No. 15-1346

IN THE

Supreme Court of the United States

GEICO GENERAL INSURANCE CO. AND GOVERNMENT EMPLOYEES INSURANCE CO.,

Petitioners,

v.

SAMUEL CALDERON ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether GEICO improperly denied overtime pay to a group of its employees who investigate insurance fraud because it incorrectly treated them as "employed in a bona fide administrative capacity," 29 C.F.R. § 541.200(a).

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INTRODUCTION

In 2010, Samuel Calderon and fellow GEICO Investigators (respondents here) challenged GEICO's decision to classify them as exempt administrative employees, thereby denying them overtime pay. The courts below discussed in detail the actual tasks performed by respondents and determined, based on Department of Labor (DOL) regulations implementing the Fair Labor Standards Act (FLSA) whose validity petitioners have not challenged, that GEICO Investigators were entitled to overtime pay.

Thus, this case is no different from dozens of cases routinely decided each year that apply a DOL regulation interpreting a particular exemption of the FLSA to a group of workers at a particular company. DOL has repeatedly emphasized that in "all instances," application of the exemption regulations "to the specific facts of the employee's work" is what "determines whether the employee satisfies the requirements for" an exemption. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 81 Fed. Reg. 32,391, 32,447 (May 23, 2016).

GEICO asks this Court to take a different approach: to declare that an industry-wide category of employees it denominates as "insurance fraud investigators" are exempt from the FLSA overtime-pay requirements as a matter of law. Pet. i. GEICO's gambit contradicts the core principle of the FLSA's implementing regulations that "[a] job title alone is insufficient to establish the exempt status of an

employee." 29 C.F.R. § 541.2. This Court should deny review.

STATEMENT OF THE CASE

1. GEICO is "in the business of providing insurance." Pet. App. 6a. When one of its policyholders submits a claim, that claim is assigned to a Claims Adjuster in the Claims Department for resolution. *Id.* 50a. The Claims Adjuster assesses the claim on its merits and is the person who determines whether GEICO will pay or deny the claim. *Id.*

If GEICO's system detects indicia of fraud, the claim is referred to the Special Investigation Unit (SIU). Pet. App. 51a-52a. Respondents, whom GEICO calls "Investigators," hold the lowest-level positions in the SIU. *Id.* 51a. As of 2012, they comprised 250 of GEICO's more than 30,000 employees nationwide. *Compare id. with GEICO at a Glance*, https://www.geico.com/about/corporate/at-a-glance/ (last visited June 27, 2016).[1] Respondents spend "approximately 90 percent of their time on investigations" into claims referred to them. Pet. App. 51a (citation omitted). They have no discretion over whether or not to investigate a referred claim. *Id.* 52a.

Under GEICO's "written procedures," Investigators interview witnesses, take photographs, look at "industry recognized databases," and collect and preserve evidence. Pet. App. 52a-53a. Their final work product is a report prepared according to a process from which they are "not allowed to deviate"

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[1] This number of GEICO Investigators excludes those employed in California, who are already classified as non-exempt by the company under state law. Pet. App. 6a n.1, 51a.

unless they receive "pre-approval from a superior." *Id.* 53a. They are required to submit an initial report within ten days of being assigned a claim and interim reports every twenty days thereafter. *Id.* 9a.

GEICO trains and directs its Investigators "to specifically omit all opinions from their written reports." Pet. App. 77a-78a (citation omitted). The SIU Administration and Operations Manual requires reports to reflect only "objective findings, observations, and physical evidence or other pertinent documentation." *Id.* 55a-56a (citation omitted).

"GEICO maintains strict control and oversight over the reports that the Investigators complete." Pet. App. 56a. Investigators must write their reports according to "specific template[s]." *Id.* (alteration in original; citation omitted). Most Investigators—more than 200 of the 250, *id.* 9a—are "required to submit their reports to their Supervisor [within the SIU] for review before the reports are submitted" to the Claims Adjusters, *id.* (The others can submit their reports directly.) Supervisors "scrutinize" not just the report's "content[s]," but also its "minutiae, including Investigators' proper use of grammar, punctuation, and formatting." *Id.* 57a (citation omitted). GEICO regularly audits reports for efficiency, compliance, and quality. *Id.* 57a-58a.

After Investigators have finished their work, their reports are given to a Claims Adjuster. Pet. App. 57a. The Claims Adjuster then uses the facts contained in the report to determine the validity of the insurance claim and whether to pay it. *Id.*

2. In 2010, Samuel Calderon, a GEICO Investigator, brought a collective action under the Fair

Labor Standards Act (FLSA) alleging that GEICO had improperly classified its Investigators as exempt from the Act's overtime-pay requirement contained in 29 U.S.C. § 201(1). Pet. App. 11a-12a.

As relevant to this case, the FLSA exempts from its overtime requirement "any employee employed in a bona fide . . . administrative . . . capacity." 29 U.S.C. § 213(a)(1). This exclusion is commonly called the "administrative exemption." The FLSA grants DOL the authority to "define[] and delimit[]" the meaning of "administrative." 29 U.S.C. § 213(a)(1).

DOL does so in 29 C.F.R. §§ 541.200-202. It has also provided guidance through examples, 29 C.F.R. § 541.203, and opinion letters, *see, e.g.*, DOL, Wage & Hour Div., Opinion Letter FLSA 2005-21 (Aug. 19, 2005), 2005 WL 3308592. GEICO does not challenge the validity of any of these pronouncements.

For an employee to fall within the administrative exemption, Section 541.200(a) requires the job to satisfy three criteria. First, the employee must be paid at least $455 per week (equivalent to an annual salary of $23,260). 29 C.F.R. § 541.200(a)(1).[2] Second, the employee's primary duty must be "the performance of office or non-manual work directly related to the management or general business operations of the employer." *Id.* § 541.200(a)(2). Third, the employee's

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[2] This number reflects the salary floor applicable during this litigation. However, on May 23, 2016, DOL published a new regulation, effective December 1, 2016, that roughly doubles the salary floor. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, 81 Fed. Reg. 32,391, 32,405 (May 23, 2016) (to be codified at 29 C.F.R. § 541.200(a)(1)).

primary duty must involve the "exercise of discretion and independent judgment with respect to matters of significance." *Id.* § 541.200(a)(3).

A simple way to understand the latter two prongs of Section 541.200(a) is that the second prong focuses on whether an employee's work involves the type of "back office" tasks such as human resources and accounting that transcend individual industries and enable the employer to carry out its particular business, while the third prong looks at the latitude the employee is given in exercising his primary duties and the importance of those tasks. *See* Lawrence P. Postol, *The New FLSA Regulations Concerning Overtime Pay*, 20 Lab. Law. 225, 230 (2004).

Respondents contended that their job did not satisfy the second or the third prong of Section 541.200(a)'s test. With respect to the second prong, they maintained that their primary duty—conducting investigations—was not "administrative" because it did not involve running or servicing GEICO's business. With respect to the third prong, they argued that given the constraints on their primary duty, they did not exercise discretion or independence with respect to matters of significance.

3. The district court certified the GEICO Investigators' FLSA claim as a collective action, and forty-eight other GEICO Investigators opted in as plaintiffs. Pet. App. 12a.[3] Following discovery, GEICO and respondents filed cross-motions for summary

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[3] After other GEICO Investigators opted into the FLSA action, respondents added a class claim based on New York labor law with respect to New York-based employees. Pet. App. 12a. Certification of the collective and class actions is not at issue.

judgment. *Id.* 49a. Because GEICO never challenged the validity of the relevant DOL regulations, the only question was how those regulations applied to these specific employees. After a hearing, the district court granted respondents' motion and denied GEICO's. *Id.* 81a.

Applying Section 541.200(a)'s three-prong test, the district court found that GEICO's Investigators were not exempt. Pet. App. 81a. The district court deemed it "[l]ikely" that the Investigators' primary duty fell within the scope of the second prong because they were "assist[ing]" Claims Adjusters who were themselves exempt. Pet. App. 68a, 72a. But the court recognized that "[e]ven if" that were so, it could not "end the inquiry" there, because GEICO had to also satisfy the third prong. *Id.* 72a-73a.

The district court found that GEICO did not satisfy the third prong of Section 541.200(a)'s test, which requires that the employee's "primary duty include[] the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3). GEICO had argued that because losses from insurance fraud could be a "major problem," any discretion Investigators exercised would satisfy this prong. Pet. App. 78a. The district court disagreed, quoting DOL's express rejection of the idea that significance turns "merely" on whether "the employer will suffer financial losses if the employee does not perform the job properly," *id.* 79a (quoting 29 C.F.R. § 541.202(f)). Relying on "[r]egulations and case law," the district court found that although GEICO's Investigators exercised "some discretion during investigations," that discretion did "not bear on matters of significance." Pet. App. 80a. Thus, the

district court concluded that respondents did not fall within the FLSA's administrative exemption.

4. The Fourth Circuit affirmed the grant of summary judgment on the issue of liability. Pet. App. 15a. It concluded that GEICO had failed to meet its burden with respect to the second prong. *Id.* 37a. That prong requires that an employee's primary duty be "directly related to the management or general business operations" of the employer. *Id.* 20a (quoting 29 C.F.R. § 541.200(a)(2)).

The Fourth Circuit focused on the GEICO Investigators' primary duty: "conducting factual investigations and reporting the results," Pet. App. 37a; *see also id.* 25a. That duty, the court held, "is too far removed from their employer's management or general business operations" to satisfy the second prong. *Id.* 24a. With respect to whether GEICO investigators were involved in management, the court explained that GEICO Investigators "have 'no supervisory responsibility and do not develop, review, evaluate, or recommend [GEICO's] business policies or strategies with regard to the' claims they investigated." *Id.* 25a (quoting *Desmond v. PNGI Charles Town Gaming, LLC*, 564 F.3d 688, 694 (4th Cir. 2009)) (alteration in original). And with respect to general business operations, the court contrasted the work of the GEICO investigators to the kind of work done by employees who deal with "human resources; employee benefits;" or "public relations," *id.* 21a (quoting 29 C.F.R. § 541.201(b)).

The Fourth Circuit rejected GEICO's argument that because Claims Adjusters performed exempt work, and GEICO Investigators provided reports to them, Investigators were also exempt. It was not

enough, the Fourth Circuit explained, that the work of Investigators "is used *to support the claims-adjusting function,*" Pet. App. 36a (emphasis in original), because it is "'the nature of the work, not its ultimate consequence,' that controls whether the exemption applies," *id.* (quoting *Desmond*, 564 F.3d at 692). Were it otherwise, the court noted, "even 'run-of-the-mine' jobs such as secretarial work that supported the claims adjusting function could be found to be directly related to management policies or general business operations. But in fact such jobs do not generally satisfy this element." *Id.* 36a-37a.

Because the Fourth Circuit found that GEICO had failed to meet its burden under the second prong of Section 541.200(a), the court found it unnecessary to address the third prong. Pet. App. 38a n.19.

The Fourth Circuit subsequently denied rehearing en banc, without any judge requesting a vote. Pet. App. 87a.

REASONS FOR DENYING THE WRIT

Petitioners complain that their Investigators were found to be protected by the FLSA overtime-pay requirements, while Special Investigators at Nationwide Mutual Insurance Company ("Nationwide SIs") were found to be exempt. But this difference presents no conflict concerning any question of law. Variations between the primary duties actually performed by the two sets of employees explain why GEICO's employees are protected while Nationwide's are not.

Nor is there any disagreement between the courts of appeals on the second issue on which petitioners seek review: the proper approach for construing FLSA

exemptions. Whatever the particular words courts use, every court of appeals, including the Fourth Circuit, is doing the same thing.

This Court's intervention is particularly unwarranted in light of DOL's recent changes to the administrative exemption and the small number of workers potentially affected by any decision here. And on the factbound question whether GEICO Investigators meet the test for the administrative exemption in 29 C.F.R. § 541.200(a), the courts below were right: Respondents are protected by the FLSA overtime-pay requirements.

I. Determining whether workers fall outside the DOL regulations implementing the Fair Labor Standards Act's overtime-pay protections demands a fact-intensive inquiry into workers' duties, not their titles.

GEICO asks this Court to resolve whether some generic category of "insurance fraud investigators" are covered by the second prong of the regulation implementing the Fair Labor Standard Act's administrative exemption, Pet. i. But the real question in this case is whether the specific duties GEICO Investigators perform render them exempt from that prong.

DOL's regulations do not provide a categorical "administrative exemption" based on job title. To the contrary, "[a] job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations." 29 C.F.R. § 541.2. DOL has consistently

emphasized that "there must be a case-by-case assessment" to determine if an employee is exempt. 69 Fed. Reg. 22,122, 22,144 (April 23, 2004); *see also* DOL, Wage & Hour Div., Opinion Letter FLSA 2005-2 (Jan. 23, 1998) 2005 WL 330610 (no "blanket exemption" based on job title). Even petitioners' *amici* emphasize the "fact-intensive inquiry" the FLSA demands. Br. of *Amici* Chamber of Commerce *et al.* in Supp. of Pet'rs 7.

That inquiry cannot be short-circuited by pointing to some platonic notion of "insurance fraud investigator" or by assuming that workers throughout an industry who hold a particular job title perform the same primary duties. Instead, a court must assess whether the primary duty of the employees before it satisfy the regulations, which requires finding facts sufficient to show that the employer has met 29 C.F.R. 541.200(a)'s three separate and conjunctive prongs.

Before this Court, petitioners dispute only the question whether they satisfy the second prong of a three-part test; they offer no argument as to how or why they could satisfy the third prong. The Fourth Circuit's application of the second prong of the "administrative exemption" regulation to GEICO Investigators is a factbound determination that does not implicate any circuit split.

II. The circuits are not split on either issue that petitioners raise.

A. There is no conflict among the circuits on the question whether insurance fraud investigators are exempt under 29 C.F.R. 541.200(a)'s second prong.

Petitioners claim the Fourth Circuit's opinion conflicts with the Sixth Circuit's opinion in *Foster v. Nationwide Mut. Ins. Co.*, 710 F.3d 640 (6th Cir. 2013). Pet. 2. The alleged split is not merely shallow; it is illusory. Petitioners' argument rests on the following mistaken syllogism: if two courts reach different bottom lines in cases that seem similar on a superficial reading, it must be because they have different views of the law. Not so: differences in the actual job tasks fully explain the results.

1. Petitioners purport to find their split in a difference in how the Fourth Circuit here and the Sixth Circuit in *Foster* analyzed the second prong of Section 541.200(a). Pet. 14-16. But both circuits used the same legal approach. They grounded their analysis in the specific work performed by the employees before them, and then carefully compared the primary duties performed by those employees to the examples DOL provided of the distinctions between administrative and non-administrative work. *See* Pet. App. 37a (describing why GEICO Investigators' primary duty was "not analogous" to examples of administrative work but was "directly analogous" to examples of non-administrative work); *Foster*, 710 F.3d at 645 (explaining the ways in which the primary duty of Nationwide SIs was "similar to" and "overlap[ped]" with examples of administrative work).

The different bottom lines in this case and *Foster* are due not to different views of the law, but instead to factual differences between the primary duties of GEICO Investigators and Nationwide SIs. Petitioners harp on the Fourth Circuit's observation that *Foster* involved "essentially identical" facts. Pet. 2, 10, 13, 24 (quoting Pet. App. 39a). But "essentially" does not automatically mean "materially indistinguishable," as petitioners claim, Pet. 2. It can mean "mostly . . . but not entirely." *Apotex Corp. v. Merck & Co.*, No. 96 C 7375, 2000 WL 97582, at *3 (N.D. Ill. Jan. 25, 2000), *aff'd*, 254 F.3d 1031 (Fed. Cir. 2001). Or it can serve as a contrast to "completely," *In re Stolkin*, 471 F.2d 1331, 1336 (7th Cir. 1973), or "actually," *Bd. of Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Fralick*, 601 F. App'x 289, 294 (5th Cir. 2015). In the context of this case, the Fourth Circuit's reference to "essentially identical" facts did not mean that the two jobs were identical in every material way or that the differences between them were irrelevant. Small but salient differences in the primary duties of GEICO Investigators and Nationwide SIs explain the different outcomes. And the question of what an employee's job actually entails is a question of fact subject to clear-error review. *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986).

The primary duty of GEICO Investigators is "conducting factual investigations and reporting the results." Pet. App. 37a. They are "'trained and directed' by GEICO 'to specifically omit all opinions from their written reports.'" *Id.* 77a-78a. They "do not develop, review, evaluate, or recommend [GEICO's] business policies or strategies with regard to the

claims they investigated." *Id.* 25a (internal quotation mark omitted) (alteration in original).

In contrast, the primary duty of Nationwide SIs went beyond simply "investigat[ing] suspicious claims by gathering and reporting facts." *Foster v. Nationwide Mut. Ins. Co.*, No. 2:08-cv-020, 2012 WL 407442, at *20 (S.D. Ohio Jan. 5, 2012), *aff'd*, 710 F.3d 640 (6th Cir. 2013). Nationwide SIs, unlike GEICO Investigators, were also responsible for the "resolution of fraud indicators." *Id.* The primary duty of a Nationwide SI was "determining and communicating . . . the legitimacy or illegitimacy of suspicious claims," not simply conducting fact-finding. *Foster*, 710 F.3d at 650. In light of the duty of Nationwide SIs to decide whether a claim was fraudulent and to communicate that finding to the claims adjusters, the *Foster* district court expressly rejected as "too narrow" the employees' argument that their primary duties were simply "gathering and reporting facts," *Foster*, 2012 WL 407442, at *20—precisely the primary duty to which GEICO Investigators are restricted. Indeed, earlier this year, the Sixth Circuit described Nationwide's employees as hybrid "SIs/claims adjustors." *Lutz v. Huntington Bancshares, Inc.*, 815 F.3d 988, 994 (6th Cir. 2016).

In short, GEICO's assertion that respondents "perform the same job functions" as the SIs in *Foster*, Pet. 16, ignores what the Fourth and Sixth Circuits said about the employees in front of them in favor of fastening on facial similarities at a high level of abstraction. Given that both cases were "close" ones, Pet. App. 37a; *Foster*, 2012 WL 407442, at *2, the variations in the jobs actually performed made the difference. Factual differences often produce different

legal outcomes. *See, e.g.*, *In re Fenofibrate Patent Litigation*, 910 F. Supp. 2d 708, 713 (S.D.N.Y. 2012) (holding drug with chemical ratio of 4.7/1 did not infringe patent covering drugs with ratios between 5/1 and 15/1), *aff'd*, 499 F. App'x 974 (Fed. Cir. 2013) (per curiam).

In short, two circuit courts dealing with two different companies, whose employees have similar job titles but saliently different duties, reached two different outcomes. That does not a circuit split make.

2. Despite the fact that there is no inconsistency between the Sixth Circuit's conclusion in *Foster* and the Fourth Circuit's decision here, petitioners claim the Fourth Circuit "expressly recognized a conflict." Pet. 13. The Fourth Circuit did no such thing.

Petitioners' reliance on the Fourth Circuit's use of the phrase "essentially identical," Pet. 13, rips those words out of context. That phrase does not appear in the part of the Fourth Circuit's opinion discussing whether GEICO Investigators satisfy the second prong of 29 C.F.R. § 541.200(a)—the question on which petitioners allege there is a conflict. Rather, it appears pages later in a part of the opinion dealing with respondents' cross-appeal on the question whether GEICO's violation was "willful" under the Portal-to-Portal Act, 29 U.S.C. § 255(a). Pet. App. 38a-40a. In its analysis of willfullness, the Fourth Circuit recognized that the question of GEICO Investigators' exemption status was "close and complex," *id.* 39a—which is why, after all, the Fourth Circuit had gone through the facts in such detail earlier in its opinion, *id.* 6a-10a. In light of that factual complexity, the Fourth Circuit pointed to the Sixth Circuit's decision in *Foster* to support its conclusion that GEICO had not acted willfully. *Id.*

39a-40a. This statement did not even implicitly, let alone "expressly," Pet. 13, recognize a conflict.

3. Perhaps recognizing that their purported "direct conflict" with *Foster*, Pet. 16, is illusory, petitioners suggest that the Fourth Circuit's decision here somehow conflicts with "numerous other cases," *id.*, by adopting a "policy-setting requirement," *id.* 17, and a "blanket rule for investigators," *id.* 21. Both suggestions are wrong.

First, the Fourth Circuit never "limited the administrative exemption to management-level employees," Pet. 17. To the contrary, quoting from the DOL rulemaking and from the regulation, the court of appeals recognized that workers whose primary duties are in "functional areas" can also qualify for the administrative exemption because they are involved in "servicing" the business, regardless of whether they are in management. Pet. App. 36a-37a.

All that the Fourth Circuit did here was to hold that GEICO Investigators did neither. They did not satisfy the requirement that their primary duty involve "assisting with the running" of the business (that is, "management"): GEICO Investigators, who hold the lowest level positions in a subunit of the Claims Department, supervise no one and do not "develop, review, evaluate, or recommend" policy, Pet. App. 25a. Nor did GEICO Investigators' satisfy the requirement that their primary duty be "servicing" the business (that is, "general business operations"), 29 C.F.R. § 541.201(a): GEICO Investigators did not perform the kind of "functional" work that the regulations identify as servicing the business, Pet. App. 37a (quoting 29 C.F.R. § 541.201(b)).

The Fourth Circuit's reference to two earlier FLSA cases finding nonpolicymaking employees exempt, Pet. App. 29a, confirms that its decision here was simply a factbound determination about GEICO Investigators—rather than, as petitioners would have it, the announcement of a "parsimonious" policy-setting requirement, Pet. 29. In *Shockley v. City of Newport News*, 997 F.2d 18 (4th Cir. 1993), the Fourth Circuit held that a police officer who conducted internal investigations fell within the administrative exemption because—in contrast to GEICO Investigators—after she gathered factual data, she determined whether departmental policy violations had occurred and then made "recommendations" to her captain (who then reported further up the chain of command) that ultimately "shaped the police department's policy with regard to internal discipline," *id.* at 28. And in *West v. Anne Arundel Cty.*, 137 F.3d 752 (4th Cir. 1998), the Fourth Circuit found that emergency medical services technicians who designed, implemented, and ran training programs satisfied the second prong. *Id.* at 764. Nothing in the Fourth Circuit's opinion suggests that it was announcing a new approach to the second prong, Pet. App. 29a.

Second, petitioners are wrong to claim that the Fourth Circuit adopted any "blanket rule" for investigators, Pet. 21. *Shockley* itself disproves that allegation, because the investigator there was held to be exempt, 997 F.2d at 28. And although the Fourth Circuit explained the differences between the primary job duty of GEICO Investigators and the primary duty of the investigator in *Shockley*, Pet. App. 29a, petitioners never mention *Shockley* in their petition. Petitioners can assert the creation of a "blanket rule"

only by ignoring both *Shockley* and the Fourth Circuit's insistence that the determination of an employee's exemption status under the second prong is "determined on a case-by-case basis and depends on their specific duties," *id.* 34a. In reality, it is petitioners, not respondents, who seek from this Court a blanket rule based on job title, not the employees' actual job duties.

B. There is no conflict among the circuits on how to construe regulations implementing the Fair Labor Standards Act's exemptions.

1. Petitioners' second question presented asserts that the Fourth Circuit's approach to FLSA cases is "in conflict with fundamental principles of statutory construction and the decisions of every other court of appeals" with respect to whether exemptions to the FLSA's overtime-pay requirement "must be narrowly construed." Pet. i. That statement is untrue.

This Court's precedent could not be clearer: "It is well settled that exemptions from the Fair Labor Standards Act are to be narrowly construed." *Mitchell v. Ky. Fin. Co.*, 359 U.S. 290, 295 (1959). This Court has repeated that directive numerous times, most recently in *Holly Farms Corp. v. N.L.R.B.*, 517 U.S. 392, 399 (1996) (quoting both *Mitchell* and *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960) for the proposition that exemptions "are to be narrowly construed").

Despite claiming a conflict in the courts of appeals, Pet. i, petitioners do not identify a single court of appeals decision that disputes the narrow-construction rule for FLSA exemptions.

Petitioners are also wrong to suggest that this Court has "reserv[ed] the question" whether FLSA exemptions should be narrowly construed. Pet. 24. Neither of the cases petitioners cite for this proposition even involved construing an FLSA exemption from the overtime-pay rules. *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870 (2014), involved the definition of "changing clothes" in Section 203(o) of the FLSA, which goes to whether workers are entitled to be paid at all. *Id.* at 874. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156 (2012), turned entirely on the question whether the plaintiffs there "made sales" as defined in Section 203(k). 132 S. Ct. at 2172. Both cases left untouched the longstanding rule that the exemptions provision at issue here, Section 213, should be construed narrowly. As the Court explained in *Sandifer*, the "narrow-construction" principle of *Arnold* is "inapplicable to a provision appearing in § 203." 134 S. Ct. at 879 n.7; *see also Christopher*, 132 S. Ct. at 2172 n.21. That the narrow construction rule "made an appearance" in those cases, Pet. 24, is irrelevant.

Petitioners' citation to *Encino Motorcars, LLC v. Navarro*, No. 15-415 (June 20, 2016), Pet. 24, 27, similarly does nothing to help their argument. This Court's decision in *Navarro* turned entirely on whether to give *Chevron* deference to a 2011 DOL regulation that changed course (yet again) on whether service advisors at car dealerships fall within a statutory exemption for "any salesman, partsman, or mechanic" working at a dealership, 29 U.S.C. § 213(b)(10)(A). *See* slip op. at 7. Because the Court held that the 2011 regulation should not receive *Chevron* deference, it remanded the case to the Ninth Circuit

"to interpret the statute in the first instance." Slip op. 12. In doing so, this Court left undisturbed that court's declaration that *Arnold* requires that FLSA exemptions be "narrowly construed against employers," *Navarro v. Encino Motorcars, LLC*, 780 F.3d 1267, 1271 (9th Cir. 2015) (internal quotation marks omitted).

Not only is the Fourth Circuit's position that "FLSA exemptions are to be narrowly construed," Pet. App. 15a (quoting *Desmond v. PNGI Charles Town Gamining, L.L.C.*, 564 F.3d 688, 692 (4th Cir. 2009)) (internal quotation mark omitted), consistent with the decisions of this Court and every other court of appeals, but petitioners are also mistaken to suggest any conflict between the time-honored narrow-construtions rule and "fundamental principles of statutory construction," Pet. i. From the very beginning, this Court has emphasized that because the FLSA is "remedial legislation," failure to construe the exemptions narrowly would "abuse the interpretive process." *A.H. Phillips, Inc., v. Walling*, 324 U.S. 490, 493 (1945); *see also* 3B Sutherland Statutory Construction § 76:9 (7th ed. 2008).

Put simply, petitioners are not asking this Court to resolve a circuit split or even an unresolved issue; they and their *amici* are instead asking this Court to overrule an unbroken line of precedents stretching back more than half a century. They have provided no reason to do so. Any request for such a change is more properly directed to Congress than to this Court.

2. Petitioners' inclusion of the phrase "clear-and-convincing evidence" in their second question presented, Pet. i, does nothing to make this case more worthy of review.

Petitioners cannot credibly argue that this case implicates the "clear-and-convincing evidence standard," Pet. 3, given the position they took before the district court. There, petitioners insisted that "[t]he 'clear and convincing evidence' standard is irrelevant at the summary judgment stage." Defs' Reply on Cross-Mot. for Summ. J. at 7-8, ECF 93 (citing *Yi v. Sterling Collision Centers, Inc.*, 480 F.3d 505, 506 (7th Cir. 2007)). But that is precisely the stage at which this case was decided. Pet. App. 81a-83a. Petitioners cannot now switch gears and argue that this case implicates the question of evidentiary standards.

Indeed, this is not a case about evidentiary standards. An "evidentiary standard of proof applies to questions of fact and not to questions of law." *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 114 (2011) (Breyer, J., concurring). When it comes to "how the law applies to facts as given"—in particular, what "subsidiary legal standards mean or how they apply to the facts"—standards of proof have "no application." *Id.* In FLSA cases, this Court has emphasized that how workers "spent their working time" is "a question of fact," but whether "their particular activities excluded them from the overtime benefits of the FLSA" is not. *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986). In this case, petitioners have pointed to no dispute over how GEICO Investigators spend their time—the issue to which an evidentiary standard of proof could matter.

In any event, petitioners' suggestion that there is a meaningful conflict between the approach taken by the Fourth Circuit and the approaches of other courts of appeals is unfounded. Regardless of the language

they use, the courts of appeals are all doing effectively the same thing.

The Fourth Circuit, like most other circuits, has used a variety of verbal formulations over the years to convey the *Arnold* principle that exemptions must be narrowly construed. In *Clark v. J.M. Benson Co.*, 789 F.2d 282 (4th Cir. 1986), for example, the Fourth Circuit suggested that it would require employers to provide "clear and affirmative" evidence of their entitlement to an exemption. *Id.* at 286 (quoting *Donovan v. United Video, Inc.*, 725 F.2d 577, 581 (10th Cir. 1984)). In *Shockley*, citing nothing but *Clark*, the Fourth Circuit instead used the phrase "clear and convincing evidence." 997 F.2d at 21. In *Darveau v. Detecon, Inc.*, 515 F.3d 334 (4th Cir. 2008), the Fourth Circuit, quoting *Arnold*, said that exemptions should be limited to situations where employers could show "plainly and unmistakably" that the job fell within the terms and spirit of the exemption, *id.* at 337 (quoting *Arnold*, 361 U.S. at 392), never mentioning any requirement for "clear and convincing evidence." In *Desmond*, within a single paragraph, the Fourth Circuit quoted both the "clear and convincing" language of *Shockley* and the "plainly and unmistakably" language of *Arnold*, 564 F.3d at 691-92, to describe what an employer would need to show. So, too, in this case, Pet. App. 16a (quoting *Desmond*, 564 F.3d at 692). The Fourth Circuit has never suggested that the phrase "clear and convincing evidence" is meant to impose any burden beyond what *Arnold* commands.

The Fourth Circuit's linguistic variations on the principle of narrow construction do not mark it as an outlier. Building on this Court's decision in *A.H.*

Phillips v. Walling that an exemption should not be granted unless an employer fell "plainly and unmistakably within its terms and spirit," 324 U.S. 490, 493 (1945), courts of appeals have required employers to establish exemptions "affirmatively and clearly," *Legg v. Rock Prods. Mfg. Corp.*, 309 F.2d 172, 174 (10th Cir. 1962); "plainly and unmistakably," *Lederman v. Frontier Fire Prot., Inc.*, 685 F.3d 1151, 1156-57 (10th Cir. 2012); and "by a preponderance of the clear and affirmative evidence," *Renfro v. Indiana Michigan Power Co.*, 370 F.3d 512, 515 (6th Cir. 2004), among other phrasings. But these terms have all been used "merely to indicate that exemptions are to be construed narrowly . . . [and] also that the burden of proof is on the defendant, since entitlement to an exemption is an affirmative defense." *Yi*, 480 F.3d at 507.

The Tenth Circuit captured this point when it explained that its use of the phrase "clear and affirmative evidence" is "simply an invocation of the familiar principle of statutory interpretation that exemptions from a statute that creates remedies that should be construed narrowly." *Lederman*, 685 F.3d at 1158 (quoting *Fowler v. Incor*, 279 Fed. App'x 590, 592 (10th Cir. 2008) (internal quotation marks omitted). Such minor wording differences do not create a conflict among the circuits. *Cf., e.g.*, *Kuusk v. Holder*, 732 F.3d 302, 306 (4th Cir. 2013) ("differently worded" decisions about equitable tolling in immigration cases in different circuits did not alter the fact that the courts were "adher[ing] to the [same] general principle").

III. The application of the second prong of 29 C.F.R. § 541.200(a) to GEICO Investigators raises no question worthy of this Court's review.

GEICO suggests that the importance of this case should be measured by whether *preventing insurance fraud* is important. *See, e.g.*, Pet. 2, 7. But the proper inquiry is whether deciding respondents' *exemption status* is important for this Court to resolve. It is not. Any decision by this Court would have little effect on GEICO and even less impact beyond the parties to this case.

1. It is unclear, going forward, how many GEICO Investigators would be affected by a decision here. On May 23, 2016, DOL published a new rule roughly doubling the salary threshold in the first prong of Section 541.200(a).[4] *See* 81 Fed. Reg. 32,391, 32,550 (May 23, 2016) (to be codified at 29 C.F.R. § 541.600). The new rule will take effect December 1, 2016. *Id.* at 32,391. At that point, a number of GEICO Investigators may not even satisfy the first prong of the administrative exemption. *See* Pet. App. 18a n.8.

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[4] The new rule raises the minimum salary level in the first prong from no less than $455 a week, or $23,660 a year, to no less than $913 a week, or $47,476 a year. 81 Fed. Reg. at 32,392-93. It also contains a provision to automatically adjust the minimum salary level every three years using the same formula used for this adjustment. *Id.* at 32,391 In addition, while DOL did not revise the tests for prongs two and three in its recent rulemaking, it remains concerned that these prongs may warrant revision. *Id.* at 32,399. While it declined to revise them "at this time," *id.*, the possibility of those revisions militate against this Court's intervention now.

2. GEICO further argues that this case is important because the Fourth Circuit's decision puts it at a competitive disadvantage. Pet. 29. This assertion defies fact and logic. GEICO, a multibillion dollar corporation that spent $1.1 billion on advertising in 2012,[5] offers no explanation for how the $3 million in backpay ordered here or any future overtime pay, *see* Pet. App. 90a-97a, would significantly affect its competitive position.

More fundamentally, if GEICO really were to believe that its business model depends on having Investigators fit within the administrative exemption, it could structure its operations differently. GEICO has decided to give decisionmaking authority to Claims Adjusters, rather than to Investigators. Other companies—for example Nationwide—structure their operations differently. *See, e.g.*, *Foster v. Nationwide Mut. Ins. Co.*, 710 F.3d 640, 642 (6th Cir. 2013). Nationwide may have succeeded in exempting its SIs, but it gave SIs more responsibilities and discretion. *Id.* at 647-48. Nothing in the Fourth Circuit's decision prevents GEICO from moving to Nationwide's model if it wants to avoid the FLSA's overtime-pay requirements. Or GEICO could simply hire more workers and limit their hours to forty per week, avoiding any question of overtime.

3. Although GEICO claims that this case affects "tens of thousands of workers," Pet. 29, in reality a decision of this Court would have limited impact beyond the parties.

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[5] *GEICO Success Highlights Advertising Dollars vs. Agent Commissions Debate*, Ins. J. (Oct. 22, 2013) http://bit.ly/1TsG7wR.

GEICO's only source for its claim is a DOL comment observing that there were 492,000 insurance adjusters, examiners, and investigators in 2004. Pet. 29 n.10. But even GEICO concedes that this number does not break out the much more common adjusters and examiners from insurance *investigators*—the only type of employee at issue here. *Id.*

The real number of employees potentially affected by a decision whether "insurance fraud investigators" are covered, Pet. i, is barely one percent of what GEICO intimates. In 2012, the year the parties moved for summary judgment, GEICO employed 250 insurance fraud investigators. Pet. App. 9a. GEICO controls almost five percent of the property and casualty insurance market. *See* GEICO, *Corporate Ownership*, http://on.gei.co/1qK9Bx1 (last visited June 29, 2016) (showing Geico is owned by Berkshire Hathaway Group); National Commission of Insurance Commissioners, *2014 Top 25 Groups and Companies by Countrywide Premium* (April 6, 2015) (noting Berkshire Hathaway Group's market share), http://bit.ly/1XxW1Zz. GEICO never suggests that it employs a low number of investigators relative to other insurance companies. Thus, even presuming for the moment that job titles are determinative (which they are not), it stands to reason that there are probably about 5000 insurance fraud investigators in the entire country.

And even that figure is an unrealistically high upper boundary of the group potentially affected by a decision in this case. Many of these employees may have already been covered by the FLSA's overtime requirements or by state-law overtime requirements, or be among the 22.5 million employees newly

protected by the revised regulation, 81 Fed. Reg. at 32,393.

Even within this narrow band of employees titled "insurance fraud investigators," any decision by this Court would have limited impact. A future court confronted with an FLSA administrative exemption case from a different insurance company would have to begin the analysis anew, looking not at the job title but to the specific employee's primary duties. *See supra* at 9-10. There is no reason to think, in light of the diversity of ways businesses are structured, that facts in a future case would exactly mirror the facts here.

4. This case implicates no larger issues that merit this Court's attention.

a. GEICO provides no support for its claim that the Fourth Circuit's decision will "encourage forum shopping by plaintiffs," Pet. 3. The reality of FLSA litigation indicates just the opposite. In this case, respondents filed their suit in the District of Maryland, where GEICO is headquartered. Plaintiffs generally bring suit either in the district where they work or in their employer's home district. Filing in the home districts of the parties hardly bespeaks forum shopping. Nor does GEICO point to any actual cases where forum shopping has been a problem in FLSA litigation.

Moreover, existing venue rules are available to deal with any unfairness that might arise in the future. *See* 28 U.S.C. § 1406. Left unsaid in petitioners' suggestion that plaintiffs forum shop is that in *Foster* it was the *defendants* who had the case transferred from California, where the plaintiff lived

and worked, to defendants' home district in Ohio. Order Granting Def.'s Mot. to Transfer Venue to the Southern District of Ohio, *Foster v. Nationwide Mut. Ins. Co.*, No. C 07-4928 (N.D. Cal. Dec. 14, 2007), ECF No. 47.

b. Nor does this case implicate any larger questions about agency deference or categorical FLSA exemptions. Although petitioners suggest that the case involves Section 213(a) of the FLSA, the decision below turned on the application of a subpart of a DOL regulation, 29 C.F.R. § 541.200(a)(2).

This case is thus unlike the FLSA cases this Court has taken in the past. Some of those cases involved a question common to many administrative law regimes. For example, *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2165 (2012), involved the question whether DOL's interpretation of its regulations is owed deference. *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 162 (2007), involved questions of agency deference—as did *Auer v. Robbins*, 519 U.S. 452, 454-55 (1997). Petitioners here are not challenging the validity or even the interpretation of a DOL regulation.

Even in the rare case where this Court has addressed an FLSA exemption directly, it has done so to clarify the meaning of statutory terms and not to conduct factbound inquiries into whether a particular job satisfies the regulations implementing the administrative exemption. For instance, *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388 (1960), clarified the statutory definition of "retail or service establishment" in 29 U.S.C. § 213(a)(1), *id.* at 391. Similarly, this Court's recent decision in *Encino Motorcars, LLC v. Navarro*, No. 15-415 (June 20, 2016), addressed the

question whether service advisors qualify as "salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles" in 29 U.S.C. § 213(b)(10)(A), and did so in the context of whether *Chevron* required deference to a DOL interpretation.

c. Finally, DOL has the ability and willingness to clarify the extent of the administrative exemption. *See, e.g.*, 81 Fed. Reg. 32,391. For over twenty years it has consistently determined that the administrative exemption is not intended to cover employees whose primary duties are investigative. *See infra* at 33. Because petitioners do not dispute anything about the statute itself, but merely the application of a subpart of a DOL regulation, their complaint is best directed to DOL—not this Court.

IV. This case is a poor vehicle for resolving the issues on which petitioners seek review.

Because an employer must satisfy all three prongs of Section 541.200(a) to qualify for the administrative exemption, the only way this Court could hold that GEICO Investigators are exempt is to reach, and decide in GEICO's favor, an issue neither addressed by the Fourth Circuit nor presented in the petition: whether GEICO Investigators satisfy prong three of the regulations—that is, whether the Investigators' "primary duty includes the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3). Deciding that issue would be unwise in this procedural posture and would only result in an affirmance anyway.

1. Petitioners acknowledge that, after holding for respondents on the second prong of 29 C.F.R. § 541.200(a), the Fourth Circuit did not reach the

question whether GEICO could satisfy the third prong, Pet. 19 n.8. Indeed, the Fourth Circuit expressly declined to do so. Pet. App. 38a n.19. As a result, to hold for petitioners, this Court would need to address an issue not dealt with in the decision below. But this Court has been reluctant to consider "defensive pleas" that were "not addressed by the Court of Appeals," because it is a "court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005); *see also F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 175 (2004). Petitioners have given no reason to overcome that reluctance here. Nor does this Court take cases to decide issues not argued in the petition. *See, e.g.*, *Yee v. City of Escondido*, 503 U.S. 519, 537 (1992).

2. GEICO provides no serious argument that it could satisfy the third prong. Petitioners' barebones reference to that prong never addresses the question whether GEICO Investigators exercise any discretion or independent judgment, but fastens only on the fact that "the resolution of fraudulent claims 'is important to GEICO.'" Pet. 19 n.8 (quoting Pet. App. 25a). As respondents have already explained, *see supra* at 23, the importance to GEICO of detecting fraudulent claims has nothing to do with the administrative exemption to the FLSA. The FLSA-related question is not whether fraud is important to GEICO, but whether GEICO Investigators are making an "independent judgment," 29 C.F.R. § 541.202(a) with respect to the important decision of whether to pay or deny a claim.

Here, they were not. Petitioners provide no reason for this Court to reject the finding of the district court, whose analysis the Court of Appeals left undisturbed,

that GEICO Investigators do not exercise the kind of discretion contemplated by the third prong of Section 541.200(a), Pet. App. 80a.

The district court's decision was informed by DOL regulations providing that workers who perform inspections are generally not exempt when their work is performed "along standardized lines involving well-established techniques" and with little "leeway." 29 C.F.R. § 541.203(g). GEICO Investigators fit this framework. Investigators "occupy the lowest level" of the Special Investigations Unit, itself a subunit of the Claims Department. Pet. App. 51a. They "report to Supervisors, who in turn report to Managers, who in turn report to the Assistant Vice-President of Claims." *Id.* 7a. Investigators write their reports according to "specific template[s]." *Id.* 56a. (alteration in original). Speculation is impermissible, as are "opinions." *Id.* 55a. "[S]tatements regarding payment of claim[s]" are expressly prohibited, "unless required by state law." *Id.* 55a-56a. GEICO Investigators are tasked merely with the resolution of "narrow factual questions." *Id.* 25a. GEICO regularly audits their reports for efficiency, compliance, and quality. *Id.* 57a-58a. The work is routine, done "along standardized lines involving well-established techniques," 29 C.F.R. § 541.203(g).

Moreover, as the district court explained, "an employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will suffer financial losses if the employee does not perform the job properly." Pet. App. 79a (quoting 29 C.F.R. § 541.202(f)). Petitioners' argument that fraud prevention is important to the insurance industry is

therefore immaterial to whether an insurance fraud investigator is exempt. Indeed, it proves too much. Under petitioners' view, a messenger entrusted with carrying large sums of money from her employer's office to a bank would be exempt merely because she has the discretion to determine the driving route. But the governing regulation squarely rejects that possibility, stating that such a messenger is not exempt even if "serious consequences may flow from the employee's neglect." 29 C.F.R. § 541.202(f).

In short, because deciding how to apply 29 C.F.R. § 541.200(a)(2) to GEICO Investigators will not resolve even the question whether *they* are "covered by the administrative exemption," Pet. i, this case is a bad vehicle for resolving any larger questions.

V. GEICO Investigators do not meet the requirements of the second prong of 29 C.F.R. § 541.200(a).

GEICO Investigators are protected by the FLSA's overtime-pay provisions. Their primary duties are not directly related to management or general business operations, as required by the second prong, 29 C.F.R. § 541.200(a)(2). The regulations elaborate on this second prong in 29 C.F.R. § 541.201: it involves "assisting with the running or servicing of the business." 29 C.F.R. § 541.201(a). GEICO Investigators do neither.

1. GEICO has never suggested that its Investigators are involved in the running—that is, the "management"—of GEICO's business, 29 C.F.R. § 541.200(a)(2). (Indeed, the petition effectively disclaims any managerial role for them. *See* Pet. 17.) So the only way they could qualify for the

administrative exemption is for their primary duties to be directly related to GEICO's "general business operations." 29 C.F.R. § 541.200(a)(2). They are not.

The regulations enumerate types of work that meet the second prong's requirement that the employee's primary duty be "directly related" to business operations, which means "servicing" the business. 29 C.F.R. § 541.201(a). For example, employees whose work lies in "functional areas" like accounting, purchasing, marketing, insurance, health and safety, legal and regulatory compliance, and human resources, perform "administrative" functions within the meaning of the second prong. 29 C.F.R. § 541.201(b). Put another way, the second prong is focused on back-office overhead functions that are common across all sorts of industries. *See* Lawrence P. Postol, *The New FLSA Regulations Concerning Overtime Pay*, 20 Lab. Law. 225, 230 (2004).

Section 541.203 provides examples of jobs that fall within or outside the administrative exemption. Two of these examples are particularly instructive. On the one hand, insurance claims adjusters are generally exempt. 29 C.F.R. § 541.203(a). On the other hand, "[p]ublic sector inspectors or investigators" are generally not exempt, because their work is typically not related to "the management or general business operations of the employer." *Id.* § 541.203(j). They are performing line-level, industry-specific duties, not general back-office tasks. DOL's conclusions are based on the type of work an employee is doing, rather than on that employee's job title, *see id.* § 541.2; nothing turns on whether the employee works in the private or public sector.

Section 541.3 reinforces the conclusion that investigators who perform work such as "preparing investigative reports" are typically not exempt because their primary duties fall outside the requirement of the second prong. 29 C.F.R. § 541.3(b). DOL has explained that Section 541.3(b) embraces prior case law finding that individuals who work as environmental wrongdoing investigators, county probation office investigators, and police investigators lie outside the second prong. 69 Fed. Reg. 22,122, 22,129 (April 23, 2004). Nothing in the DOL regulation suggests that the police investigator who investigates insurance fraud as a criminal matter should be treated differently with respect to the second prong of the administrative exemption than the GEICO Investigator who investigates a potential fraud as part of his job.

GEICO Investigators' primary duty is "conducting factual investigations and reporting the results" to Claims Adjusters who make the actual decisions, Pet. App. 37a, 57a. Unlike the employee benefits personnel or the database administrators who provide support to the Claims Adjusters, and whose work involves "general business operations," 29 C.F.R. § 541.200(a)(2), of the kind performed across a wide range of companies, the Investigators are not performing an "administrative" function.

Nor are GEICO Investigators doing the kind of advising, negotiating, or decisionmaking that would bring them within the second prong. Thus, a comparison between the primary duty of GEICO Investigators and the primary duties DOL regulations repeatedly and consistently describe as insufficient to meet the second prong confirms the Fourth Circuit

was correct: GEICO Investigators do not fall within the administrative exemption.

2. DOL opinion letters reinforce the conclusion that GEICO Investigators do not meet the second prong. A 2005 opinion letter regarding private sector employees conducting security clearance investigations offers an illuminating example. The investigators' primary duty was "diligent and accurate fact-finding, according to [agency] guidelines, the results of which are turned over" to the agency for a decision. DOL, Wage & Hour Div., Opinion Letter FLSA 2005-21 (Aug. 19, 2005), 2005 WL 3308592. DOL emphasized that "[s]uch activities, while important, do not directly relate to the management or general business operations of the employer within the meaning of the regulations." *Id.*

3. Petitioners are wrong to compare GEICO Investigators to "insurance claims adjusters," Pet. 18-19. The duties of claims adjusters that the regulation highlights as making them an "example[]" of the administrative exemption, 29 C.F.R. § 541.203(a), include tasks like "evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation." *Id.*

GEICO Investigators perform none of these tasks. GEICO explicitly forbids them from making recommendations regarding coverage. They do not determine liability. And they have no influence over litigation. *See* Pet. App. 55a-56a. GEICO cannot credibly compare them to claims adjusters, rather than to the wide range of investigators whom DOL has consistently found non-exempt. The Fourth Circuit

was thus right to reject GEICO's attempt to transfer the Claims Adjustors' exemption to the Investigators.

CONCLUSION

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

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