NO. 10-507

In the
Supreme Court of the United States

PACIFIC OPERATORS OFFSHORE, LLP AND INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
Petitioners,

v.

LUISA L. VALLADOLID, ET AL.,
Respondents.

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

REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 1333(b), like the balance of the Outer Continental Shelf Lands Act ("OCSLA"), focuses on extending federal laws to the outer continental shelf and ensuring that the shelf did not remain a jurisdictional "no-man's-land." It does not extend a remedy to a worker injured in a forklift mishap on dry land in Ventura, California. That injury was caused by operations on dry land, not by "operations conducted on the outer Continental Shelf," as section 1333(b) requires. No amount of legal alchemy can convert dry land in Ventura, California—where both the injury and the operations that caused the injury clearly occurred—into the outer continental shelf.

For most of their briefs, up until the critical moment at which they urge a status-based test with absolutely no mooring in the statute, Respondents stress that the text of section 1333(b) does not unambiguously impose a situs requirement. To be sure, section 1333(b) would more clearly impose a situs requirement if it simply provided coverage to any employee for any injury occurring on the outer continental shelf. But that simple situs requirement would create anomalies that Congress could not have intended, such as providing longshore workers' benefits to accountants injured on the shelf. For this reason, section 1333(b) includes additional language that makes clear that a longshore workers' remedy is available only for an "injury occurring as the result of operations conducted on the outer Continental Shelf for the purposes of," *inter alia*, "exploring for, developing, removing, or transporting by pipeline the natural resources." Thus, courts, including this one,

have referred to section 1333(b) as "superimposing" a status-based requirement (employees injured by offshore production operations) on the basic situs requirement of OCSLA.

As even Respondents sometimes admit, section 1333(b) surely imposes some kind of situs requirement. It is best read as requiring the situs of injury to be the shelf with an additional status-based requirement superimposed. But at a minimum, it requires the situs of the operations that caused the injury to be on the outer continental shelf. And once it is conceded that either the situs of the injury or the situs of the operations must be on the shelf, there is no way Respondent Valladolid can recover for the forklift mishap on dry land. The decedent was self-evidently injured by operations on dry land, not by operations on the shelf. Only the most expansive view of but-for causation could possibly suggest that the decedent was injured "as the result of operations conducted on the outer Continental Shelf." Even the Director rejects such a reading because it would produce anomalous and wholly unintended results, such as extending OCSLA to the New Jersey Turnpike.

Lacking any means to suggest the text of section 1333(b) could reach an injury caused by operations on dry land, Respondents abandon the statutory text altogether and advocate a status-based test that looks to where a worker spends the majority of his or her time. Unable to point to any mooring in section 1333(b) for this purely status-based approach, the Director invokes this Court's decision in *Chandris, Inc. v. Latsis*, 515 U.S. 347 (1995), which interpreted the Jones Act. But the need to invoke *Chandris* only

underscores the problem with Respondents' argument. While the Jones Act has language that supports a status-based test, there is no analogous language in section 1333(b). In sum, there are only two plausible interpretations of section 1333(b)—a situs-of-injury test with a superimposed status requirement or a situs-of-the-operations-that-caused-the-injury test—and either interpretation produces the entirely unsurprising conclusion that OCSLA does not provide new federal remedies for injuries occurring on dry land and caused by operations on dry land.

ARGUMENT

I. The Text and Structure of OCSLA Support Reading Section 1333(b) as Imposing a Situs-of-Injury Requirement.

Nothing in Respondents' briefs disproves Petitioners' basic contention that section 1333(b) is best read as limiting OCSLA's extension of coverage under the Longshore and Harbor Workers' Compensation Act ("LHWCA") to injuries that occur on the outer continental shelf. Respondents' plain text argument ultimately amounts to a contention that the statute cannot be read to impose a situs-of-injury requirement because Congress could have more clearly imposed a situs requirement by simply providing a remedy to any employee injured on the shelf. But both the addition of the phrase "as the result of operations conducted" and the later references to the purposes of those operations were necessary to limit longshore workers' coverage to employees directly involved in offshore production activities. Congress did not intend to extend

longshore workers' coverage to accountants. Moreover, Respondents' arguments overlook the text, structure and context of OCSLA.

1. At the outset, Respondents' plain text argument ignores the fact that Congress uses very different text when it wants to provide a remedy to workers based primarily on status or without regard to the situs of the injury. When Congress intends to extend benefits to workers without regard to where their injuries occur, Congress says so explicitly. *See, e.g.*, District of Columbia Workmen's Compensation Act, ch. 612, § 1, 45 Stat. 600 (1928) (repealed 1979) (extending LHWCA to employees in District of Columbia "*irrespective of the place where the injury or death occurs*" (emphasis added)); 42 U.S.C. § 1651 (extending workers' compensation to designated employees on overseas military bases "*irrespective of the place where the injury or death occurs*" (emphasis added)). Congress is equally explicit when it intends benefits to be determined solely by reference to a worker's status. *See, e.g.*, 5 U.S.C. § 8171(a) (extending LHWCA benefits to all work-related injuries "occurring to an employee of a nonappropriated fund instrumentality"); 46 U.S.C. § 30104 (affording cause of action to "[a] seaman injured in the course of employment"). Congress followed neither of those established approaches in section 1333(b).

Instead, Congress employed a formulation that provides a longshore workers' remedy to employees injured "as the result of operations conducted on the outer Continental Shelf" for specified purposes related to natural resource exploration and development. 43 U.S.C. § 1333(b). Not one word in

the statute even hints that it provides a remedy to workers who predominantly work offshore "irrespective of where the death or injury occurs." To be sure, Congress could have more clearly imposed a pure situs requirement if it provided a remedy to any employee injured on the outer continental shelf, and omitted the reference to injuries "as the result of operations conducted" and the related references to purposes. But omitting that language would have come at the cost of extending a longshore workers' remedy to employees injured on the shelf while performing functions for which a longshore workers' remedy would be wholly inapposite. Congress clearly did not intend that result, and the resulting statute is best read as providing a remedy to employees (1) injured on the shelf, (2) while performing specific operations for specified purposes.

Indeed, that is precisely how this Court has read the statute. In *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986), this Court considered the general structure of OCSLA and concluded that the statute reflects "Congress['s] determin[ation] that the general scope of OCSLA's coverage … would be determined principally by locale, not by the status of the individual injured or killed." *Id.* at 219. The Court also noted that section 1333(b) "*superimposes* a status requirement on the otherwise determinative OCSLA situs requirement." *Id.* at 220 n.2 (emphasis added). The Court's formulation is telling. It did not describe 1333(b) as adopting a wholly different approach from the rest of OCSLA. To the contrary, the Court recognized that 1333(b), like the balance of OCSLA, is focused on the unique jurisdictional

problem of the outer continental shelf. But unlike other provisions that focus solely on situs, section 1333(b) requires more. It requires situs-plus-status. In other words, it "superimposes" a status requirement—that of being an employee injured while performing offshore operations for certain specified purposes—on top of the general situs requirement.

2. The general structure of section 1333 as a whole only reinforces that reading. The first subsection of the statute extends federal law to "the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed." 43 U.S.C. § 1333(a)(1). That same geographical definition is referenced in the statute's various other provisions, denoting Congress's clear intent to extend the specified federal laws and regulations only to those designated areas. *See id.* § 1333(c)–(f) (each referencing the "artificial islands, installations, and other devices referred to in subsection (a)").*

Subsection (b) does not expressly cross-reference subsection (a), but that does not reflect any lesser focus on the unique problem of the shelf. Instead, it simply reflects the fact that subsection (b) includes its own reference to the "outer Continental Shelf," which many of the other subsections lack. It also

* Respondents make much of the fact that section 1333(a)(2) sets forth a narrower situs than section 1333(a)(1). But section 1333(a)(2) establishes the extent to which Congress adopted state law as a surrogate for the federal law it extended to the shelf, not the extent to which Congress extended federal law in the first place.

reflects the provision's unique recodification history discussed below. And finally it reflects the fact that Congress's focus in subsection (b) was not just on situs, but on limiting the longshore workers' remedy to employees engaged in certain operations. What it does not reflect is any intent to provide a remedy to anyone on dry land or anywhere other than on the shelf, where the unique jurisdictional problems that the statute addresses are implicated.

The focus on providing a remedy for injuries suffered on the shelf is underscored by the final provision of section 1333. Section 1333(f) is a sort of savings clause, making clear that "[t]he specific application *by this section*" of specific provisions of law to the shelf "shall not give rise to any inference that the application … of any other provision of law is not intended." 43 U.S.C. § 1333(f) (emphasis added). This subsection makes clear that "this section"—*i.e.*, section 1333—extends "certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon." *Id.* Subsection (b) is not carved out from the rest of "this section" as having a different purpose or effect. Rather, the statutory text itself makes clear that 1333(b), like the rest of section 1333, extends a "certain provision[] of law"—namely the LHWCA—to the "outer Continental Shelf." The differences in wording between (b) and the other provisions reflect not some fundamentally different approach or purpose, but the reality that Congress did not want to provide a longshore workers' remedy to every

employee and so "superimpose[d] a status requirement on the otherwise determinative OCSLA situs requirement." *Offshore Logistics*, 477 U.S. at 220 n.2.

3. The original form in which section 1333(b) was enacted reinforces the inference that Congress intended to extend LHWCA coverage only to the outer continental shelf as geographically defined throughout the statute. In its original form, OCSLA's LHWCA provision incorporated by express reference Congress's geographic limitation on the statute's extension of federal jurisdiction as a limitation on the extension of LHWCA coverage. Section 4 of OCSLA provided, in relevant part:

> (b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources … of the subsoil and seabed of the outer Continental Shelf ….
>
> (c) With respect to disability or death of an employee resulting from any injury occurring *as the result of operations described in subsection (b)*, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

OCSLA § 4(b)–(c), 67 Stat. 462, 462–63 (1953) (emphasis added). That original structure makes clear that Congress was primarily concerned with the jurisdictional problem of the situs, and so extended federal jurisdiction to controversies arising

from the operations on the shelf set forth in subsection (b). It then provided a remedy to employees injured as the result of those same operations in that same situs. Thus, it was clear that the statute was not designed to provide a remedy for offshore workers wherever and whenever they are injured, but rather to adopt the situs-plus-status test that this Court accurately described in *Offshore Logistics*.

Nothing in the recodification of OCSLA changed that basic fact. When Congress reorganized those provisions of the statute in 1978, it made clear that "it was not [its] intent … to alter in any way the existing [LHWCA] coverage." H.R. Rep. No. 95–1474, at 81 (1978) (Conf. Rep.), *reprinted in* 1978 U.S.C.C.A.N. 1674, 1680. Accordingly, as it did then, section 1333(b) now continues to contain both the same basic situs prerequisite as the rest of the statute—it covers only those injuries that occur on the outer continental shelf—and its own unique status requirement.

The original form of 1333(b) also underscores the broader problem with Respondents' view of the statute. Presumably even Respondents would concede that federal jurisdiction would not extend by virtue of the original subsection (b) to a dispute arising out of operations on dry land based on some tenuous connection to offshore operations. But there is no more reason to read the original section 4(c)—now 1333(b)—as extending to injuries suffered on dry land just because of a tenuous connection to offshore operations.

4. The basic text and structure of section 1333(b) and section 1333 as a whole render largely irrelevant the bulk of Respondents' objections to a situs-of-injury requirement. For example, Valladolid argues at length that neither the statute nor Petitioners "define[] the relevant situs" with sufficient specificity. Valladolid Br. 29. But Valladolid readily concedes (as she must) that "§ 4(b) undisputedly contains a 'situs requirement,'" Valladolid Br. 36, because, at a minimum, the operations which caused the injury must occur on the shelf, *see infra*, at 14. Respondents also make much of the fact that subsection (b) does not contain the exact same situs requirement as other provisions of section 1333. But, as explained, Respondents fail to give any weight to the plain text of 1333(f), which makes clear that *all* of section 1333's subsections extend federal law only "to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon." *Id.* § 1333(f).

There is likewise no merit to Valladolid's claims that attempting to define the relevant situs for purposes of a situs-of-injury test "would present significant difficulties," or that "OCSLA provides no guidance" on what the situs would be. Valladolid Br. 19, 29. The statute provides very clear guidance—courts should interpret section 1333(b)'s reference to "the outer Continental Shelf" consistently with the rest of section 1333, which defines "the outer Continental Shelf" to include only "the subsoil and seabed of the outer Continental Shelf and … all artificial islands, and all installations and other

devices permanently or temporarily attached to the seabed." 43 U.S.C. § 1333(a)(1); *see also id.* § 1333(c)–(f) (invoking same definition). That is the clear import of section 1333(f) and its explanation that the various provisions of the statute extend federal law to the specific locations "referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon." *Id.* § 1333(f).

5. Finally, Petitioners' reading of 1333(b) is not only more consistent with the text and structure of the statute, but is also consistent with Congress's evident intent to address a jurisdictional "no-man's-land," rather than provide a duplicative remedy for injuries suffered on dry land.

Respondents cannot and do not dispute the basic factual background against which OCSLA was enacted. Before OCSLA, the shelf was "an area of intense activity that lacked an established legal system because it lies beyond state boundaries." *Mills v. Dir., Office of Workers' Comp. Programs, U.S. Dep't of Labor*, 877 F.2d 356, 358 (5th Cir. 1989). OCSLA was enacted for the very specific purpose of eliminating that jurisdictional confusion and establishing a set of "laws and regulations governing [outer Continental Shelf] lands." 43 U.S.C. § 1333. The basic structure of the statute reflects Congress's intent to address this unique and limited problem and limit OCSLA, and section 1333 in particular, to the "narrowly circumscribed area" of the outer continental shelf. *Offshore Logistics*, 477 U.S. at 218.

Although Valladolid makes the entirely unobjectionable and unexceptional point that

OCSLA was not *solely* enacted to cure that jurisdictional gap, *see* Valladolid Br. 43 (noting that OCSLA was intended to "promot[e] economic development" on the shelf), neither Valladolid nor the Director points to anything in the statute or its legislative history that suggests Congress was focused on areas beyond the shelf itself, or that its focus was based on workers' status as opposed to the unique jurisdictional issues posed by the geography of the shelf.

In light of Congress's obvious focus on those jurisdictional problems, Respondents provide no satisfying response to Petitioners' contention that a statute enacted with that kind of acutely geographic focus should not lightly be construed to extend beyond the "narrowly circumscribed area" in which it was intended to apply. *Offshore Logistics*, 477 U.S. at 218. *Cf. Small v. United States*, 544 U.S. 385, 388 (2005); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991). The Director suggests (at 26 n.9) the concerns underlying the presumption against extraterritorial application of domestic statutes carry no weight in a case like this one, as they only "protect against unintended clashes between our laws and those of other nations." *EEOC*, 499 U.S. at 248. But the Director fails to explain why giving domestic effect to a federal statute that was plainly intended to govern areas outside the reach of state law would not raise highly analogous concerns as to unintended clashes or overlaps between federal and state law.

Respondents suggest Congress may have anticipated overlap between state and federal law when, during the drafting process, it deleted

language that would have precluded recovery under section 1333(b) for a worker already covered by state law. *See* Valladolid Br. 41; Dir. Br. 28. A committee report explaining that deletion, however, only drives home the point that Congress's goal was to provide coverage to "all workers *on the Outer Shelf*," S. Rep. No. 83-411, at 23 (1953) (emphasis added), not to extend coverage to the land-based injuries of individuals who work on the shelf.

Moreover, Congress's decision not to limit remedies of workers whose States extended a remedy pre-OCSLA at most shows that Congress's concern is better phrased as addressing jurisdictional confusion—rather than only a jurisdictional gap—concerning the status of the outer continental shelf. Congress was concerned that overlapping claims of jurisdiction and the confusing status of the shelf would leave some workers without remedies. It addressed the unique jurisdictional status of the shelf with a statute directed uniquely to the shelf. Subsection 1333(a) generally extends federal jurisdiction to the shelf, subsections (b)–(e) extend specific federal laws, and subsection (f) makes clear that nothing in the section precludes the application of other federal laws to the shelf. But nothing in the text, structure, or purpose of Congress suggests an intent to provide a remedy outside of the geographical situs of the shelf with its attendant jurisdictional issues. Thus, in light of the uniquely geographically tethered goal of OCSLA, courts should be wary of reading section 1333(b) to extend "far beyond its intended locale," *Offshore Logistics*, 477 U.S. at 218, to reach injuries occurring

not just on the shelf, but on the shore and the New Jersey Turnpike as well.

II. Section 1333(b) At the Very Least Requires an Injury to Be Proximately Caused by Operations on the Shelf.

1. Although section 1333(b) is best read as imposing a situs-plus-status test, even Respondents are forced to concede that section 1333(b) "undisputedly contains *a* 'situs requirement.'" Valladolid Br. 36 (emphasis added). The statute extends LHWCA coverage only to those "injur[ies] occurring as the result of operations conducted *on the outer Continental Shelf*," 43 U.S.C. § 1333(b) (emphasis added), and thus at a minimum mandates that "the operations from which the injury results must be 'conducted *on* the [Shelf].'" Dir. Br. 24. Accordingly, even if the statute does not require the *injury* to occur on the shelf, it at least requires *the operations that caused the injury* to occur on the shelf, and thus forecloses any reading of the statute that would cover an injury like the decedent's, which occurred on dry land and was caused by operations on dry land.

Valladolid dismisses the statute's clear situs-of-operations-that-caused-the-injury requirement as "trivial," Valladolid Br. 37, as she contends it is satisfied by the mere fact that an employee works on operations on the shelf, even if the employee is not actually injured by something that happens on the shelf. *See* Valladolid Br. 53 ("employment in operations conducted on the OCS (regardless of the location of the injury) should be both necessary and sufficient to prove th[e] causal connection"). The

Director similarly contends that "an off-Shelf injury to an employee who spends a substantial amount of his time on the Shelf furthering the employer's 'operations' there also 'result[s]' from Shelf operations." Dir. Br. 33.

Although Respondents claim to disavow a "but-for" test, *see infra*, at 17, there are only two ways to reach decedent's injury—either under an unprecedentedly broad concept of but-for causation or under a status-based test that asks only where a worker spends most of his time, an approach with no mooring in the statutory text. Respondents' radical but-for reading of section 1333(b)'s causation requirement (albeit by another name) is wholly untenable. Operations on the shelf caused the decedent's injury only in the most far-fetched sense that, but for operations on the shelf, decedent might not have a job or might not have been in Ventura on the fateful day. By that logic, the decedent was injured as the result of Petitioner's formation as an enterprise and as a result of the settlement of California.

As a matter of common sense, however, the phrase "as the result of operations conducted on the [Shelf]" is best understood to require a *direct* causal relationship between an injury and operations that actually occur *on the shelf*. That language cannot plausibly be read to signal Congress's implicit intent to provide LHWCA coverage whenever some attenuated chain of injury-producing events could ultimately be traced back to the mere fact that operations on the shelf exist. Especially in light of Congress's clear intent to address the unique problems caused by the jurisdictional confusion

concerning the shelf, the statute is much more logically read to impose a stringent proximate causation requirement that is not satisfied when an injury neither occurs on nor is directly caused by something that happens on the shelf.

Respondents' reading of the statute not only ignores Congress's evident purpose, but it also proceeds as if section 1333(b) stood alone and the relevant question were whether it is possible to string together a chain of causation that ultimately traces an injury on dry land to operations on the shelf. That reading makes nonsense of the statute. The sensical way to read the statute is to understand that section 1333(b) is part of broader statute aimed specifically at the outer continental shelf, and that the relevant question is: was the decedent's injury caused by operations on the shelf (in which case one might think OCSLA would supply a remedy) or caused by operations on dry land (in which case one would assume OCSLA was wholly irrelevant). The decedent's injury in Ventura was self-evidently caused by operations on dry land. That should be the end of the case.

The primary case Respondents rely upon in support of their implausible reading of the statute's causation requirement confirms that their argument is unprecedented. *See* Valladolid Br. 24 and Dir. Br. 18 (citing *Brown v. Gardner*, 513 U.S. 115 (1994)). *Brown* addressed whether a statute covering "an injury … that occurs as the result of hospitalization" should be read to impose a requirement that a hospital be at fault for the injury. 513 U.S. at 116, 119 (internal quotation marks omitted). The Court rejected that argument, but did so because there is a

difference between fault and cause, not because the phrase "as the result of" was without consequence. Quite the contrary, the Court confirmed that that language should be read to impose a "proximate causation requirement" that "narrow[s] the class of compensable cases … by eliminating remote consequences, not by requiring a demonstration of fault." *Id.* at 119. Under Respondents' reading, "as the result of" would not narrow the class at all, but would simply require someone to have been hospitalized at some point in his or her life.

2. Respondents ultimately recognize that a concept of but-for causation that extends the outer continental shelf to the New Jersey Turnpike is wholly implausible. The Director recognizes with some understatement that "it is unlikely that Congress intended to provide for such open-ended LHWCA coverage." Dir. Br. 39; *see also* Valladolid Br. 53–54 (conceding that section 1333(b) should not be read to cover employee "[i]njuries remotely linked to OCS operations"). As a result, Respondents are forced to impose an artificial limitation on their reading of the statute, so as to prevent the statute from reaching, for example, "an injury to an on-shore human resources worker." Valladolid Br. 53. The Director admits that the statute provides no indication "what category of off-Shelf injuries are covered." Dir. Br. 32. But rather than recognize that the category clues are missing in the statute because *no* "off-Shelf injuries are covered," Respondents ultimately settle on a test that conveniently reaches just far enough to cover this case: they argue that section 1333(b) should be read to cover only those off-shelf injuries suffered by

workers who, like the decedent, "spend a substantial amount of time working on the Shelf." Dir. Br. 32. As to all others, Respondents would retain the statute's situs requirement: those workers "would be covered only for injuries that actually occur on the OCS itself." Dir. Br. 32.

Respondents draw a distinction not found in the statute. Section 1333(b) does not say a word about how much time an employee generally spends working on the shelf. Nor does anything in the text suggest Congress intended to create two different classes of workers, some whose injuries would be covered no matter where they occur, and some whose injuries would only be covered when directly caused by operations on the shelf. The statute instead imposes a single test applicable to all offshore workers: an employee's injuries are covered if they "occur as the result of operations conducted on the outer Continental Shelf" for the specific purposes set forth. 43 U.S.C. § 1333(b). Basic principles of statutory construction preclude Respondents' attempts to give two different interpretations to that single statutory directive. *See Clark v. Martinez*, 543 U.S. 371, 386 (2005) (rejecting "the dangerous principle that judges can give the same statutory text different meanings in different cases").

What Respondents really seek to do is to impose a status-based approach—a test that looks to how a worker spends the majority of his time to determine whether he is an "offshore worker"—with absolutely no basis in the statute. It is no accident that in advancing this atextual argument, the Director is forced to look far afield to cases interpreting different statutes that feature the kind of purely

"status-based" language that 1333(b) lacks. In particular, the Director asks the Court to import law developed to determine whether an individual is a "seaman" for purposes of the Jones Act. *See* Dir. Br. 33 (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368 (1995)). But the law the Director invokes was developed precisely because the Jones Act undisputedly provides the very status-based coverage test that the text of section 1333(b) does not—it provides a cause of action for "any seaman" injured "in the course of his employment." *Chandris*, 515 U.S. at 354, 368 (internal quotation marks omitted). Congress made a deliberate decision not to model section 1333(b) after the broad status-based Jones Act. It was not concerned with the plight of offshore workers, even when they were injured on dry land. Congress instead was concerned with the unique problems caused by the outer continental shelf and wanted to provide a remedy for workers injured in that jurisdictional no-man's-land.

3. Contrary to Respondents' suggestions, this Court's precedents provide no support for their strained reading of section 1333(b). Respondents attempt to explain this Court's statement in *Herb's Welding v. Gray* that section 1333(b) "draws a clear geographic boundary that will predictably result in workers moving in and out of coverage," 470 U.S. 414, 427 (1985), not as a prediction about workers in general, but as a statement applicable only to the particular worker at issue because he did not spend "a substantial amount of time working on the Shelf," Dir. Br. 32. *See* Dir. Br. 26; Valladolid Br. 34. That is wholly implausible.

Herb's Welding does not so much as hint that the Court even contemplated such a distinction. Moreover, even assuming the Court might (implicitly) have considered the possibility that section 1333(b) imposes a situs test only on those workers who "d[o] not have the sort of substantial connection to the OCS" that triggers "OCSLA coverage for off-Shelf injuries," the Court gave no indication that it would have considered the worker in *Herb's Welding* part of that class of second-tier offshore workers. Dir. Br. 26. Quite the contrary, the Court described the worker as one who spent "a *significant* portion of his work-time" on the shelf, but nonetheless would fall outside the statute when working off-shelf. 470 U.S. at 427 (emphasis added). Nor did the Court suggest that OCSLA's "explicit geographic limitation" would apply only to workers who spend an insufficient amount of time working on the shelf. *Id.* The Court instead suggested precisely the opposite when it noted that the statute "will *predictably* result in workers moving in and out of coverage." *Id.* (emphasis added). Accordingly, there is no merit to Respondents' contention that the Court was expressly recognizing a geographic limitation that it implicitly considered inapplicable to the majority of section 1333(b) cases.

Respondents' effort to convert *Offshore Logistics* into favorable precedent is equally unpersuasive. According to Respondents, when the Court recognized that section 1333(b) "superimposes a status requirement on the otherwise determinative OCSLA situs requirement," *Offshore Logistics*, 477 U.S. at 220 n.2, it was in fact only referring to the situs of "the relevant extractive operations."

Valladolid Br. 36. But *Offshore Logistics* was referring to OCSLA's general situs requirement, so it is implausible to think it was referring to language unique to section 1333(b). The unique language is what caused that subsection alone to superimpose a status requirement.

But even if the Court was referring to the situs of the operations that caused the injury, instead of the injury itself, its language clearly demonstrates that it understood OCSLA to address the special problems of the shelf. The claimant in *Offshore Logistics* urged reliance on two cases that had assumed (without deciding) that OCSLA applied to worker "accidents that resulted in deaths or injuries not on platforms, but on boats in the waters immediately adjacent to the platforms." *Id.* at 218. Unpersuaded, the Court noted that to the extent OCSLA might cover *any* injuries that do not occur on the shelf, the statute would at least require "proximity of the workers' accidents to the platforms" and injuries "intimately connected with the [employees'] work on the platforms." *Id.* at 218–19. Thus, the Court thoroughly discredited the notion that OCSLA might be read to cover injuries that neither occur on nor are directly caused by operations on the shelf—and did so in the context of employees who, much like the decedent here, undisputedly spent the majority of their time working on the shelf. At the very least, the statute therefore requires direct and proximate causation, a standard that is not satisfied here.

III. Respondents Provide No Persuasive Reason Why Section 1333(b) Should Be Read to Cover Land-Based Injuries.

For all the reasons set forth, the text, structure and purpose of the statute compel the conclusion that there are only two plausible interpretations of section 1333(b), both of which impose a situs-based test: LHWCA coverage depends upon either whether an injury occurred on the shelf to a qualifying employee (situs-of-injury-plus-status), or whether the operations that caused an injury occurred on the shelf (situs-of-operations-causing-injury). The practical difference between the two tests is likely to be quite small. While it may be theoretically possible for operations on the shelf to directly injure a worker not on the shelf, in most circumstances, the employee will be on the shelf and the injury and operations alike will be on the shelf. Under either interpretation, however, there is no possible basis for extending the statute to injuries caused by operations on dry land.

Valladolid claims (at 31–32) that any situs-based test would be unworkable, making much of some conflicting results that the Fifth Circuit has reached when applying *Mills*. *See also* Dir. Br. 31 n.10. But any confusion in the Fifth Circuit's precedents is a product of that court's extension of LHWCA coverage to reach injuries suffered on "the waters above the OCS." *Mills*, 877 F.2d at 362. As this Court explained in *Offshore Logistics*, "OCSLA must be 'construed in such a manner that the character of the waters above the outer Continental Shelf as high seas … shall not be affected.'" 477 U.S. at 217 (quoting 43 U.S.C. § 1332(2)).

Valladolid also point to purported "confusion and uncertainty" in the law when the LHWCA imposed a situs requirement that injuries must occur on navigable waters. Valladolid Br. 46. However, the confusion Valladolid references stemmed not from uncertainty as to how to apply the LHWCA's clear line between navigable waters and land, but rather from application of the "maritime but local" doctrine, which extended *state*-law compensation schemes *beyond* navigable waters. *See Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 119 (1962). As to the LHWCA's clear situs-of-injury test, there was never any confusion over or difficulty applying the rule that "federal coverage stopped at the water's edge." *Northeast Marine Terminal Co. v. Caputo*, 432 U.S. 249, 259 (1977). There is similarly nothing inherently difficult about applying section 1333(b) to require examination of whether an injury, or at least the operations that caused it, occurred on "the outer Continental Shelf."

Finally, there is nothing inherently problematic about the fact that giving effect to section 1333(b)'s clear situs requirement "would result in OCS workers moving between state and federal coverage every time they move on and off a covered situs." Valladolid Br. 47. That is precisely how this Court contemplated section 1333(b) would operate, *see Herb's Welding*, 470 U.S. at 427 (section 1333(b) "will predictably result in workers moving in and out of coverage"), and that is precisely how the LHWCA operated for years, without this Court seeing a need to read the situs-of-injury test out of that statute, *see Northeast Marine*, 432 U.S. at 259–60. While there may be policy reasons to expand section 1333(b) to

provide broader LHWCA coverage for workers who spend most of their time on the shelf, "[t]he invitation to [do so] must be addressed to Congress, not to this Court." *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 223–24 (1970).

CONCLUSION

The judgment of the Court of Appeals should be reversed. The final order of the Benefits Review Board denying Respondent's claim should be reinstated.

Respectfully submitted,

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