

NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 20-5382

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**EARTHWORKS, et al.,
*Plaintiffs/Appellants,***

v.

**U.S. DEPARTMENT OF THE INTERIOR, et al.,
*Defendants/Appellees,***

and

**BARRICK NORTH AMERICA HOLDING CORP., et al.,
*Intervenor-Defendants/Appellees.***

Appeal from the United States District Court for the District of Columbia
No. 1:09-cv-01972 (Hon. Rudolph Contreras)

**FINAL BRIEF FOR AMICI CURIAE THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA AND
THE NATIONAL ASSOCIATION OF MANUFACTURERS
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**A. Parties and Amici**

All parties, intervenors, and amici appearing before the district court and in this Court (except for the amici filing this brief) are listed in the Brief for Appellants and the Brief for Federal Appellees.

B. Rulings Under Review

References to the rulings at issue appear in the Brief for Appellants.

C. Related Cases

There are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

/s/ Eric Grant

Eric Grant

RULE 26.1 DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America (Chamber) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber. Insofar as it is relevant to this litigation, the Chamber's general nature and purpose is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts, including by regularly filing amicus curiae briefs in cases that raise issues of concern to the nation's business community.

The National Association of Manufacturers (NAM) states that it is a non-profit, tax-exempt organization incorporated in the State of New York. The NAM has no parent corporation, and no publicly held company has 10% or greater ownership in the NAM. Insofar as it is relevant to this litigation, the NAM's general nature and purpose is to serve as the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States, including in amicus curiae briefs.

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INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and every industrial sector. Manufacturing employs nearly 13 million men and women, contributes \$2.9 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.*

* Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amici curiae state that no counsel for any party authored this brief in whole or in part, and no entity or person — aside from amici curiae, their members, or their counsel — made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

SUMMARY OF ARGUMENT

As declared by Congress, it is in the national interest to foster and encourage private enterprise in developing domestic mineral resources and thereby to promote an adequate and stable supply of materials — especially critical minerals — needed to maintain economic well-being and national security. The 2003 Millsite Rule does just that by rejecting a non-statutory limitation on the number of millsite locations that are necessary to support a particular mining claim. Accepting Plaintiffs' contrary arguments and vacating the Rule would inevitably reduce domestic production of critical minerals, with at least three deleterious consequences to the national interest.

1. Reduced domestic production of critical minerals would hamstring the U.S. economy. Critical minerals are minerals whose absence would have significant negative consequences for the economy and national security of the United States. As determined by the U.S. Geological Survey pursuant to congressional mandate, they include lithium, cobalt, and rare earth elements. Critical minerals serve as building blocks for many technologies, from common products like cellphones to national defense applications like jet fighter engines. Critical minerals — lithium in particular — also play an essential role in the transition to a less carbon-intensive economy, notably in supporting the batteries that power electric vehicles. Public lands like those subject to the 2003 Millsite Rule contain some of the world's largest lithium deposits, as well as deposits of other critical minerals.

Domestic production of critical minerals is essential to minimize supply chain risks and disruptions in the manufacturing sector. Though such minerals are essential to many key products manufactured in the United States, our Nation depends heavily on imported minerals, and this reliance on imports has only worsened in recent years. This overreliance on imports of critical minerals creates chokeholds in the supply chain, giving foreign governments immense leverage over our economy and national security. If this trend is not reversed with increased domestic production, the U.S. hi-tech manufacturing sector will become ever more vulnerable to trade shocks, whether resulting from military crises like that in Ukraine or from decisions to nationalize certain mineral deposits, as Chile and Mexico have recently done with lithium.

Moreover, expanding renewable energy production will be impossible without reliable access to critical minerals. For example, the average electric car requires six times the mineral inputs of a conventional gas-powered car, and an offshore wind turbine requires nine times the mineral inputs of a typical gas-fired power plant. The Nation's ambitious targets for renewable energy simply cannot be met if the United States lacks the necessary supplies of critical minerals.

2. Reduced domestic production of critical minerals would undermine U.S. national security. The countries that currently possess the bulk of critical minerals are not our closest allies, making increased domestic production a national security imperative as well as an economic necessity. China alone processes approximately

90% of the world's rare earth elements, along with 50% to 70% of lithium and cobalt. The U.S. defense industry needs those critical minerals for advanced semiconductors and missile guidance systems, related superalloys for turbines and hypersonic missiles, and solar panels for military satellites, meaning that our core military apparatus depends on foreign sources of critical minerals. China has not hesitated to weaponize its natural resources, as exemplified by its threat in July 2023 to curb exports of the critical minerals gallium and germanium, which are important components of semiconductors. By encouraging the domestic production of minerals, the 2003 Millsite Rule is helping to make the U.S. less vulnerable to such threats.

3. Reduced domestic production of critical minerals would produce worse environmental and worker safety outcomes. The United States cannot develop a reliable renewable energy network without increased mining and processing of critical minerals; for example, the demand for lithium is expected to grow by more than 40 times by 2040. Unless the United States shifts rapidly to domestic mining and processing of these minerals, nations with weaker environmental and labor standards will continue to control the global market for critical minerals. China currently dominates the market for processing critical minerals, but it does not share our Nation's commitment to environmental protection and worker safety. Encouraging production of critical minerals in the United States will foster better environmental and safety outcomes than continuing our reliance on foreign sources.

The judgment of the district court rejecting Plaintiffs' challenge to the 2003 Millsite Rule should be affirmed.

ARGUMENT

Congress has declared it the “continuing policy” of the United States “in the national interest to foster and encourage private enterprise in . . . the orderly and economic development of domestic mineral resources.” 30 U.S.C. § 21a(2). It is further “the continuing policy of the United States to promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production.” *Id.* § 1602. These congressionally declared national policies are no relics of a bygone era. As recently as 2020, Congress specified that implementing such policies requires federal agencies like Appellee Bureau of Land Management (BLM) to “facilitate the availability, development, and environmentally responsible production of domestic resources to meet national material or critical mineral needs” and to “minimize delays in the . . . issuance of permits and authorizations necessary to explore for, develop, and produce critical minerals.” *Id.* § 1602(7)–(8), *added by* Consolidated Appropriations Act, 2021, Pub. L. No. 116-120, Div. Z, § 7002(b), 134 Stat. 1182, 2563 (2020). Even more recently, Congress enacted 30 U.S.C. § 1607(c) in order to “improve the quality and timeliness of Federal permitting and review processes with respect to critical mineral production on Federal land.” Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 40206(c), 135 Stat. 429, 961 (2021);

see also id. § 40206(b)(3) (declaring that “to the maximum extent practicable, the critical mineral needs of the United States should be satisfied by minerals responsibly produced and recycled in the United States”).

By rejecting any *non-statutory* limitation on the number of millsite locations needed to support a particular mining claim, the 2003 Millsite Rule at issue in this appeal supports and implements the above-quoted continuing policies of the United States as declared by Congress. The briefs of both the Federal Appellees (at 30–53) and the National Mining Association et al. (at 14–34) have cogently explained why the Rule accords with the Mining Law of 1872 and with other governing statutes. For the Court to accept Plaintiffs’ arguments to the contrary and to vacate the Rule would inevitably *thwart* “the orderly and economic development of domestic mineral resources,” especially as to critical minerals. 30 U.S.C. § 21a(2). As Plaintiffs themselves frankly admit, the regulatory regime they seek to impose by vacating the 2003 Millsite Rule would render millsites on public lands “inadequate, insufficient, and an impediment to modern large-scale mining operations.” Brief for Appellants at 38 (internal quotation marks omitted); *accord* Amicus Curiae Brief of Law Professors at 25 (advocating for an “antiquated regime governing mining claims” that would concededly “be anachronistic to modern mining operations”). The resulting reduction in domestic production of critical minerals would have at least three deleterious consequences to the national interest, as explained below.

I. Reduced domestic production of critical minerals would hamstring the U.S. economy.

A. Critical minerals are critically important.

At the direction of Congress, the U.S. Geological Survey (USGS) has designated 50 mineral commodities as “critical minerals.” *See* 2022 Final List of Critical Minerals, 87 Fed. Reg. 10,381 (Feb. 24, 2022), <https://bit.ly/3K8VfkG>. As Congress has recognized, critical minerals — including lithium, cobalt, and rare earth elements — “serve an essential function in the manufacturing” of products, and their absence “would have significant consequences for the economic or national security of the United States.” 30 U.S.C. § 1606(c)(4)(A)(iii). Critical minerals are foundational to the modern economy: they serve as the “building blocks” for many technologies, from common products like laptops, cellphones, automobiles, and medical devices to national defense applications like jet fighter engines and antimissile defense systems. *See, e.g.*, Congressional Research Service (CRS), *Critical Minerals and U.S. Public Policy* 30–32 (June 28, 2019) (hereinafter *Critical Minerals*) (table showing “Major End Uses” of 35 critical minerals), <https://bit.ly/3Q5MQ5m>.

Critical minerals likewise play an essential role in the transition to a more diversified, less carbon-intensive economy. Renewable energy technologies like solar panels, wind turbines, and electric vehicles rely on these minerals. Accordingly, “a concerted effort to reach the goals of the Paris Agreement . . . would mean a quadrupling of mineral requirements for clean energy technologies by 2040. An even

faster transition, to hit net-zero *globally* by 2050, would require six times more mineral inputs in 2040 than today.” International Energy Agency (IEA), *The Role of Critical Minerals in Clean Energy Transitions* 8 (rev. Mar. 2022) (hereinafter *Clean Energy Transitions*), <https://bit.ly/3K2Vde7>; accord, e.g., World Bank Group, *Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition* 93 (2020) (noting that “large relative increases in demand of up to nearly 500 percent are estimated for certain minerals, especially those concentrated in energy storage technologies, such as lithium, graphite, and cobalt”), <https://bit.ly/3QnCC0r>.

Lithium in particular is a prized resource because of its use in battery and other energy storage products. The demand for lithium is expected to increase more than *40 times* by 2040 to meet goals for reducing global greenhouse gases. See IEA, *Clean Energy Transitions*, *supra*, at 8. Because devices ubiquitous in our everyday lives use batteries — cellphones, laptops, and an ever-growing number of electric vehicles — lithium needs are already ever-present and increasing. See, e.g., CRS, *Critical Minerals*, *supra*, at 34–35 (presenting case study of lithium-ion batteries).

Federal public lands like those subject to the 2003 Millsite Rule contain some of the world’s largest lithium deposits. For example, the Thacker Pass Lithium Mine Project on BLM land in Nevada is expected annually to produce lithium in amounts constituting between 25% and 50% of worldwide production in 2022. See USGS, *Mineral Commodity Summaries* 109 (Jan. 31, 2023) (estimating that 130,000 metric

tons of lithium were produced worldwide in 2022), <https://on.doi.gov/3XXX2Pb>; BLM, *Thacker Pass Lithium Mine Project: Final Environmental Impact Statement* 2-8 (Dec. 4, 2020) (approving project expected to produce some 33,000 tons per year of lithium in Phase 1 and 66,000 tons per year in Phase 2), <https://bit.ly/3O4Qr0C>; *cf. Bartell Ranch LLC v. McCullough*, 2023 WL 1782343 (D. Nev. Feb. 6, 2023) (largely upholding BLM’s approval of Thacker Pass project, but remanding without vacatur on one point), *aff’d sub nom. Western Watersheds Project v. McCullough*, No. 23-15259, 2023 WL 4557742 (9th Cir. July 17, 2023) (mem.). Among other benefits, the Thacker Pass project is expected to provide battery material for “more than one million EVs [electric vehicles] annually in North America” in 2025 and beyond. Archana Rani, *GM to Invest \$650m in Thacker Pass mine developer Lithium Americas*, MINING TECHNOLOGY (Feb. 1, 2023), <https://bit.ly/3Oxt8OR>.

B. Domestic production of critical minerals is essential to minimize supply chain risks and disruptions in the manufacturing sector.

Mining projects like those governed by the 2003 Millsite Rule generate billions of dollars in economic activity and support thousands of jobs nationwide. The Thacker Pass project, for example, would create almost 1,000 new jobs and generate substantial local, state, and federal tax revenues; the construction phase alone would inject \$265.4 million into the local economy. *See* BLM, *Thacker Pass Lithium Mine Project, supra*, at 4-86. But the potential economic disruptions of vacating the Rule are not confined to discrete local economies. Increasing the impediments to mining

projects on federal public lands would increase reliance on *imports* of critical minerals. Recent years have taught that domestic energy-related markets are increasingly vulnerable to disruptions on the international stage.

Although critical minerals are essential to many key products manufactured in the United States, our Nation depends heavily on imported minerals. In 2022, of the 50 USGS-designated critical minerals, the United States was “100% net import reliant” for 12 of them and was “more than 50% net import reliant” for 31 more. *See* USGS, *Mineral Commodity Summaries*, *supra*, at 20. This reliance on imports has only worsened in recent years: the number of minerals for which the United States is either 50% or 100% import-reliant *nearly doubled* between 1954 and 2014. *See* USGS, *Comparison of U.S. Net Import Reliance for Nonfuel Mineral Commodities* 1–2 (Dec. 2015), <https://on.doi.gov/3O2PNkl>. Such reliance highlights the need for more domestic production. A decision by this Court rejecting the 2003 Millsite Rule and thereby imposing additional impediments to mining projects on federal public lands would only accelerate the troubling trend reported by USGS.

Overreliance on imports of critical minerals creates chokeholds in the supply chain, giving foreign governments immense leverage over our economy and national security. As the U.S. Government Accountability Office (GAO) has explained, “the supply chains for critical minerals generally follow a linear path” from raw material extraction and processing to consumption and recycling. GAO, *Critical Minerals:*

Building on Federal Efforts to Advance Recovery and Substitution Could Help Address Supply Risks 8 (Dec. 2022), <https://bit.ly/44A4aE3>. Thus, it is not surprising that the first opportunity “to pursue recovery and substitution across critical mineral supply chains” consists of “diversifying and expanding domestic sources of critical minerals,” *id.* at 9, especially on the “modern large-scale” basis facilitated by the 2003 Millsite Rule, Brief for Appellants at 38. Moreover, the initial steps of this supply chain (mineral extraction and processing) greatly influence the later steps (product manufacturing and use). Therefore, although the estimated value of nonfuel minerals produced at mines in the United States in 2022 was less than \$100 billion, those minerals helped enable nearly \$4 trillion in domestic value-added industry sectors. *See* USGS, *Mineral Commodity Summaries*, *supra*, at 5.

As a result, if the United States increasingly relies on imports of critical minerals, the U.S. hi-tech manufacturing sector will become ever more vulnerable to trade shocks. Because many critical minerals are bottleneck resources (i.e., determinative ingredients in various products), any trade-related disruption of supplies of these minerals would immediately affect the production of numerous end-products. *See, e.g.,* Ondrej Burkacky et al., *Semiconductor Shortage: How the automotive industry can succeed*, MCKINSEY & COMPANY (June 10, 2022) (detailing the supply-chain shocks caused by the pandemic-induced shortage of automotive semiconductors), <https://mck.co/3DrRBi2>. The ongoing Ukraine crisis is a trenchant example: “Russia

supplies 25 to 30 percent of palladium, a rare metal used for semiconductors.” *Id.*; see also Jim Kilpatrick, *Supply Chain Implications of the Russia-Ukraine Conflict*, DELOITTE INSIGHTS (Mar. 25, 2022), <https://bit.ly/44VZxnl>.

Other threats and challenges lurk beyond the headlines, including the movement of foreign nations to nationalize critical mineral industries within their borders. Chile, the world’s second largest producer of lithium, recently announced that it will nationalize the country’s lithium industry; Mexico did the same with respect to its lithium deposits last year; and in 2020, Indonesia banned exports of nickel ore, an important material in the production of batteries. See Matthew Chye, *Factbox: Chile lithium move latest in global resource nationalism trend*, REUTERS (Apr. 21, 2023), <https://reut.rs/3rEpWrF>. These multifaceted threats and obstacles to imports of critical minerals underscore the need for robust, expeditious *domestic* production of the kind facilitated by the 2003 Millsite Rule.

C. Expanding renewable energy production will be impossible without reliable access to critical minerals.

Impeding domestic production of critical minerals would also derail national efforts to expand renewable energy sources and thereby reduce emissions of greenhouse gases and other fossil-fuel emissions. Since August of 2022, “\$263 billion in domestic utility-scale clean energy investments have been announced . . . , surpassing total investment into U.S. clean power projects commissioned between 2016–2022.” American Clean Power, *Clean Energy Investing in America*, <https://bit.ly/3Qeu8Zc>

(visited July 23, 2023). The current Administration, moreover, has set a “target for the United States to achieve a 50–52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030.” The White House, *Fact Sheet: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target* (Apr. 22, 2021), <https://bit.ly/47dcIMq>. None of these targets can be met if the United States lacks the necessary supplies of critical minerals. *See, e.g.*, Shannon Osaka, *Minerals are Crucial for electric cars and wind turbines. Some worry whether we have enough*, WASH. POST (Feb. 2, 2023) (observing that “the average electric car requires six times the mineral inputs of a conventional gas-powered car,” and “an offshore wind-turbine . . . requires nine times the mineral inputs of a typical gas-fired power plant”), <https://wapo.st/3Oq3gEb>.

II. Reduced domestic production of critical minerals would undermine U.S. national security.

The countries that currently possess the bulk of critical minerals are not our closest allies, making increased domestic production a national security imperative as well as an economic necessity. According to the International Energy Agency, China alone “processes approximately 90% of the world’s rare earth elements, along with 50% to 70% of lithium and cobalt.” Camille Erickson, *US Critical Mineral Imports Increase YOY as China Maintains Supply Chain Grip*, S&P GLOBAL MARKET INTELLIGENCE (Aug. 20, 2021), <https://bit.ly/3OqTK3G>; *see also* IEA, *Clean Energy Transitions*, *supra*, at 13 (charts illustrating China’s dominance in extraction of rare

earths and in processing of numerous critical minerals). To name just a few uses, the U.S. defense industry needs those critical minerals for advanced semiconductors and missile guidance systems, related superalloys for turbines and hypersonic missiles, and solar panels for military satellites. *See* Morgan D. Bazilian et al., *America's Military Depends on Minerals That China Controls*, FOREIGN POLICY (Mar. 16, 2023), <https://bit.ly/3O7njG6>; CRS, *Critical Minerals*, *supra*, at 1 n.1 (military end use), 12 (reliance on China). Thus, at a time when American military readiness remains as vital as ever, our core military apparatus depends on foreign sources of critical minerals. Equally troubling, because of China's "near-monopoly control" over certain critical minerals, "there has been a transfer of technology from U.S. firms and others to China in order to gain access" to such minerals. *Id.* at 5.

China has not hesitated to weaponize its natural resources. For example, in retaliation over a fishing dispute in 2010, China cut off exports of rare earth elements to Japan for some two months; prices of some elements doubled, others increased by as much as 1300%. *See China's Monopoly on Rare Earths: Hearing Before the Subcommittee on Asia and the Pacific of the House Committee on Foreign Affairs*, 112th Cong., 1st Sess. 1 (2011) (statement of Chairman Manzullo), <https://bit.ly/44YUKBy>. Faced with supply disruption to its production of hi-tech magnets, Japan capitulated in the dispute. *See, e.g.*, Eugene Gholz, Council on Foreign Relations, *Rare Earth Elements and National Security* 3 (Dec. 2014), <https://on.cfr.org/43BRXx9>. Since

that incident, Japan “significantly reduced its dependence on China for rare earths” by deliberate action. Mary Hui, *Japan’s Global Rare Earths Quest Holds Lessons for the US and Europe*, QUARTZ (Apr. 23, 2021), <https://bit.ly/3rIEOoU>.

More recently, in July of 2023, China threatened to curb exports of the critical minerals gallium and germanium, which are important components of semiconductor chips. See Andy Home, *Column: China flexes critical metals muscles with export curbs*, REUTERS (July 20, 2023), <https://reut.rs/3OvpPYc>. By encouraging the domestic production of minerals, the 2003 Millsite Rule is helping to make the U.S. less vulnerable to such threats.

III. Reduced domestic production of critical minerals would produce worse environmental and safety outcomes.

The United States cannot develop a reliable renewable energy network without increased mining and processing of critical minerals. Estimates of increased demand for such minerals are staggering. As noted above, demand for lithium is expected to grow by more than 40 times by 2040; demand for graphite, cobalt, and nickel will grow by “only” 20–25 times by that date. See IEA, *Clean Energy Transitions*, *supra*, at 8. Increased demand for critical minerals in the renewable energy sector is occurring at three levels: first, at the power source level, where critical minerals are needed to make magnets and motors in wind turbines and photovoltaic cells in solar panels, *see id.* at 54–74; second, at the electricity network level, where critical minerals are essential to transmission lines and power distribution systems that connect the power

grid to scattered wind farms and solar arrays, *see id.* at 75–82; and third, at the energy storage level, where critical minerals like lithium are key components of batteries used to store renewable power, *see id.* at 83–108. Demand for critical minerals is not limited to supporting wind and solar power; other low-carbon power-generation sources like hydropower, geothermal energy, nuclear power, and bioenergy likewise require such minerals, albeit in varying degrees. *See id.* at 69, 71–74.

Increasing storage is essential to scaling up renewable power. Wind and solar power inherently face “intermittency” problems — it is never windy or sunny all the time. Thus, to meet electricity demand at any given point, some of the power generated from these renewable sources must be stored for later use via batteries, the most common form being lithium-ion batteries. *See, e.g.*, Environmental and Energy Study Institute, *Fact Sheet: Energy Storage* 1–2, 4 (Feb. 2019), <https://bit.ly/44Guexk>. Because critical minerals are core ingredients in batteries, a limited supply of critical minerals (especially lithium) necessarily limits opportunities to increase the use of renewable energy.

Electric vehicles similarly require critical minerals. The batteries that power those vehicles “depend on five critical minerals whose domestic supply is potentially at risk for disruption: lithium, cobalt, manganese, nickel, and graphite,” and the U.S. “is heavily dependent on imports for these minerals for use in EV batteries.” CRS, *Critical Minerals in Electric Vehicle Batteries* i (Aug. 29, 2022) (emphasis deleted),

<https://bit.ly/3Oriedd>. The EV-driven demand for lithium and nickel is expected to increase by a staggering 40 times between 2020 and 2040. See IEA, *Clean Energy Transitions*, *supra*, at 98. Yet the countries with some of the highest electric vehicle sales (like the U.S.) “have some of the most vulnerable supply chains and are heavily reliant on imports in terms of EV batteries and raw materials,” i.e., critical minerals. Isabeau van Halm & Cathy Mullan, *Booming EV Sales Challenge Critical Mineral Supply Chains*, ENERGY MONITOR (Feb. 14, 2022), <https://bit.ly/4707ObP>.

Unless the United States shifts rapidly to domestic mining and processing of these minerals, nations with weaker environmental and labor standards will continue to control the global market for critical minerals. As discussed above, China currently dominates the market for processing critical minerals. Thus, even if the United States begins to mine critical minerals, those minerals may still need to be shipped to China for processing. For example, mined lithium must be processed into a usable material like lithium carbonate, which is then used as an ingredient in lithium-ion batteries. China alone controls “almost 60% of the world’s capacity for processing raw lithium products into battery-grade chemicals” that include lithium carbonate. Alex Scott, *Challenging China’s Dominance in the Lithium Market*, CHEMICAL & ENG’G NEWS (Oct. 29, 2022), <https://bit.ly/3KaFxFE>.

The United States features one of the world’s safest and most protective mining regimes. See Zhongxue Li et al., *Comparison of typical regulatory mechanisms*

for improving global mine safety and health, 3 INT’L J. MINING & MINERAL ENG’G 251, 253–54 (2011) (discussing development of U.S. mining laws, including law that is “widely considered as one of the most effective occupational safety statutes ever enacted”), <https://bit.ly/3Q9gMgM>. China, by contrast, does not share our Nation’s commitment to environmental protection and worker safety. In 2022, for example, there were 10 coal mining-related deaths in the United States versus 245 in China. See U.S. Mine Safety & Health Administration, *Coal Fatalities for 1900 Through 2022* (visited July 26, 2023), <https://bit.ly/3Ovsv8g>; *China coal mine death toll rises to six, 47 missing*, REUTERS (Feb. 24, 2023) (reporting data from China’s National Mining Safety Administration), <https://reut.rs/44KcPns>. Encouraging production of critical minerals in the United States will foster better environmental and safety outcomes than continuing, or even worsening, our reliance on foreign sources.

CONCLUSION

The judgment of the district court should be affirmed.

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Respectfully submitted,

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