

1 IN THE SUPREME COURT OF THE UNITED STATES

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3 ELAINE L. CHAO, SECRETARY OF :

4 LABOR, :

5 Petitioner :

6 v. : No. 00-927

7 MALLARD BAY DRILLING, INC. :

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9 Courtroom 20  
10 333 Constitution Avenue, N. W.  
11 Washington, D. C.  
12 Wednesday, October 31, 2001

13 The above-entitled matter came on for oral  
14 argument before the Supreme Court of the United States at  
15 11:01 a.m.

16 APPEARANCES:

17 MATTHEW D. ROBERTS, ESQ., Assistant to the Solicitor

18 General, Department of Justice, Washington, D. C.; on  
19 behalf of the Petitioner.

20 PATRICK J. VETERS, ESQ., New Orleans, Louisiana; on behalf  
21 of the Respondent.

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1 P R O C E E D I N G S

2 (11:01 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 next in No. 00-927, Elaine Chao v. Mallard Bay Drilling,  
5 Inc.

6 Mr. Roberts.

7 ORAL ARGUMENT OF MATTHEW D. ROBERTS

8 ON BEHALF OF THE PETITIONER

9 MR. ROBERTS: Mr. Chief Justice, and may it  
10 please the Court:

11 This case arises out of an explosion that killed  
12 four employees on a drilling barge on the inland waters of  
13 Louisiana. The barge is not inspected for certification  
14 by the Coast Guard, which therefore has almost no  
15 regulations that address occupational safety and health on  
16 the barge. The question presented is whether the Coast  
17 Guard has, nonetheless, exercised authority over the  
18 working conditions on the barge so as to displace  
19 application of the Occupational Safety and Health Act.

20 QUESTION: Well, Mr. Roberts, the Coast Guard  
21 does have regulations, though, that require an emergency  
22 plan and fire control devices.

23 MR. ROBERTS: Not -- not that apply to this  
24 vessel, Your Honor. The -- the only occupational -- the  
25 only regulations addressed to occupational safety and

1 health issues on this barge that have been identified by  
2 respondent and its amici are regulations that address risk  
3 from the marine sanitation devices, or the toilets, on the  
4 vessel.

5           The only other regulation of which I'm aware  
6 that deals with occupational safety and health is a  
7 regulation that -- that addresses operating the vessel  
8 while intoxicated. Those regulations -- there are  
9 regulations that address emergency procedures on inspected  
10 vessels, but not on this type of uninspected vessel.

11           QUESTION: Fire safety regulations are -- are  
12 different from -- from --

13           MR. ROBERTS: No, no. There are no fire and  
14 safety regulations on -- on this vessel, Your Honor.  
15 There are some specific fire and safety regulations  
16 required by some statutes on particular types of vessels,  
17 particularly vessels propelled by machinery. Those are  
18 the ones covered by -- by 46 U. S. C. 4102.

19           QUESTION: Well, if -- if the Coast Guard has  
20 regulations that try to contain a hazardous event, after  
21 it occurs, as opposed to regulations trying to prevent it  
22 in the first place, do you say that the containment  
23 approach just doesn't qualify under this statute as a  
24 Coast Guard regulation?

25           MR. ROBERTS: No, Your Honor, but -- but with

1 respect to -- to this vessel, as I -- as I was saying,  
2 they don't have such regulations. The -- the containment  
3 approach would -- would qualify, although if -- if a  
4 regulation was addressed to preventing a fire for  
5 occurring, that would address a -- a different -- a  
6 different hazard than a regulation that was addressed to  
7 responding to that after the fire had occurred and -- and  
8 could be put out.

9           But -- but here, the Coast Guard has not  
10 exercised statutory authority over the working conditions  
11 involved in this case, and under section 4(b)(1) of the  
12 act, the --

13           QUESTION: Mr. Roberts, do you think you could  
14 explain to us -- just go back to the basics. What is the  
15 difference between an inspected vessel and an uninspected

16           And also, you introduced just now not this type  
17 of an inspection. So, there are subcategories within an  
18 inspection. If you could just tell us what fills those  
19 categories --

20           MR. ROBERTS: Yes. Yes, Your Honor.

21           First, to -- to start at the -- the beginning of  
22 your question, there are certain categories of vessels  
23 that are listed under the statute as inspected vessels and  
24 with respect -- under Coast Guard statutes as inspected  
25 vessels. On those vessels, the Coast Guard inspects them

1 at the beginning and then periodically for certification  
2 that they're in satisfactory condition, fit for the  
3 service for which they're intended and seaworthy. The  
4 Coast Guard also has comprehensive regulatory authority  
5 over those vessels, and it's exercised that authority  
6 comprehensively over those vessels. So, for those  
7 vessels, the Secretary and the Coast Guard agree the --  
8 the Occupational Safety and Health Act doesn't apply.

9 Then there's another set of vessels --

10 QUESTION: May I -- may I interrupt you right  
11 there? And I don't want to interrupt this whole answer.  
12 Does -- OSHA doesn't apply just as to those measures --  
13 just as to those working conditions on those vessels that  
14 have been covered?

15 Suppose OSHA has a regulation about kitchens.  
16 You have to have guards on the carving knives or  
17 something. And the Coast Guard, on an inspected vessel,  
18 does not have that provision. Under the scheme, as it  
19 works, can OSHA regulate the -- the kitchen knife problem,  
20 or -- or is it completely displaced? Because --

21 MR. ROBERTS: It's completely displaced on the  
22 inspected vessels because the Coast Guard has  
23 comprehensive authority over those and has exercised its  
24 comprehensive authority on the inspected vessels by  
25 promulgating comprehensive regulations, and those

1 regulations include specific ones addressing specific  
2 hazards, as well as general provisions such as the one  
3 that I was referring to that requires that the vessels be  
4 fit for the service that they're intended and safe and  
5 seaworthy. And therefore, with respect to those, all the  
6 working conditions are covered either by the specifics or  
7 by the general, and the OSH Act does not apply.

8           But what we're concerned with in this case is a  
9 -- is a vessel on which -- over which the Coast Guard has  
10 much more limited authority and with respect to which it  
11 -- it has authority to and has regulated only very  
12 specific conditions.

13           QUESTION: Getting back to the inspected  
14 vessels, because this might have a bearing on -- on how we  
15 write the opinion in this case, even though it's  
16 uninspected. Are there instances in which there are --  
17 there is concurrent jurisdiction between the Coast Guard  
18 and OSHA on inspected vessels?

19           MR. ROBERTS: Not with respect to regulation in  
20 terms of setting occupational safety and health standards  
21 and enforcing occupational safety and health standards.  
22 There is, with respect to reporting or investigation on  
23 inspected vessels -- I mean, not -- no. I guess the  
24 answer is no.

25           QUESTION: I hope I didn't take you too far off

1 the track. You were talking about inspected and  
2 uninspected vessels.

3 MR. ROBERTS: To get back to the uninspected  
4 vessels that -- that Justice Ginsburg had asked about and  
5 which is what we -- we have in this case, on those  
6 vessels, there's very limited authority. It flows from  
7 specific statutory grants that deal with specific items of  
8 safety. And therefore, the Coast Guard regulation of  
9 working conditions on those vessels is spotty, depending  
10 on the statutory grants of authority.

11 And as I said before, on -- this particular type  
12 of inspected vessel is a -- is an inland drilling barge,  
13 and on this barge there -- the statutory authority doesn't  
14 give the Coast Guard authority to require fire  
15 extinguishers or -- or those kind of things, and it gives  
16 the Coast Guard no authority over the hazards from oil and  
17 gas drilling, which are the hazards involved in this -- in  
18 this case.

19 QUESTION: But some -- some uninspected are more  
20 closely watched?

21 MR. ROBERTS: Some uninspected are more closely  
22 watched, and we -- we would submit that no uninspected  
23 vessel is comprehensively watched as to occupational  
24 safety and health.

25 But that -- the Court doesn't need to -- to get



1 into that to -- to resolve this case. All -- all we're  
2 asking here is that the Court reject the holding of the  
3 Fifth Circuit, which is that there's an industry-wide  
4 exemption for all seamen on all vessels from the  
5 Occupational Safety and Health Act, even in situations  
6 where the Coast Guard has not regulated the particular  
7 working conditions on that vessel and the particular  
8 working conditions that result in the occupational and  
9 safety and health citation in the -- in that case.

10 QUESTION: How could one know that this is a  
11 little-inspected vessel, as -- as distinguished from  
12 uninspected but more inspected?

13 MR. ROBERTS: Well, there are different types of  
14 -- of uninspected vessels, and the -- depending on the  
15 type, different sets of regulations apply to them. And  
16 the vessel operators are well aware of what regulations  
17 apply to them.

18 But -- but on all uninspected vessels, it  
19 doesn't really matter whether it's little or more, because  
20 the way the statutory scheme works is that the Coast Guard  
21 regulations that govern them apply to them. And the OSHA  
22 standards apply to the extent that the working conditions  
23 are not covered by Coast Guard regulations. And that  
24 comes from the -- the language of section 4(b)(1) of the  
25 OSH Act, which makes clear that displacement of the act is

1 limited to those working conditions with respect to which  
2 other agencies exercise authority to prescribe or enforce  
3 occupational safety and health standards. That --

4 QUESTION: Now, Mr. Roberts, it seemed to me  
5 here the administrative law judge seemed to say that the  
6 OSHA regulations were not preempted because the Coast  
7 Guard didn't require precisely the same thing that OSHA  
8 did. And I would have thought it was a much more general  
9 proposition, that if the Coast Guard adopted some general  
10 regulations in this area, that's enough, and that you  
11 wouldn't look to see how closely OSHA's regs matched in  
12 every detail the Coast Guard regs. What is the  
13 Government's view?

14 MR. ROBERTS: The Government's view is that you  
15 don't look to see if there's precisely the same regulation  
16 in precisely the same manner of the same -- the same  
17 degree of stringency. You look to see whether the --  
18 whether there is a regulation on the part of the Coast  
19 Guard that addresses the same working conditions, the same  
20 hazards that are involved. And if there are, then no  
21 matter whether that's more stringent, less stringent, or  
22 goes about it in a different way, it's displaced. But  
23 here there's no regulation that addresses this hazard --

24 QUESTION: Apparently both the Coast Guard and  
25 OSHA agree here.

1           MR. ROBERTS: Yes, they agree. And the  
2 agencies, not only the Coast Guard and OSHA, but other  
3 agencies where this comes up, are -- have been in  
4 agreement. These kinds of disputes about coverage haven't  
5 arisen because the agencies have been disputing about what  
6 -- when it applies and when it doesn't and what working  
7 conditions are covered by their different regulations.  
8 They've arisen when employers have asserted that the OSH  
9 Act doesn't apply so that nobody -- there would be no  
10 regulations covering --

11           QUESTION: How much of a dispute would survive  
12 the Solicitor General's review of the two agencies'  
13 decision?

14           MR. ROBERTS: Well, we didn't -- we didn't need  
15 to resolve any dispute because there's been a longstanding  
16 understanding between the two agencies, based on the  
17 language of the OSH Act, as to how the -- how the two --  
18 the authority of each agency interacts with the other.

19           QUESTION: If I can go back to inspected vessels  
20 just for 1 minute. I thought the answer you would give me  
21 to the question about, you know, the kitchen knives would  
22 be just what you told Justice O'Connor now with reference  
23 to the uninspected vessels, that we look to see if the  
24 working condition is regulated. Or maybe I just  
25 misunderstood your answer. Was your answer to the effect

1 that on inspected vessels, generally, all working  
2 conditions are regulated, or at least they've been looked  
3 at and there's been a decision not to regulate and that's  
4 sufficient to displace OSHA?

5 MR. ROBERTS: Yes. Yes, Your Honor. It's the  
6 same --

7 QUESTION: That's the best understanding --

8 MR. ROBERTS: My answer was intended to say the  
9 same thing, that at bottom, the same test applies whether  
10 the particular working conditions have been addressed, but  
11 with respect to inspected vessels, the working conditions  
12 have been addressed comprehensively by the Coast Guard  
13 through specific regulations and through general  
14 regulations. And so, there aren't -- there aren't any  
15 gaps where workers would be unprotected that the OSH Act  
16 would need to -- to step in.

17 But on uninspected vessels, the -- the situation  
18 is quite -- quite the reverse and almost the polar  
19 opposite where there aren't just little gaps, but there  
20 are potentially whole vessels that are almost completely  
21 unregulated with respect to occupational safety and  
22 health.

23 So, the industry-wide exemption that the Fifth  
24 Circuit has crafted here would, as a result, leave many  
25 workers unprotected from many hazardous conditions and --

1 and really frustrate the express purpose of the act which  
2 is to assure, insofar as possible that every working man  
3 and woman in the Nation has safe and healthful working  
4 conditions.

5 And moreover, to -- even if there was any  
6 ambiguity about how the statutory scheme should work, from  
7 looking at its text and from looking at the -- and from  
8 the fundamental purpose of the act, the Secretary has  
9 interpreted the act this way for 30 years. It's been the  
10 Secretary's longstanding and consisted view. It's  
11 reflected in citations over those 30 years and regulations  
12 that the Secretary promulgated in 1972 in a statutorily  
13 mandated report to Congress on coordination between the  
14 OSH Act and other laws that the Secretary submitted in  
15 1980. And the Secretary's view would be -- would be  
16 entitled to deference.

17 QUESTION: That -- that view is also expressed  
18 in the -- in the joint agreement.

19 What -- could you tell me -- I should know this,  
20 but I just don't -- how was the joint agreement  
21 promulgated, if it was? Or is it simply just a private  
22 memorandum of understanding exchanged between the two  
23 agencies?

24 MR. ROBERTS: It was published in the -- in the  
25 Federal Register at -- at the time that it was -- it was

1 entered into, Your Honor.

2 To -- to -- without -- without belaboring the  
3 point, turning to the facts that are here briefly, the  
4 respondent does not dispute that the Coast Guard hasn't  
5 addressed the particular hazards involved here. And as I  
6 said before, the only regulations that respondent and  
7 amici have -- have pointed to that address the working  
8 conditions here are -- are very limited, those addressing  
9 the marine sanitation devices, and there is in fact almost  
10 no regulation here, so that under any understanding of the  
11 term working conditions, any reasonable understanding of  
12 what working conditions is under the statute, the Coast  
13 Guard hasn't exercised authority over the working  
14 conditions here.

15 QUESTION: I take it the reason you say we don't  
16 have to get into the distinction between the -- the hazard  
17 view and the area view is that the area view has been  
18 interpreted, I think as you put it, narrowly to take into  
19 consideration the particular area in which the particular  
20 hazard occurs. Is that about --

21 MR. ROBERTS: That's -- that's one -- one  
22 reason. If -- if the area view was interpreted broadly,  
23 it would, in effect, completely eviscerate --

24 QUESTION: Yes.

25 MR. ROBERTS: -- the act because it would mean

1 that the regulations of the toilets preempt the -- any  
2 regulation of the vessel and expose all those -- all the  
3 hazards that might exist on the vessel would not be  
4 subject to -- to regulation. So, it has been interpreted  
5 narrowly.

6 QUESTION: I -- I guess my only question is,  
7 given that narrow interpretation, I wonder if there is all  
8 that much difference between the hazard view and the --  
9 and the area view as it has been -- been stated.

10 MR. ROBERTS: Well, I -- I think that -- that  
11 there is the potential for -- for different results to  
12 arise between the two views, even with the -- the narrow  
13 interpretation of -- of the area view because the area is  
14 identified, say, as the -- the atmosphere on the boat.  
15 The atmosphere might be regulated by the Coast Guard with  
16 respect to particular injuries that -- that might be  
17 caused by problems in the atmosphere like explosion, which  
18 it isn't here, but assume that it were. Yet, it wouldn't  
19 be regulated for -- for other problems that might result  
20 from that like respiratory problems, particles that would  
21 be in the atmosphere that would get into the -- the  
22 workers' lungs.

23 QUESTION: Are you saying that the regulations  
24 just have to be an exact -- if the regulation is not an  
25 exact duplicate of what OSHA would do, it isn't covered?

1                   MR. ROBERTS: No, Your Honor. Not that it --  
2 that it has to be an exact duplicate, but that it has to  
3 address the same injury, the same kind of injury from the  
4 same source in essence.

5                   QUESTION: So, if you regulate smoke -- if the  
6 Coast Guard regulates smoke because of some reasons but  
7 doesn't address the particulates in the smoke, OSHA could  
8 come in and have a regulation for smoke coming out of the  
9 vessel?

10                  MR. ROBERTS: Yes, if -- if the Coast Guard's  
11 regulation didn't address the injury -- the particular  
12 injury that would result from the smoke, that the -- that  
13 the OSHA regulation was trying to --

14                  QUESTION: Well, what if the --

15                  MR. ROBERTS: -- to get at.

16                  QUESTION: -- Coast Guard regulations said that  
17 we're going to regulate this aspect of smoke. Insofar as  
18 particulates are concerned, we think seamen are -- can  
19 take particulates.

20                  MR. ROBERTS: If the Coast Guard had made that  
21 determination and expressly concluded that a regulation of  
22 that was not warranted, then that would be an exercise of  
23 its authority over -- over that working condition and the  
24 OSH Act would be displaced. But there's no -- no  
25 contention that -- that that is what happened here, and



1 there couldn't be because the Coast Guard doesn't even  
2 have authority to regulate the hazards that are involved  
3 -- involved here, Your Honor.

4 If there are no further questions, I'll reserve  
5 the remainder of my time for rebuttal.

6 QUESTION: Very well, Mr. Roberts.

7 Mr. Veters, we'll hear from you.

8 ORAL ARGUMENT OF PATRICK J. VETERS

9 ON BEHALF OF THE RESPONDENT

10 MR. VETERS: Thank you, Mr. Chief Justice, and  
11 may it please the Court:

12 The Coast Guard has absolute authority to  
13 regulate uninspected vessels, as well inspected vessels,  
14 and there's not one iota of difference between the two.

15 Justice O'Connor, if I could go to your question  
16 earlier, you're absolutely correct. The ALJ in this case  
17 said that we did not -- the Coast Guard did not have a  
18 statute that mirrored the language of -- of the OSH Act.  
19 As a result thereof, she concluded that the act was  
20 displaced.

21 QUESTION: Yes. It sounds like the ALJ's  
22 description was probably -- didn't get it quite right, and  
23 I take it that your opposing counsel here concedes as  
24 much.

25 MR. VETERS: I would hope so, Your Honor.

1           And, Your Honor, to get right to the point, with  
2 all due respect to counsel, the Coast Guard has absolutely  
3 regulated emergency response. 46 C.F.R. 26. Operators of  
4 inspected vessels must prepare and post an emergency  
5 checkoff list.

6           QUESTION: Now, where are you -- you're reading  
7 from a Coast Guard regulation?

8           MR. VETERS: Yes, sir, Your Honor.

9           QUESTION: Where -- where will we find it in the  
10 papers?

11          MR. VETERS: We'll find that on page 13 of the  
12 amicus brief on behalf of the AWO, Your Honor.

13          They had -- they require an -- quote, an  
14 emergency checkoff list.

15          QUESTION: Now, is this for uninspected vessels?

16          MR. VETERS: For uninspected vessels, Your  
17 Honor, operators of uninspected vessels covering  
18 emergencies, including rough weather, crossing hazardous  
19 bars, man overboard, as well as fire at sea. We have a  
20 parallel regulation. It doesn't read verbatim as the OSH  
21 Act, but clearly it has been addressed.

22          But to go back to Justice O'Connor's question,  
23 that is not even required by the Coast Guard for  
24 preemption purposes. The Coast Guard has a statute -- the  
25 OSH Act, 4(b)(1) reads that it will not apply to working

1 conditions that are -- so long as the other Federal agency  
2 exercises statutory authority. The Coast Guard has  
3 exercised statutory authority. It's not a question of  
4 degrees in the statute. It's not light exercise, moderate  
5 exercise, or heavy exercise. It's once there has been  
6 exercise by a Federal agency such as the Coast Guard, the  
7 OSH Act is displaced.

8 QUESTION: Well, there's a difference between  
9 having statutory authority and discretion to exercise it.  
10 And the Coast Guard may have statutory authority which it  
11 chooses not to exercise. But on -- to the extent that I  
12 understand, your argument is if the Coast Guard has  
13 authority and exercises it to any extent, then that's  
14 preempted. Is that -- do I understand that?

15 MR. VETERS: That's -- that's fairly correct,  
16 Your Honor.

17 And -- and the only question -- the Government  
18 is mischaracterizing the extent of regulation in this  
19 case. You cannot tell -- in this case, the Coast Guard --  
20 there is no gap in coverage for -- for worker safety. The  
21 Coast Guard stepped in and investigated a serious marine  
22 accident pursuant to 46 U.S.C. 63. We had multiple  
23 deaths. We had multiple injuries. We had property damage  
24 in excess of \$100,000. Three Coast Guard investigators  
25 came out over a 6-month period. They got control of this

1 well, of this blowout situation, and they exercised their  
2 authority.

3 QUESTION: But let's take a -- perhaps a  
4 practical example in response to Justice Ginsburg's  
5 question. Supposing all the Coast Guard had regulated  
6 here was marine toilets: don't dump your toilets into the  
7 navigable water. Would you say that OSHA could not do  
8 anything then?

9 MR. VETERS: I would say that's an extreme  
10 example, Your Honor. But, yes --

11 QUESTION: Those are the -- the kinds of  
12 examples that perhaps focus your attention.

13 MR. VETERS: Your Honor, yes. I would say that  
14 there has been an exercise of authority, and if -- if OSHA  
15 has a complaint, it is not properly directed to the Court.  
16 It's properly directed to Congress to have the Coast Guard  
17 promulgate regulations that address the needs of the  
18 seamen. That's the proper complaint. It's not for this  
19 Court to step in and give OSHA -- carve out exception  
20 after exception where there are no express regulations.

21 If I may refer to Justice Kennedy's question,  
22 he's -- you're absolutely correct. OSHA gets -- OSHA gets  
23 their jurisdiction in this case from a memorandum of  
24 understanding, a peace treaty, an informal memorandum that  
25 is not a delegation of law. That memorandum says, Your

1 Honor -- it says -- the memorandum of understanding says  
2 nothing in this MOU pertains to uninspected vessels.  
3 That's what it says. That does not disclaim Coast Guard  
4 regulation of inspected vessels, nor does it cede to the  
5 Government jurisdiction over uninspected vessels.

6 Your example about the kitchen knife is  
7 absolutely correct. The Government has come in and said  
8 if the Coast Guard does not have an express provision --  
9 in this case, we did not have an express provision  
10 regarding the working conditions of the presence of  
11 natural gas in the atmosphere of an inland drilling barge  
12 -- there's no such creature. If -- if the Coast Guard  
13 does not have that or if the Coast Guard does not  
14 articulate a policy that they will not regulate the  
15 presence of natural gas in the atmosphere of an inland  
16 drilling barge, then OSHA can step in and regulate that.  
17 OSHA can step --

18 QUESTION: Well, but it seems to me to that that  
19 argument -- that position of the Government is just  
20 consistent with the statute because the -- the statute  
21 applies to working conditions.

22 MR. VETERS: Correct.

23 QUESTION: And I -- I would be surprised if the  
24 Coast Guard had regulations on -- on drilling barges that  
25 related to -- to blowout preventers, mud cavity

1 depressors, chemical mixing material for mud, drilling  
2 bits. That's -- that's OSHA stuff not Coast Guard stuff.

3 MR. VETERS: Well, Your Honor, they -- what the  
4 Coast Guard has is broad, general authority according to  
5 14 U.S.C. 2, and they can board an uninspected vessel.  
6 They can inspect -- they can investigate any uninspected  
7 vessel on the navigable waters of the United States. They  
8 can seize it partially or seize it fully. They can take  
9 an uninspected barge out of service if it poses a danger  
10 or threat to property or persons. It can even sink an  
11 uninspected barge if it's a threat to property or -- or  
12 life.

13 With that being said, the Coast Guard does not  
14 have to -- to have every minute regulation that tailors  
15 that of the OSH Act to -- to assert their authority in  
16 this case.

17 QUESTION: Well, but they said -- the Government  
18 said, for example, in respect to the -- the regulations  
19 that you cited having to do with safety on page 13 --

20 MR. VETERS: Yes, sir.

21 QUESTION: -- where they said that part 27,  
22 which is what you were quoting from, applies only to  
23 towing vessels, that it didn't apply to barges. So,  
24 that's what they said in their reply brief. And you're  
25 dealing with a barge. So, when we look through this, it

1 seemed to me that their claim -- and I'd ask you if that  
2 isn't right -- that -- that the only -- the only Coast  
3 Guard things that seem to apply at all to the barges, an  
4 uninspected barge, had to do with fire extinguishers, life  
5 preservers, ventilation for tanks and engines, and also a  
6 general requirement that when there's an accident, they  
7 look into it to see if a law has been violated.

8 MR. VETERS: I would disagree.

9 QUESTION: Is that right? Which are the ones,  
10 in addition to those that do apply?

11 MR. VETERS: Those do apply under the subchapter  
12 C uninspected vessels. But we submit, Your Honor, 46  
13 C.F.R. 24, 25, and 26 apply to all uninspected vessels.

14 And not only that, Your Honor, the important  
15 thing is there are many regulations that apply to both  
16 uninspected vessels --

17 QUESTION: Well, I'm just saying which ones  
18 apply --

19 MR. VETERS: Which ones.

20 QUESTION: -- other than the ones I listed.

21 MR. VETERS: Your Honor --

22 QUESTION: I mean, you know, they go through  
23 this in a big appendix, and -- and are they wrong in their  
24 appendix?

25 MR. VETERS: Yes, I think they're reading --

1                   QUESTION: Which -- which part of the appendix  
2 is wrong?

3                   MR. VETERS: I think they're reading the -- the  
4 statutes too narrowly, Your Honor. I would submit 33  
5 C.F.R., part 160. It's -- that governs ports and  
6 waterways safety. It applies to all vessels. That --  
7 under that statute, inspected as well as uninspected, the  
8 Coast Guard can deny entry to a port. It can seize a  
9 vessel that it feels is operating unsafely. It can tell  
10 the operator of that vessel how to operate that vessel.  
11 It can take that vessel out of service. It doesn't -- it  
12 doesn't come under the subchapter of uninspected vessels,  
13 yet the authority is very broad. It's just like the --  
14 the drug testing of people that have accidents, Your  
15 Honor. Any --

16                   QUESTION: Okay, 160. Is there any other one  
17 that you think that they're wrong about?

18                   MR. VETERS: Yes. I think the COLLREGS, Your  
19 Honor. The -- the --

20                   QUESTION: Well, you better tell me the -- I  
21 mean, you know, I'm just checking them and I'll look up  
22 later.

23                   MR. VETERS: Okay. Your Honor, I don't have the  
24 -- the COLLREGS, what we call the rules of the road, but  
25 it's the navigational rules that apply to vessels as well



1 as uninspected vessels. Clearly, there are rules that  
2 apply to both species. These -- these regulations are  
3 designed to prevent collisions and to prevent accidents  
4 and injuries to seamen. They -- that's another example of  
5 rules articulated that are -- that govern the working  
6 conditions --

7 QUESTION: What I'm getting at is that they --  
8 let's say a few minimal applications -- applied to the  
9 Belden, all right, which is, I take it, your -- your  
10 barge, to Mr. Belden.

11 MR. VETERS: Yes, Your Honor.

12 QUESTION: And they have a big appendix designed  
13 to show that. And if their appendix is right, they're  
14 right. So, I want to check the ones that you disagree  
15 with about that appendix, so I can go back and look them  
16 up. What I've looked up so far, I've checked section 160.  
17 I'll go look that up.

18 Is there any other thing I should check?

19 MR. VETERS: Your Honor, I don't have their  
20 appendix in front of me, but yes, I would go -- we have --  
21 we have a list of regulations that we've -- we've applied  
22 to --

23 QUESTION: I know and they went through those,  
24 and they went and said that every one of those that you  
25 say, by and large, don't apply with certain exceptions.

1 So, I'm just going to make my work a little easier --

2 MR. VETERS: Oh, I understand, Your Honor.

3 QUESTION: -- to find out what I do have to look  
4 up and what I don't.

5 MR. VETERS: Your Honor, we would -- we would  
6 submit that, yes, the ones we talk about 33 C.F.R., part  
7 160 clearly applies. We believe 46 C.F.R. 24, part 24,  
8 part 25, part 26 apply. We believe the rules of the road,  
9 the COLLREG, related to navigation apply. We believe the  
10 -- the regulations concerning drug and alcohol testing, 46  
11 C.F.R., part -- part 16 -- they apply. We believe 33  
12 C.F.R., part 155; 33 C.F.R., part 81, navigation lights.  
13 When this vessel is towed -- it's a non-self-propelled  
14 barge -- when it's towed out to location, Your Honor, it  
15 has to have certain navigation lights. These are all  
16 application of specific regulations.

17 QUESTION: But I don't know what that has to do  
18 with the complexity of a -- of a well drilling operation.  
19 It's just night and day. There are separate working  
20 conditions that prevail to oil field operations that --

21 MR. VETERS: Your Honor, I think it does go back  
22 that -- that this is actual exercise of authority by the  
23 Coast Guard.

24 QUESTION: But -- but this applies to working  
25 conditions that -- that I've just mentioned. The statute

1 says, with respect to working conditions.

2 MR. VETERS: Your Honor, we think the working  
3 conditions -- I believe Justice Souter mentioned it -- is  
4 clearly the working conditions on the barge itself. I  
5 don't think you have to regulate -- the thousands of  
6 potential working conditions that could be regulated  
7 cannot be addressed in minute detail. This Court  
8 recognized 60 years ago in Southern Steamship --

9 QUESTION: Well, that -- that's OSHA's problem

10 MR. VETERS: Your Honor, I guess we haven't  
11 discussed is the relationship of master to seaman is  
12 entirely different from that of employer to employee.

13 QUESTION: But before you get into that, I -- I  
14 just want to touch base on one thing. Your -- your  
15 argument -- your response to Justice Kennedy, as I  
16 understand it, depends on the point that you made in  
17 response to the Chief Justice's question. If they are  
18 regulating marine toilets, then they are regulating for  
19 purposes of -- of excluding OSHA jurisdiction. If they're  
20 regulating in -- in a later example that you used, running  
21 lights when the barge is being towed, then they're  
22 regulating to the exclusion of OSHA. Period. I mean,  
23 that's -- that's the essence of your argument, and as I  
24 understand it, in response to Justice Kennedy, just as --  
25 as in response to the Chief. Am I right?

1 MR. VETERs: Yes, Your Honor.

2 QUESTION: Yes.

3 MR. VETERs: They have -- they possess statutory  
4 authority to regulate and they have exercised that  
5 authority. And they've emphasized it in a general way,  
6 maybe not in the same exact way OSHA does, maybe not as  
7 aggressively, but the preemption cases from this Court say  
8 that once there's been an exercise of statutory authority,  
9 we don't look at the quality of the regulations, we don't  
10 look at the consistency or the extent.

11 QUESTION: No, counsel, but isn't it true that  
12 what it really boils down to is whether rules of the road  
13 or navigation lights are regulations of working  
14 conditions?

15 MR. VETERs: I believe so, Your Honor. If you  
16 work on a semi-submersible drilling rig and you're being  
17 towed at night and having the presence of navigation  
18 lights is to protect you from injury from a colliding  
19 vessel, I believe that does -- that goes to health and  
20 safety of those seamen on that vessel. I think it clearly  
21 does. I don't think you can take very specific, you know,  
22 regulations -- the working environment out -- out at sea  
23 is very much different than it is at the, you know,  
24 manufacturing facility in New Jersey. It's two different  
25 kind of -- two different types of animals.

1           And that's why this Court has always considered  
2 seamen to be wards of the Court. That's why they enacted  
3 the Jones Act for their protection, the -- the warranty of  
4 unseaworthiness. Seamen have been treated differently for  
5 as long as --

6           QUESTION: But your client isn't a seaman. It's  
7 an employer.

8           MR. VETERS: It's an employer of seamen, Your  
9 Honor.

10           And one -- one thing we haven't addressed also,  
11 Your Honor, I think the Fifth Circuit, which I would  
12 submit is the preeminent admiralty circuit court at least  
13 in this -- in this country, has -- has hit the nail on the  
14 head. Adopting the definition of working conditions  
15 espoused by the Government would create an absolute  
16 disastrous and unworkable concept. I do not think  
17 Congress in its wisdom could have ever intended that a  
18 barge within 3 miles is subject to -- to OSHA  
19 jurisdiction. As it leaves the 3-mile area, now it's not  
20 subject to OSHA jurisdiction, and in -- within 3 miles and  
21 outside 3 miles, it is still subject to the jurisdiction  
22 of the United States Coast Guard.

23           QUESTION: Mr. Veterans, that might have been a  
24 more persuasive argument if we didn't have 30 years of  
25 experience with this understanding between the -- the two

1 agencies. So, what you describe as unworkable has  
2 apparently worked for some 30 years and it's open and  
3 notorious. Congress hasn't stepped in to say, agencies,  
4 you've got it wrong.

5 MR. VETERS: No, Your Honor. I believe that the  
6 MDU is important. In this case, the -- the OSHA inspector  
7 -- it's in the trial transcript -- who testified, where  
8 did you get your jurisdiction in this case? He said, I  
9 looked at the memorandum of understanding and I came to  
10 the conclusion I had jurisdiction.

11 The Fifth Circuit is correct. 14 U.S.C. 2, the  
12 enabling statute of the Coast Guard, says it covers all  
13 matters not delegated by law specifically to some of the  
14 Federal agencies. Two Federal agencies cannot  
15 contravene --

16 QUESTION: You're now addressing a different  
17 question, whether there's any statutory authority for this  
18 arrangement. You're not addressing the question I asked  
19 you.

20 MR. VETERS: I'm sorry, Your Honor.

21 QUESTION: Where is this massive confusion if  
22 for 30 years this has been in place and at least the  
23 agencies are telling us that -- that it's working okay?

24 MR. VETERS: Your Honor, there's no confusion in  
25 the Fifth Circuit because the Fifth Circuit in the Clary

1 cases and the Donovan cases says with respect to the  
2 working conditions of seamen, the OSH Act doesn't apply.  
3 Period. The confusion is in the Ninth Circuit. The  
4 confusion is in the Eleventh Circuit when you have OSHA  
5 standards being applied to seamen. And, Your Honor --

6 QUESTION: I thought you said -- I thought you  
7 said that it confused it. You could not have these two  
8 agencies -- that there would be pandemonium out there by  
9 the people who are regulated.

10 MR. VETERS: That's correct.

11 QUESTION: And the Government is telling us  
12 that's not so. It's been that way for 30 years, and even  
13 the Clary case is what? 1980?

14 MR. VETERS: Yes, 1980.

15 QUESTION: The Government said, well, as they  
16 read it, that just goes to -- it wasn't clear that it  
17 wasn't an inspected vessel.

18 MR. VETERS: No. The Fifth Circuit had handled  
19 that, Your Honor, and said it was a special purpose  
20 drilling barge similar to the Mr. Belden. And -- and the  
21 Fifth Circuit was right. It didn't matter if it was  
22 inspected or it wasn't inspected.

23 But, Your Honor, I would submit the Fifth  
24 Circuit is correct. If you let two agencies regulate the  
25 working conditions of seamen and have OSHA come in with a

1 nook and cranny theory and fill in gaps every place  
2 there's not a Coast Guard regulation, outside of the Fifth  
3 Circuit of the United States, you will have absolute  
4 confusion. You will have redundancy.

5 QUESTION: -- you've had it for 30 years outside  
6 the Fifth Circuit, and there hasn't apparently been this  
7 massive confusion. Is the Government dissembling when it  
8 tells us that there hasn't been such confusion?

9 MR. VETERS: Your Honor, I think that we have  
10 three amicus briefs that were filed. We have the American  
11 Waterways Operators and two other entities I think  
12 strongly urging this Court to adopt the position we're  
13 espousing for the very reason that they anticipate that,  
14 yes, that there will be confusion if there's two sets of  
15 regulations. Marine operators have to know who to look  
16 to --

17 QUESTION: Well, why should it be anticipate  
18 since this has been going on so long?

19 MR. VETERS: Your Honor, I would submit that  
20 there is -- there has been confusion on this issue. I --  
21 I would submit to you that where the OSH Act has -- has  
22 supplanted or overreached into the area of the Coast  
23 Guard, there has been confusion. But there has not been  
24 confusion in the Fifth Circuit, where we have the  
25 Mississippi River and the Gulf of Mexico, because marine



1 operators know what the law is and they've been able to  
2 apply that.

3 QUESTION: What about a -- a kind of contrary  
4 parade of horribles to yours if -- if we were to accept  
5 the Fifth Circuit view, and that is assuming that the  
6 Coast Guard regulates running lights and marine sanitation  
7 devices, as they were called, and things like that and  
8 does nothing more, and it does nothing more than it  
9 purports to do right now? There's an enormous gap in --  
10 in safety coverage for a whole class of workers. It seems  
11 to me very odd that Congress, in writing the -- the  
12 statute that we're dealing with, would have intended such  
13 a kind of a huge gap in safety coverage. What's your  
14 response to that?

15 MR. VETERS: Your Honor, I do not believe there  
16 is a huge gap. They -- as I had mentioned earlier --

17 QUESTION: Well, if they -- on your theory, if  
18 they -- if the Coast Guard regulates running lights, OSHA  
19 can do absolutely nothing about blowouts like this, and  
20 that seems to me a pretty big gap.

21 MR. VETERS: Your Honor, the -- the Coast Guard  
22 has the absolute authority, statutory authority, to board,  
23 inspect, investigate any vessel they choose randomly at  
24 will, whatever they want to do, and to seize that vessel,  
25 to control it --

1           QUESTION:  If that were -- if that were -- I  
2 mean, if that were the answer to my problem, I would have  
3 expected Congress to tell the Coast Guard not only that it  
4 may regulate, but that it must.  I would have expected  
5 some statute that would in -- in effect, have -- have  
6 required or have extended as a matter of law Coast Guard  
7 regulation regardless of the Coast Guard's discretion.  
8 But we have nothing like that.

9           What we have, on your theory, is regulation of  
10 running lights by the Coast Guard means safety in blowout  
11 situations is not covered by anything.  And -- and that's  
12 what I find it difficult to believe that Congress could  
13 have intended.

14           MR. VETERS:  Your Honor, what -- I go back to  
15 what I said earlier.  Under 14 U.S.C. 2, the Coast Guard  
16 has been charged with the responsibility of safety and  
17 life at sea.  If they are not doing their job, if they  
18 need to have more regulations, then yes, that is a  
19 question properly addressed to the Congress, not to this  
20 Court.  I respectfully submit that.  Then they have to go  
21 to Congress and say, we need more regulations in this  
22 area.  You need to do that.  Under the marine --

23           QUESTION:  Congress apparently has -- has not  
24 been -- been particularly concerned about the -- the  
25 Secretary's interpretation of this statute and the -- to

1 the effect of the -- OSHA jurisdiction. And I gather that  
2 has been a -- a subject of -- of published standards for  
3 what? 15 years, 25 years now?

4 MR. VETERS: Yes, Your Honor.

5 QUESTION: So, if -- if you say, well, if  
6 Congress doesn't like it, Congress can do something about  
7 it, Congress could do something about the -- the  
8 administrative position and it hasn't done anything about  
9 it, which suggests that that's a -- a good reason behind  
10 the rule of deference.

11 MR. VETERS: Your Honor, the rule of deference  
12 only applies if the -- it is consistent with the intent of  
13 Congress and the statute is unambiguous in its intention.  
14 I believe 14 --

15 QUESTION: And you say this is an unambiguous  
16 statute despite the -- the presence of the word exercise  
17 there?

18 MR. VETERS: I do, Your Honor. I think the  
19 enabling act says, covering all matters not specifically  
20 delegated by law to some other Federal agencies. It was  
21 enacted in 1915. There's been no specific delegation by  
22 law to OSHA, and OSHA has assumed jurisdiction, so to  
23 speak, of uninspected barges through a private treaty,  
24 informal agreement between them and the Coast Guard. That  
25 is improper.

1           The Fifth Circuit has said Federal modalities  
2 may not shift and exchange responsibilities between  
3 themselves. If they want to go to Congress and they want  
4 to carve out an exemption for uninspected vessels in State  
5 territorial waters, they can do that. The Congress can  
6 enact that, and I have no complaints. But that cannot be  
7 something done between agencies among themselves, Your  
8 Honor. And this --

9           QUESTION: The antitrust division and the FTC do  
10 it all the time.

11           MR. VETERS: Your Honor, I can't speak --

12           QUESTION: Is that illegal too?

13           MR. VETERS: I'm not an antitrust lawyer, Your  
14 Honor, about which I could -- I could speak to that.

15           QUESTION: I mean, I just wondered how general  
16 statement was. You mean in this instance they can't do  
17 it.

18           MR. VETERS: No.

19           Your Honor, if I could go back to what Justice  
20 Kennedy had said earlier, though, about the kitchen  
21 knives, I think he's absolutely correct. The theory  
22 espoused by the Government, if there is not an express  
23 regulation for inspected vessels, inspected vessels being  
24 900-foot passenger vessels, Your Honor, if there is -- if  
25 there is not a Coast Guard regulation that -- that

1 specifically addresses kitchen knives, then under the  
2 theory espoused by the Government, OSHA can absolutely  
3 step in and regulate --

4 QUESTION: Well, that's why I wondered maybe it  
5 has to do how comprehensive the regulation was, and that's  
6 what I was interested in.

7 MR. VETERS: Your Honor, they've just chosen --  
8 OSHA has chosen not to regulate inspected vessels pursuant  
9 to a memorandum of understanding, but it does not -- it  
10 doesn't change the statutory scheme one bit.

11 QUESTION: Well, the word is exercise. The word  
12 is exercise in the statute.

13 MR. VETERS: Yes, Your Honor.

14 QUESTION: So, if they decide not to exercise  
15 their authority, then I guess they're not exercising it.

16 MR. VETERS: You're right, Your Honor.

17 QUESTION: If they're not exercising it, they're  
18 not. Then the Coast Guard can come in. I mean, that's  
19 what the statute says.

20 MR. VETERS: But, Your Honor, the statute  
21 doesn't say comprehensive, pervasive exercise; it says  
22 exercise. And I think we give its plain meaning. And --  
23 and if there's been an exercise of authority by one  
24 Federal agency, I think it will create confusion, I think  
25 it will create redundancy, and it will create a

1 proliferation of regulations that are not needed.

2 QUESTION: So, if the Coast Guard didn't  
3 regulate the toilets, then OSHA could regulate it.

4 MR. VETERS: According to OSHA, Your Honor,  
5 that's correct. But we say --

6 QUESTION: What about you? I mean, you -- you  
7 have said if they exercise any authority, that's it. It's  
8 totally preemptive of what they regulate and what they  
9 don't regulate. Suppose they don't exercise any authority  
10 at all. Would this be just a no regulation plan?

11 MR. VETERS: If there were no express --

12 QUESTION: If the Coast Guard didn't regulate  
13 anything on this particular class of uninspected vessels,  
14 then would there be authority in the Occupational Safety  
15 and Health --

16 MR. VETERS: If there was just the mere  
17 possession of authority without the exercise, I would  
18 argue, Your Honor, that they still -- the Coast Guard  
19 still has been charged with their responsibility and they  
20 still would have that responsibility. They just were not  
21 doing their job. But in this case, they have --

22 QUESTION: But you don't -- you don't put  
23 anything -- I misunderstood your argument before. I  
24 thought you said if they exercise any authority, then  
25 everything is preempted.

1           MR. VETERS: Yes, Your Honor --

2           QUESTION: So, if they didn't choose to exercise  
3 any authority, that OSHA could -- could regulate. But now  
4 you're saying there is no authority at all with respect to  
5 these uninspected vessels in any agency other than the  
6 Coast Guard. Is that what you're saying?

7           MR. VETERS: That's correct, Your Honor. I'm  
8 saying that the Coast Guard has absolute, exclusive  
9 jurisdiction over uninspected vessels. They have the  
10 statutory authority and they have exercised the statutory  
11 authority through regulations.

12          QUESTION: No, but -- as I understand your  
13 theory now, it wouldn't matter even if they had not  
14 exercised it.

15          MR. VETERS: Your Honor, I'd say -- I would  
16 agree with that. I'd say that even if they had the  
17 possession of authority given to them by Congress and they  
18 choose, for whatever reason, not to exercise that, then  
19 the complaint is still not properly before this Court.  
20 It's properly with Congress as to why they're not doing  
21 their job and to ensure that they do it or to take the  
22 jurisdiction away.

23          But that's not our case. If you just look at  
24 the facts of this case, Your Honor, there was -- there --  
25 there was no regulations regarding atmospheric presence of

1 natural gas. Yet, what did the Coast Guard do? They  
2 immediately dispatched people to the scene. They took  
3 control of the well. They prevented pollution. They  
4 saved lives. They did a 6-month investigation. OSHA did  
5 nothing. OSHA came out to the site, turned around, never  
6 -- never interviewed a -- a crew member, never stepped  
7 foot aboard the Mr. Belden, and received in the mail a  
8 certified letter with respect to citations.

9           The Coast Guard did their job in this case, even  
10 though there's not express regulations and provisions in  
11 minute detail, and they continue to do that for any -- any  
12 marine accident or any serious marine accident that fits  
13 the criteria of deaths, personal injuries, or property  
14 damage. They do the job. There -- there is not this gap  
15 in coverage, Your Honor.

16           If there's a death on a vessel in navigable  
17 waters or an injury, whether it be an uninspected vessel  
18 of whatever length or -- or something larger, the Coast  
19 Guard is charged with the responsibility to investigate.

20           And the Marine Safety Manual says, when they  
21 investigate, one of the other things they must do is to --  
22 to look at existing regulations to determine if there is a  
23 need for a change in the regulations, to supplement the  
24 regulations, or to leave them as they are because they  
25 have the expertise. They've been doing this since 1915,



1 since the Department of Transportation enabled them and  
2 empowered them to do their job. They have the special  
3 expertise in this area.

4 If there are no further questions, Your Honor,  
5 I --

6 QUESTION: Thank you, Mr. Veterans.

7 MR. VETERES: Thank you very much.

8 QUESTION: Mr. Roberts, you have 11 minutes  
9 remaining.

10 REBUTTAL ARGUMENT OF MATTHEW D. ROBERTS

11 ON BEHALF OF THE PETITIONER

12 MR. ROBERTS: With the exception of part 160,  
13 which doesn't regulate occupational safety and health,  
14 none of the regulations identified by respondent applied  
15 to the Mr. Belden as is explained in the -- in the  
16 appendix in our reply brief.

17 Just to -- just to briefly mention part 26,  
18 which he started about the emergency checkoff list, that  
19 specifically applies to small passenger vessels based on  
20 specific authority given to the Coast Guard to regulate  
21 small passenger vessels in more detail. Many of the  
22 others deal with navigational issues like running lights,  
23 have nothing to do with regulation of occupational safety  
24 and health. None regulates the hazards from oil and gas  
25 drilling.

1                   Section 14 U. S. C. 2 on which respondent relies,  
2 first of all, as Justice Ginsburg points out, that only  
3 goes to the existence of authority, not to the exercise of  
4 it, and the statute is very clear that -- that the other  
5 agency must exercise authority to displace the OSH Act.

6                   QUESTION: What do you say about his argument  
7 that, yes, oh, that may be true in writing, but in fact  
8 the people who did investigate this accident was the Coast  
9 Guard?

10                  MR. ROBERTS: The Coast Guard has -- has  
11 responsibility for investigating marine accidents.  
12 Investigative authority doesn't necessarily imply that you  
13 have regulatory authority as the National Transportation  
14 Safety Board is an illustration of. Congress wanted the  
15 Coast Guard to -- to investigate. It does. If it finds  
16 violations, finds situations that indicate violations of  
17 other agency laws, it coordinates with those agencies, as  
18 it did here, and those agencies take appropriate  
19 enforcement action. The authority to investigate  
20 accidents after they happen, even if they might have been  
21 caused by unsafe working conditions, is not regulation of  
22 those working conditions, and it doesn't preempt the --  
23 preempt the OSH Act.

24                  QUESTION: Mr. Roberts, how far can a memorandum  
25 of understanding go? Supposing two agencies, just the two

1 Secretaries or whoever is representing, sit down and say,  
2 let's -- let's just divide up this area -- there can be  
3 some conflict -- and just sign a very simple understanding  
4 that, you know, you regulate A and I'll regulate B. How  
5 much authority should a court give to that?

6 MR. ROBERTS: The -- the question of who has  
7 authority here is governed by section 4(b)(1) of the OSH  
8 Act, not by some agreement between the -- Coast Guard and  
9 OSHA. That agreement reflects the Coast Guard's  
10 regulations and the interpretation of the OSH Act that the  
11 Secretary --

12 QUESTION: So, you don't -- you don't rely on  
13 the memorandum as any independent basis for a ruling --

14 MR. ROBERTS: None whatsoever, Your Honor. We  
15 rely -- we rely on the text of -- of section 4(b)(1) which  
16 is -- is quite clear that it displaces the OSH Act with  
17 respect to particular working conditions.

18 That's in stark contrast to the Fifth Circuit's  
19 holding here that there's an industry-wide exemption for  
20 all seamen on all vessels from the OSH Act. That's the  
21 approach that respondent endorses, admitting that  
22 regulation of the toilets would preempt regulation of the  
23 act altogether, and that you don't even need to regulate  
24 that, that -- that the OSH Act simply doesn't apply  
25 because respondent mistakenly believes that the Coast

1 Guard has authority, plenary authority, under section 2,  
2 when the Coast Guard has never interpreted section 2 to  
3 give it plenary authority. And it's repeatedly gone back  
4 to Congress to get specific authority to address specific  
5 issues on particular uninspected vessels, and Congress has  
6 given the Coast Guard that authority, which indicates that  
7 neither Congress nor the Coast Guard thought section 2  
8 gave it that authority.

9           The -- the Secretary's view that the Coast Guard  
10 has to regulate the particular working conditions at issue  
11 in order to displace the OSH Act is supported by the text.  
12 It's supported by the purpose of the act. It's been the  
13 Secretary's longstanding view. It's been followed by all  
14 the other circuits except for the Fifth Circuit. The  
15 Second Circuit, the Ninth Circuit, the Eleventh Circuit,  
16 with due respect to the maritime expertise in the Fifth  
17 Circuit, those circuits also have a great deal of maritime  
18 -- of maritime expertise.

19           And the working conditions here, as Justice  
20 Kennedy pointed out, are not maritime-specific. They're  
21 matters over which OSHA has expertise, and 4(b)(1) allows  
22 the Coast Guard to step in and displace the OSH Act when  
23 it has authority and when it believes that its expertise  
24 warrants it to address the particular working conditions  
25 that are at issue. The Coast Guard doesn't have authority

1 here. It hasn't exercised authority here, and the OSH Act  
2 applies here.

3 QUESTION: Are there some drilling platforms on  
4 the Outer Continental Shelf which are registered vessels  
5 and so are completely under the Coast Guard's jurisdiction  
6 as to drilling --

7 MR. ROBERTS: Yes. A drilling vessel that went  
8 to the Outer Continental Shelf, in most cases, would be an  
9 inspected mobile oil drilling unit, which the Coast Guard  
10 has comprehensive regulations covering. The Coast Guard  
11 also has regulations specifically addressed to all  
12 facilities at the Outer Continental Shelf which include a  
13 general duty clause, similar to the OSHA general duty  
14 clause, that requires that work places there be free of --  
15 of recognized hazards.

16 In addition, the Interior Department has some  
17 regulatory authority out there specifically related to  
18 mineral drilling.

19 QUESTION: On those vessels, if the Coast Guard  
20 chose, could it allow OSHA a specific regulation of a  
21 concurrent -- sort of a concurrent jurisdiction?

22 MR. ROBERTS: The -- it -- it could have if it  
23 -- if it hadn't exercised its comprehensive authority over  
24 those vessels, but it has exercised its comprehensive  
25 authority over those vessels, in contrast to the situation

1 here.

2 If there are no further questions.

3 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
4 Roberts.

5 The case is submitted.

6 (Whereupon, at 11:53 a.m., the case in the  
7 above-entitled matter was submitted.)

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