did not reach the district court's holding that petitioner had failed to allege facts sufficient to state a claim for relief against private respondents. Pet. App. 49a n.13.[4]

5. In a later decision (not the subject of this petition for a writ of certiorari), the court of appeals dismissed petitioner's petition for review of the NRC's denial of its 2.206 petition. Pet. App. 50a-53a. The court explained that, under *Heckler* v. *Chaney*, 470 U.S. 821 (1985), petitioner had failed to overcome the presumption that the NRC's decision not to pursue an enforcement proceeding was unreviewable. Pet. App. 50a-53a.

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[4] Petitioner did not appeal the district court's dismissal of the products-liability claim.

ARGUMENT

In this Court, petitioner has abandoned its claim against the NRC and seeks review only of the court of appeals' holding that its claims against private respondents are barred. This Court's review is not warranted.[5]

The court of appeals correctly held that the district court lacked subject-matter jurisdiction over petitioner's claims against private respondents because those claims (like petitioner's claim against the Commission) challenged NRC licensing orders or decisions ancillary or incidental to those orders. That holding does not conflict with any decision of this Court or another court of appeals. And this case would be a poor vehicle to address the scope of the Hobbs Act, because it involves only a case-specific assessment of petitioner's specific allegations in the context of the particular NRC orders at issue. Moreover, petitioner has pursued the proper avenue for the relief it seeks—a 2.206 petition to the NRC, followed by a petition for review in the court of appeals. That parallel litigation only underscores that the duplicative suit here is barred.

1. a. The court of appeals correctly dismissed the claims against private respondents. Consistent with this Court's decision in *Florida Power & Light Co.* v. *Lorion*, 470 U.S. 729 (1985), and its own precedent in *General Atomics* v. *United States Nuclear Regulatory Commission*, 75 F.3d 536 (9th Cir. 1996), the court of appeals explained that the Hobbs Act and Section 2239

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[5] Petitioner states that the NRC "is not a respondent here," but that is inaccurate. Pet. ii; see Sup. Ct. R. 12.6 ("All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties[.] * * * All parties other than the petitioner are considered respondents.").

of the AEA cover "not only all final NRC actions in licensing proceedings, but also all decisions that are preliminary, ancillary, or incidental to those licensing proceedings." Pet. App. 28a; see *id.* at 24a-28a & n.8; see also *Lorion*, 470 U.S. at 743. Applying that principle, the court of appeals correctly held that the district court lacked jurisdiction because petitioner's claims against both the NRC and private respondents challenged the Commission's final orders, enforcement decisions related to those orders, or conduct the NRC had licensed or certified. Pet. App. 6a-7a, 29a-49a.

In reaching that conclusion, the court of appeals examined in detail the nature of the claims and the relief sought by petitioner. Pet. App. 42a-44a. The court recognized that petitioner had "frame[d] its claims against [private respondents] as a challenge to private entities' alleged mishandling of nuclear waste." *Id.* at 44a. But the court observed that those claims included and were inextricably intertwined with allegations (1) that the 2015 License Amendments "were improperly granted," and (2) that the Holtec canisters, approved for spent nuclear fuel storage by the Certificate of Compliance, "do not comply with minimum safety requirements for [spent nuclear fuel] storage containers and are defective." *Ibid.* Looking past petitioner's "artful pleading," the court concluded that its "claims against [private respondents] are an attempt to challenge the 2015 License Amendments, the Certificate of Compliance for the Holtec System, and actions taken by the licensees under the authority of both of those final NRC orders." *Id.* at 47a. The court correctly held that the Hobbs Act bars those claims. *Id.* at 48a.

This holding is a sound application of long-established jurisdictional and administrative-law principles.

Nearly a century ago, this Court explained that, even when a suit "does not expressly pray that [an administrative] order be annulled or set aside," if it "does assail the validity of the order" and seeks injunctive relief preventing a party "from doing what the order specifically authorizes," the suit is "equivalent to asking that the order be adjudged invalid and set aside." *Venner* v. *Michigan Central R.R. Co.*, 271 U.S. 127, 130 (1926); see, *e.g.*, *Port of Boston Marine Terminal Ass'n* v. *Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 70 (1970) (barring a defense in a civil suit because it would amount to a collateral attack on a determination of the Federal Maritime Commission). Litigants thus "may not evade" exclusive-jurisdiction "provisions by requesting the [d]istrict [c]ourt to enjoin action that is the outcome of the agency's order." *FCC* v. *ITT World Commc'ns, Inc.*, 466 U.S. 463, 468 (1984).

To hold otherwise would open a substantial loophole, allowing litigants like petitioner to thwart the jurisdictional boundaries set by Congress. This Court has long cautioned against allowing such circumvention. See, *e.g.*, *Lambert Run Coal Co.* v. *Baltimore & Ohio R.R. Co.*, 258 U.S. 377, 383 (1922). And courts of appeals have applied that principle to prevent evasion of statutory limits on review of NRC orders in particular. See, *e.g.*, *New Jersey Dep't of Envtl. Prot. & Energy* v. *Long Island Power Auth.*, 30 F.3d 403, 413 (3d Cir. 1994) (observing that the plaintiff's "real complaint is not that there is no final order to challenge, but rather that it disagrees with the NRC's form of analysis and conclusions," and holding that "[t]hese challenges cannot be maintained in the district court" because of the Hobbs Act); *Michigan* v. *United States*, 994 F.2d 1197, 1204 (6th Cir. 1993) (holding that, because a State's "claims

really involved a challenge to the [NRC's] regulations," the State "must seek relief through a petition to the [Commission] with review of any adverse agency action in the court of appeals").

The court of appeals also grounded its ruling in "basic principles of administrative law." Pet. App. 40a. The court explained that petitioner should first present to the NRC its "concerns related to the safety of NRC licensees' nuclear decommissioning activities"—an "area that is unquestionably within the NRC's special competence." *Ibid.* In fact, petitioner ultimately presented its concerns to the Commission, which carefully considered them in a denial order that petitioner separately challenged in the court of appeals. See *id.* at 50a-53a, 54a-61a. As both courts below noted, petitioner's "scattershot" effort to obtain "duplicative review" of the same issues in multiple venues at the same time underscores the importance of adhering to the jurisdictional scheme that the Hobbs Act prescribes. *Id.* at 88a n.4; see *id.* at 48a; see also *Lorion*, 470 U.S. at 744-745 (stressing the role of the Hobbs Act in avoiding "duplication" or "bifurcation" of judicial review of the same agency decisions).

b. Petitioner's contrary arguments are unavailing. Petitioner contends (Pet. 15) that the court of appeals' decision "misinterprets and misapplies the Hobbs Act two ways." But on both points, petitioner misreads the decision below.

i. Petitioner asserts (Pet. 18) that the court of appeals "concluded that the Hobbs Act precluded *all* judicial review of a private party's claims against other private parties, even when no agency's 'final order' is being directly challenged." The court did not issue such a

holding. The court instead held, after carefully reviewing the details of the claims and the NRC orders in question, that petitioner was seeking to challenge the License Amendments and the Certificate of Compliance. See Pet. App. 30a ("On its face, [petitioner's first amended complaint] challenges the grant of the 2015 License Amendments and the Certificate of Compliance for the Holtec System—both final orders of the NRC for purposes of the Hobbs Act."). That characterization of petitioner's complaint is particularly apt given that petitioner also sued the NRC in the same case, and that it filed a separate 2.206 petition with the Commission seeking the same relief. See *id.* at 39a, 43a-44a.

Petitioner does not grapple with this aspect of the court of appeals' reasoning, but instead appears to assume that *pleading* a claim against a private party is enough to avoid the strictures of the Hobbs Act and the AEA. But as the court of appeals recognized, and as many other courts have held under the Hobbs Act and similar statutes, a litigant may not circumvent an exclusive-jurisdiction provision simply by repackaging challenges to agency action as claims against private parties. See, *e.g.*, *Mais* v. *Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1119-1121 (11th Cir. 2014); *Nack* v. *Walburg*, 715 F.3d 680, 685-687 (8th Cir. 2013), cert. denied, 572 U.S. 1028 (2014); *CE Design, Ltd.* v. *Prism Bus. Media, Inc.*, 606 F.3d 443, 447-448 (7th Cir. 2010), cert. denied, 562 U.S. 1138 (2011); *Daniels* v. *Union Pacific R.R. Co.*, 530 F.3d 936, 940-941 (D.C. Cir. 2008); *City of Peoria* v. *General Elec. Cablevision Corp.*, 690 F.2d 116, 119-121 (7th Cir. 1982).

Among other problems created by petitioner's approach, allowing claims of this sort would effectively nullify the administrative-exhaustion requirement in

Section 2239 of the AEA. See Pet. App. 40a-41a. By framing its challenges to the decommissioning and fuel-storage activities at SONGS as claims against private respondents—and by seeking the same relief against private respondents that it sought against the NRC—petitioner sought to sidestep the NRC's primary role in regulating the activities of nuclear-reactor licensees. Indeed, petitioner implicitly recognized the Commission's role as the expert agency by filing its 2.206 petition seeking the same relief that it seeks in this lawsuit. See *id.* at 39a.

ii. The court of appeals stated that the Hobbs Act encompasses "not only all final NRC actions in licensing proceedings, but also all decisions that are preliminary, ancillary, *or incidental* to those licensing proceedings." Pet. App. 28a (emphasis added) (citing *Lorion*, 470 U.S. at 737, 743, and *General Atomics*, 75 F.3d at 539). Petitioner contends (Pet. 18-21) that the italicized language expands the scope of the Hobbs Act substantially beyond that recognized by this Court in *Lorion*, which described the Act as encompassing licensing orders along with "preliminary or ancillary" orders. 470 U.S. at 743.

Petitioner's criticism reads far too much into the court of appeals' reading of *Lorion*. Nothing in the court's analysis suggests that it intended to expand on *Lorion*'s construction of the Hobbs Act; to the contrary, the court cited *Lorion* to support the very sentence upon which petitioner focuses. Pet. App. 28a. And in articulating its holding, the court stated that the claims against private respondents fell within the Hobbs Act because they "challenged NRC licensing orders or NRC decisions that were ancillary *or* incidental to NRC licensing decisions." *Id.* at 48a-49a (emphasis added).

That formulation illustrates that the court did not intend the dramatic difference in meaning between "ancillary" and "incidental" that petitioner perceives. Moreover, the court separately stated its holding in even more restrictive terms, explaining that "the 2015 License Amendments and the Certificate of Compliance are 'inextricably intertwined' with the NRC's regulatory and enforcement decisions that are in turn related to the challenged conduct of the [private respondents]." *Id.* at 48a. The court thus did not rely on the sweeping and unnatural use of the term "incidental" that petitioner envisions. Rather, the court's decision was consistent with the reading of the Hobbs Act adopted by this Court in *Lorion* and by numerous courts of appeals since then.

2. Petitioner contends (Pet. 3, 24, 28) that the court of appeals' decision creates various conflicts with decisions of this Court or other courts of appeals. Those arguments lack merit.

a. Contrary to petitioner's contention (Pet. 3, 28-31), the court of appeals' decision does not conflict with *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238 (1984), or *Cook* v. *Rockwell International Corp.*, 790 F.3d 1088 (10th Cir. 2015). Petitioner asserts (Pet. 31) that the court's ruling conflicts with those cases' holding that "plaintiffs can successfully assert claims against NRC licensees—[Price-Anderson Act] claims if they can prove a 'nuclear incident,' or state law claims, like nuisance, if the occurrence does not rise to the level of a 'nuclear incident.'" But *Silkwood* and *Cook* do not even mention the Hobbs Act, much less allow a party to assert claims in district court that circumvent the Hobbs Act's limitations on judicial review of NRC orders. And because the district court held in the alternative that petitioner had failed to

state a Price-Anderson Act or state-law claim on which relief could be granted, *Silkwood* and *Cook* are distinguishable in another respect as well. Pet. App. 99a-102a.

b. Petitioner asserts that the court of appeals' decision "effectively guts" the Price-Anderson Act's public liability claim and conflicts with the decisions of "at least five circuit courts," including prior decisions of the Ninth Circuit, that "have permitted [Price-Anderson Act] claims to be adjudicated against NRC licensees in federal district court." Pet. 24; see also Pet. 4, 21-27. But the court of appeals did not hold that all Price-Anderson Act claims would be subject to the Hobbs Act or otherwise render the Price-Anderson Act "a dead letter." Pet. 4. The court instead focused on petitioner's "artful pleading" in the particular context of the claims and NRC orders at issue here. Pet. App. 47a. None of the decisions that petitioner cites arose in a similar context. The decision below does not insulate licensees from Price-Anderson Act claims that seek damages for injuries suffered; it simply recognizes that the Hobbs Act bars suits that seek to invalidate NRC orders or enjoin licensees from complying with them.

c. Petitioner suggests (Pet. 4, 16-18) that the decision below is inconsistent with *PDR Network, LLC* v. *Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051 (2019). That argument is also mistaken.

In *PDR Network*, this Court considered whether the Federal Communications Commission (FCC)'s interpretation of the Telephone Consumer Protection Act of 1991 (TCPA), 47 U.S.C. 227, was binding on the district court in a TCPA suit between two private parties. 139 S. Ct. at 2053, 2055. The Court ultimately did not re-

solve that issue, determining that two preliminary questions (whether the FCC's order was a legislative rule or an interpretive rule, and whether the defendant had been given a "'prior' and 'adequate' opportunity to seek judicial review of the [o]rder") should first be resolved on remand. *Id.* at 2055.

Petitioner suggests (Pet. 18) that the court of appeals' decision in this case "contravenes *PDR Network*" by holding that the Hobbs Act "precluded *all* judicial review of a private party's claims against other private parties, even when no agency's 'final order' is being directly challenged." As discussed above, however, that argument reflects an overbroad reading of the decision below, which explained that the Hobbs Act precluded review of the claims here precisely because NRC orders *were* directly challenged. See pp. 14-17, *supra*. In any event, the court's decision cannot directly conflict with *PDR Network*, since the Court in that case did not definitively resolve any issue concerning the scope of the Hobbs Act. See 139 S. Ct. at 2055-2056.

Petitioner suggests (Pet. 4, 18) that Justice Kavanaugh's concurring opinion in *PDR Network* undermines the court of appeals' holding. But that concurrence addressed an issue—"May *defendants* in *civil enforcement actions* under the" TCPA contest the FCC's "interpretation of the Act," 139 S. Ct. at 2057 (emphasis added)—very different from the one that the court below addressed. Petitioner is not a defendant in this case; the case is not a civil enforcement action; and the issue is not whether petitioner is barred from contesting the Commission's statutory interpretations. The very different question presented here is whether petitioner can challenge NRC orders in district court by naming regulated private parties as defendants. None

of the opinions in *PDR Network* addressed that question, much less cast any doubt on the court of appeals' resolution of it here. See Pet. App. 27a-28a n.7 (explaining that "Justice Kavanaugh's concurrence addressed a question wholly irrelevant to the case at hand").

3. For multiple reasons, this case would be a poor vehicle for the Court's consideration of the question presented.

a. If the court of appeals committed any error, the error concerns its fact-bound assessment of the relationship between the particular claims asserted by petitioner and the particular NRC orders at issue. It does not implicate any broad question about the proper scope of the Hobbs Act, and it therefore does not warrant this Court's review. See, *e.g.*, *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) (explaining that this Court does not typically "grant * * * certiorari to review evidence and discuss specific facts"); Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of * * * the misapplication of a properly stated rule of law.").

b. The district court dismissed petitioner's claims against private respondents on independent grounds. As to both the Price-Anderson Act and public nuisance claims, the court held that the amended complaint failed to state a claim on which relief could be granted. Pet. App. 99a-102a, 106a-114a. It further held that the AEA preempted the state-law claims for public nuisance and strict products liability. *Id.* at 102a-106a. Thus, even if petitioners could prevail on the question presented, their efforts to obtain any practical relief would still face substantial obstacles.

c. Contrary to petitioner's characterization (Pet. 33), this is not an exceptional case requiring the Court

to resolve a "time-sensitive issue of nuclear regulation and public safety." Storage of spent nuclear fuel is undeniably an important issue. But it is an issue that turns in large measure on complex policy and scientific questions that are neither presented by this case nor readily capable of resolution by this Court. Cf. *Pacific Gas & Elec. Co.* v. *State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 223 (1983) ("The courts should not assume the role which our system assigns to Congress.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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