

No. 25-449

In the Supreme Court of the United States

STEPHEN THALER, PETITIONER

v.

SHIRA PERLMUTTER, REGISTER OF COPYRIGHTS AND
DIRECTOR OF THE UNITED STATES COPYRIGHT OFFICE,
ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly upheld the Copyright Office's refusal to register a claim to copyright in an image for which no human author had been identified.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-27a) is reported at 130 F.4th 1039. The opinion of the district court (Pet. App. 28a-46a) is reported at 687 F. Supp. 3d 140.

JURISDICTION

The judgment of the court of appeals was entered on March 18, 2025. Petitions for rehearing were denied on May 12, 2025 (Pet. App. 47a-50a). On July 23, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including October 9, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Intellectual Property Clause of the Constitution grants Congress the power “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const. Art. I, § 8, Cl. 8. Congress has exercised that power throughout the Nation’s history, with the first Congress enacting legislation in 1790 to provide copyright protection to the “author or authors” of certain works. Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124, 124.

The current statute, the Copyright Act of 1976 (Copyright Act or Act), 17 U.S.C. 101 *et seq.*, provides that copyright subsists “in original works of authorship fixed in any tangible medium of expression.” 17 U.S.C. 102(a). Copyright in a work protected under the Copyright Act “vests initially in the author or authors of the work,” 17 U.S.C. 201(a), and confers on the author certain “exclusive rights” in the work, such as the rights to copy the work and to prepare derivative works, 17 U.S.C. 106. Under the Act’s provisions regarding duration of copyright protection, the expiration of copyright generally depends on the date of the author’s death. For works created after 1977, copyright “endures for a term consisting of the life of the author and 70 years after the author’s death.” 17 U.S.C. 302(a). For a “joint work prepared by two or more authors,” copyright endures for “the life of the last surviving author and 70 years after such last surviving author’s death.” 17 U.S.C. 302(b). For certain pre-1978 works, the Act permits a “renewal and extension” of copyright protection. 17 U.S.C. 304(a)(1)(C). The parties entitled to such an extension include “the author of such work, if the author is still living,” 17 U.S.C.

304(a)(1)(C)(i); “the widow, widower, or children of the author, if the author is not living,” 17 U.S.C. 304(a)(1)(C)(ii); or, if the author died intestate, the “next of kin,” 17 U.S.C. 304(a)(1)(C)(iii) to (iv).

In certain circumstances, the Copyright Act also provides for initial vesting of ownership in individuals and entities that hire someone to create a work. The Act refers to such a work as a “work made for hire,” defined as “a work prepared by an employee within the scope of his or her employment” or “a work specially ordered or commissioned” for particular uses “if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” 17 U.S.C. 101. If a work is made for hire, “the employer or other person for whom the work was prepared is considered the author” by operation of law. 17 U.S.C. 201(b). The term of the copyright in such works is not pegged to the author’s lifetime but instead lasts “95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first.” 17 U.S.C. 302(c).

b. Copyright claimants may apply to register their claims with the United States Copyright Office. See 17 U.S.C. 408-412, 701, 702. The Copyright Office determines whether the work “constitutes copyrightable subject matter” and whether “the other legal and formal requirements of [the Copyright Act] have been met.” 17 U.S.C. 410(a). If the application meets those requirements, the Copyright Office registers the claim and provides the claimant with a certificate of registration. See *ibid.* If the Copyright Office instead determines that the work “does not constitute copyrightable subject matter or that the claim is invalid for any other reason,” it “shall refuse registration.” 17 U.S.C. 410(b).

Although “registration is not a condition of copyright protection,” 17 U.S.C. 408(a), it affords certain benefits that copyright ownership alone does not. The owner of a United States work generally may not sue for infringement in federal court unless the work has been registered or the Copyright Office has refused registration. 17 U.S.C. 411(a). Registration before the infringement occurs may also be a prerequisite to certain monetary remedies, 17 U.S.C. 412, 504, 505, and a certificate of registration can serve as *prima facie* evidence of copyright validity, 17 U.S.C. 410(c).

The Copyright Act also authorizes the Copyright Office to “establish regulations not inconsistent with law for the administration of the functions and duties” assigned under Act. 17 U.S.C. 702. Under that authority, the agency has promulgated regulations regarding “conditions for the registration of copyright,” 37 C.F.R. 202.3(a)(1), and the process by which applicants may seek “administrative review” of a decision to refuse registration, 37 C.F.R. 202.5(a). A party whose application has been refused may seek “[f]irst reconsideration” from the Copyright Office’s Registration Program, 37 C.F.R. 202.5(b), and a further “[s]econd reconsideration” from the Copyright Office’s Review Board. 37 C.F.R. 202.5(c) and (f). The Review Board’s decision on second reconsideration “constitutes final agency action.” 37 C.F.R. 202.5(g); see 17 U.S.C. 701(e).

The Copyright Office also issues guidance concerning the registration process and its requirements, including in the *Compendium of Copyright Office Practices*. See, e.g., U.S. Copyright Office, Library of Cong., *Compendium of U.S. Copyright Office Practices* (3d. ed. 2021), <https://perma.cc/9N9N-C3VU> (*Compendium (Third)*); see also 86 Fed. Reg. 3205 (Jan. 14, 2021). The *Compendium*

reflects the agency’s longstanding view that copyright requires human authorship and states that the Copyright Office “will refuse to register a claim if it determines that a human being did not create the work.” *Compendium (Third)* § 306; see *id.* § 313.2 (“To qualify as a work of ‘authorship’ a work must be created by a human being. Works that do not satisfy this requirement are not copyrightable.”) (citing *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884)). The *Compendium* offers examples of works lacking the requisite human authorship, including “works produced by nature, animals, or plants” and “works produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author.” *Id.* § 313.2.

The Copyright Office has reiterated those principles in published guidance that specifically addresses works containing material generated by artificial intelligence (AI). In guidance regarding registration of works created using AI, the Office explains that AI can be a creative tool like many others at an artist’s disposal—such as guitar pedals in sound recordings or cameras in photography. See 88 Fed. Reg. 16,190, 16,193 (Mar. 16, 2023). Consistent with the Copyright Office’s longstanding approach, the agency thus “will consider whether the AI contributions are the result of ‘mechanical reproduction’ or instead of an author’s ‘own original mental conception, to which the author gave visible form.’” *Id.* at 16,192 (brackets omitted) (quoting *Sarony*, 111 U.S. at 60). Under the guidance, if “a work’s traditional elements of authorship were produced by a machine” and a human user “d[id] not exercise ultimate creative control,” then “the work lacks human authorship” and the Copyright Office “will not register it.” *Ibid.* But a “work containing AI-

generated material [could] also contain sufficient human authorship to support a copyright claim,” such as when a human “select[s] or arrange[s] AI-generated material” in a creative way. *Ibid.* “In each case,” the agency has explained, “what matters is the extent to which the human had creative control over the work’s expression.” *Id.* at 16,193.

The Office’s report on the copyrightability of material created using generative AI similarly affirms that “[c]opyright does not extend to purely AI-generated material, or material where there is insufficient human control over the expressive elements.” U.S. Copyright Office, Library of Cong., *Copyright and Artificial Intelligence—Part 2: Copyrightability* iii (Jan. 2025), <https://perma.cc/4V92-M586> (*AI Report*); see *id.* at 7-11. Recognizing the “important distinction between using AI as a tool to assist in the creation of works and using AI as a stand-in for human creativity,” *id.* at 12, the report explains that, based on then-current technology, “prompts alone do not provide sufficient human control to make users of an AI system the authors of the output,” *id.* at 18.

2. Petitioner is a computer scientist who creates and works with AI systems. Pet. App. 6a. He invented an AI system known as the Creativity Machine and thereafter submitted to the Copyright Office a copyright registration application for an image titled “A Recent Entrance to Paradise.” *Id.* at 7a (citation omitted). Petitioner’s registration application stated that the image was “[c]reated autonomously by machine,” and the application identified the “Creativity Machine” as the image’s author. *Ibid.* (citation omitted).

The Copyright Office refused registration because “a human being did not create the work.” Pet. App. 7a (citation omitted). Petitioner sought first reconsideration

through the Copyright Office’s Registration Program. *Ibid.* In seeking reconsideration, petitioner confirmed that the image “was autonomously generated by AI,” but argued that the requirement of human authorship is unconstitutional and “unsupported by either statute or case law.” *Ibid.* (citation omitted). The agency upheld the decision to refuse registration on the ground that the image lacked “sufficient creative input or intervention from a human author.” *Id.* at 8a (citation omitted).

Petitioner sought second reconsideration from the Review Board on the same grounds as in his first request. Pet. App. 8a. The Review Board upheld the refusal to register, relying upon petitioner’s “representation that the [w]ork was autonomously created by artificial intelligence without any creative contribution from a human actor.” *Ibid.* (citation omitted). The Board also rejected petitioner’s argument that the image was a work made for hire, citing the lack of a contract between petitioner and the Creativity Machine. *Ibid.*

Petitioner then sued the Copyright Office and the Register of Copyrights under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, alleging that the Copyright Office’s refusal to register his claim was unlawful. See Pet. App. 7a-8a.

3. The district court entered summary judgment for the government. Pet. App. 28a-46a. The court held that the Copyright Act “protects only works of human creation.” *Id.* at 36a. The court explained that “human creativity is the *sine qua non* at the core of copyrightability, even as that human creativity is channeled through new tools or into new media.” *Id.* at 37a. The court further explained that, while copyright law can reach works created with the use of new tools and technolo-

gies, copyright law “has never stretched so far” as to do so “absent any guiding human hand.” *Id.* at 38a.

In this case, the district court observed that petitioner’s submission to the Copyright Office had described the work for which he sought registration as an image “generated autonomously by a computer.” Pet. App. 35a. The court rejected petitioner’s “attempts to transform the issue presented here, by asserting new facts * * * implying that he played a controlling role in generating the work” through creating, instructing, or operating the Creativity Machine. *Id.* at 44a. The court explained that those “statements directly contradict the administrative record” designed by petitioner “from the outset of his application for copyright registration,” where “his claim to the copyright was only based on the fact of his ‘ownership of the machine.’” *Ibid.* (brackets and citation omitted).

4. The court of appeals affirmed. Pet. App. 1a-27a. The court held that, to obtain protection under the Copyright Act, a work must “be authored in the first instance by a human being.” *Id.* at 10a. In support of that conclusion, the court cited “[n]umerous” statutory provisions that “both identify authors as human beings and define ‘machines’ as tools used by humans in the creative process rather than as creators themselves.” *Id.* at 11a. Those provisions “make sense,” the court explained, “only if an author is a human being.” *Ibid.*; see *id.* at 11a-15a (discussing the Act’s provisions about ownership, copyright duration, inheritance, required signatures, nationality or domicile, and intention in creating a work). Petitioner’s application for copyright registration, however, had “listed the Creativity Machine as the work’s sole author, even though the Creativity Machine is not a human being.” *Id.* at 10a. The

court concluded that, “[a]s a result, the Copyright Office appropriately denied [petitioner’s] application” for copyright registration. *Ibid.*

The court of appeals emphasized that “adhering to the human-authorship requirement does not impede the protection of works made with artificial intelligence,” because copyright protection for an AI-assisted work remains potentially available so long as the “author of that work [is] a human being—the person who created, operated, or used artificial intelligence—and not the machine itself.” Pet. App. 21a; see *id.* at 21a-24a. On appeal, petitioner had “argue[d] that he is the work’s author because he made and used the Creativity Machine.” *Id.* at 26a. The court of appeals declined to address that argument. *Ibid.* The court explained that “[t]he district court held that [petitioner] forwent any such argument before the Copyright Office,” and that petitioner’s opening brief in the court of appeals “did not challenge the district court’s finding of waiver.” *Ibid.*; see *id.* at 27a.

5. The court of appeals denied petitions for panel rehearing and rehearing en banc. Pet. App. 47a-50a.

ARGUMENT

Petitioner contends (Pet. 11-30) that copyright protection under the Copyright Act does not require human authorship. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. The petition for a writ of certiorari should be denied.¹

¹ Petitioner previously raised similar arguments in the patent context when he filed a petition for a writ of certiorari that presented the question whether an AI system may qualify as an inventor. See *Thaler v. Vidal*, No. 22-919 (filed Mar. 17, 2023). This Court

1. The court of appeals correctly held that, under the Copyright Act, only a human being can be the “author” of a copyrightable work. The court correctly upheld the refusal of petitioner’s application for copyright registration, based on petitioner’s own representations to the Copyright Office that the image at issue here had no human author.

a. Although the Copyright Act does not define the term “author,” multiple provisions of the Act make clear that the term refers to a human rather than a machine. Pet. App. 10a-18a.

- Copyright “vests initially in the author.” 17 U.S.C. 201(a). But a machine “cannot own property” and therefore cannot properly “be an author under the statute.” Pet. App. 11a.
- Copyright generally “endures for a term consisting of the life of the author and 70 years after the author’s death.” 17 U.S.C. 302(a). But “machines do not have ‘lives’ nor is the length of their operability generally measured in the same terms as human life.” Pet. App. 12a.
- When an author dies, the “termination interest” in the copyright “is owned, and may be exercised,” by the author’s “widow or widower,” or by the author’s “surviving children or grandchildren.” 17 U.S.C. 203(a)(2) and (A). But machines “have no surviving spouses or heirs.” Pet. App. 12a.
- When transferring copyright ownership, the owner must “sign[]” an “instrument of conveyance.” 17 U.S.C. 204(a). But machines do not have signatures or the “legal capacity to pro-

denied the petition for a writ of certiorari in that case. 143 S. Ct. 1783 (2023).

vide an authenticating signature.” Pet. App. 12a.

- Unpublished works are protected “without regard to the nationality or domicile of the author.” 17 U.S.C. 104(a). But machines “do not have domiciles, nor do they have a national identity.” Pet. App. 13a.
- A work qualifies as a “joint work” if it is “prepared by two or more authors with the intention that their contributions be merged into separable or independent parts of a unitary whole.” 17 U.S.C. 101. But machines “do not intend anything.” Pet. App. 13a.

Reading the term in that “context” and “with a view to [the term’s] place in the overall statutory scheme,” *Türkiye Halk Bankası A.S. v. United States*, 598 U.S. 264, 275 (2023) (citation omitted), an “author” is a human, for purposes of the Copyright Act.

This Court’s precedent underscores that the ordinary meaning of “author” in the copyright context refers to a human creator, not to a machine. Cf. *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 566 (2012) (“When a term goes undefined in a statute, we give the term its ordinary meaning.”). In *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884), this Court held that Congress’s power to enact legislation protecting the “Writings” of “Authors,” U.S. Const. Art. I, § 8, Cl. 8, allowed it to extend copyright protection to photographs, see 111 U.S. at 58. The Court viewed the Intellectual Property Clause as “broad enough to cover an act authorizing copyright of photographs,” at least insofar as the photographs are the “representatives of original intellectual conceptions of the author.” *Ibid.* And the Court contrasted “an original work of art” that is “the product

of [the photographer’s] intellectual invention, of which plaintiff is the author,” with the “merely mechanical” use of a device lacking “novelty, invention, or originality.” *Id.* at 60. Because the photograph at issue in *Burrow-Giles* was “the product of” the photographer’s “intellectual invention,” the Court deemed it “an original work of art[] * * * of which [the photographer] is the author.” *Ibid.*; see *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 737 (1989) (recognizing that, “[a]s a general rule, the author is the party who actually creates the work, that is, the person who translates an idea into a fixed, tangible expression entitled to copyright protection”).

Longstanding agency practice provides further support for that understanding. Indeed, the Copyright Office has consistently recognized the human-authorship requirement in accordance with legal standards that predate the Copyright Act of 1976. In the agency’s annual report published in 1966, the Copyright Office explained that “[t]he crucial question” for works created with “computer technology” is “whether the ‘work’ is basically one of human authorship.” U.S. Copyright Office, Library of Cong., *Sixty-Eighth Annual Report of the Register of Copyrights for the Fiscal Year Ending June 30, 1965* at 5 (1966), <https://perma.cc/QU7P-TY6N>. A work could qualify under that understanding if “the computer merely [was] an assisting instrument,” but the work would be ineligible if “the traditional elements of authorship in the work * * * were actually conceived and executed not by man but by a machine.” *Ibid.* Similarly, in the first edition of the *Compendium of Copyright Office Practices*, the agency stated that “it is not possible to claim copyright in” materials that do not “owe their origin to a human agent.” U.S. Copyright Office, Library

of Cong., *Compendium of Copyright Office Practices* § 2.8.3(I)(a)(1)(b) (July 1973), <https://perma.cc/MH7K-MSGZ>.

Thus, “at the time the Copyright Act was passed and for at least a decade before, computers were not considered to be capable of acting as authors.” Pet. App. 17a. In light of that established understanding, the proper inference is that Congress intended the concept of authorship “to be construed in accordance with pre-existing regulatory interpretations.” *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998).

b. Petitioner’s contrary arguments lack merit.

Petitioner fails to grapple with the court of appeals’ statutory analysis. Instead, he contends that the Copyright Act does not expressly include any “human restriction or requirement.” Pet. 18. And he asserts (Pet. 18-21) that the Copyright Act contemplates nonhuman authors through its definition of a “work made for hire.” A work made for hire is defined as “a work prepared by an employee within the scope of his or her employment,” or “a work specially ordered or commissioned” for particular uses “if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.” 17 U.S.C. 101. The Act provides that, “[i]n the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes” of Title 17. 17 U.S.C. 201(b).

As the court of appeals recognized, that provision allows corporations and governments to be “legally recognized as authors.” Pet. App. 19a. But Congress did not use “the word ‘author’ by itself to cover non-human entities.” *Id.* at 19a-20a. Rather, “the word ‘considered’ in the work-made-for-hire provision does the critical

work.” *Id.* at 19a. It allows for a copyright that would otherwise vest in the human creator to instead “transfer instantaneously, as a matter of law, to the person who hired the creator.” *Ibid.* And the prerequisites for a work-made-for-hire relationship—entering into an employment relationship or executing a written agreement regarding the particular work—cannot be undertaken by a nonhuman creator. For that reason, petitioner is also wrong in arguing (Pet. 21-22) that the image at issue here qualifies as a work made for hire. See Pet. App. 45a & n.3.

Petitioner fares no better in asserting (Pet. 22-25), as an alternative theory, that he is entitled to ownership of copyright in the image based on his ownership of the AI machine itself. The courts below held that petitioner had failed to preserve that argument, see Pet. App. 26a-27a, 36a n.1, and petitioner identifies no reason to question those holdings. In any event, while petitioner’s ownership of the Creativity Machine might support a claim of ownership of any physical copies of the images that the Machine creates (see Pet. 24), it does not imply ownership of any *copyright* in those images. See 17 U.S.C. 202 (“Ownership of a copyright * * * is distinct from ownership of any material object in which the work is embodied.”). Resolution of that question instead turns on whether petitioner is the “author” of those images. With respect to the image at issue in this case, petitioner’s submissions to the Copyright Office disavowed any contention that petitioner had exercised the degree of creativity needed for “author” status, and they identified the Creativity Machine itself as the image’s “author.” See pp. 6-7, *supra*.

Petitioner is likewise wrong to contend that the Copyright Office refused his registration application be-

cause it “believes human beings are not responsible for creative choices when AI is used or because it believes the use of AI involves randomness.” Pet. 15; see Pet. 15-16. The Copyright Office does not treat the use of AI, as part of a human’s creative process, as precluding the possibility of copyright protection. See pp. 5-6, *supra*. Instead, in assessing a work made using AI, the Copyright Office considers “the extent to which the human had creative control over the work’s expression.” 88 Fed. Reg. at 16,193. In this case, however, petitioner expressly disavowed any participation or creative control over the work and instead asked the Copyright Office to recognize the AI machine itself as the work’s “author.” That was the basis for the Copyright Office’s refusal to register his claim and for the decisions of the courts below. See Pet. App. 22a, 38a. This case thus does not implicate questions about the nature or extent of the human contribution that is necessary to register a copyright in a work created using AI tools.

2. The court of appeals’ decision does not conflict with any decision of this Court or another court of appeals.

a. Petitioner asserts (Pet. 15) that, by requiring human authorship, the Copyright Office is impermissibly “policing the methodology of generating creative works” in a manner that is inconsistent with this Court’s decision in *Star Athletica, LLC v. Varsity Brands, Inc.*, 580 U.S. 405 (2017). See Pet. 13-15. There is no such inconsistency. In *Star Athletica*, the Court discussed the analysis that should be used to determine whether “a feature incorporated into a useful article ‘can be identified separately from’ and is ‘capable of existing independently of’ ‘the utilitarian aspects’ of the article,” such that the feature is potentially copyrightable under

Section 101 as part of the “design of a useful article.” 580 U.S. at 413. The Court held that “evidence of the creator’s design methods, purposes, and reasons” is irrelevant to that statutory inquiry, and that the analysis instead “is limited to how the article and feature are perceived, not how or why they were designed.” *Id.* at 422-423. That holding is irrelevant to the question whether the statutory term “author” can include a machine.

b. Petitioner has not identified any court of appeals that has reached his desired result. In fact, courts of appeals have repeatedly rejected efforts to obtain copyright in works allegedly authored by nonhumans. See, e.g., *Kelley v. Chicago Park Dist.*, 635 F.3d 290, 304 (7th Cir. 2011) (explaining that “‘authorship is an entirely human endeavor’” and that “[a]uthors of copyrightable works must be human”) (quoting 2 William F. Patry, *Patry on Copyright* § 3.19 (2010)), cert. denied, 565 U.S. 934 (2011); *Urantia Found. v. Maaherra*, 114 F.3d 955, 958 (9th Cir. 1997) (explaining that, for a work to be “copyrightable,” “some element of human creativity must have occurred,” and rejecting the contention that copyright extends to works authored by “celestial beings rather than human beings”).

Petitioner contends (Pet. 16-18) that the court of appeals’ reasoning is inconsistent with that of courts that have permitted copyright registration for photographs. That is incorrect. None of the cases petitioner cites involved an attempt to register a work for which a camera itself was identified as the work’s sole “author.” See *Harney v. Sony Pictures Television, Inc.*, 704 F.3d 173, 181-182 (1st Cir. 2013) (finding it “undisputed[]” that the photographer had “produced an original, expressive work”); *Ets-Hokin v. Skyy Spirits, Inc.*, 225 F.3d 1068,

1076 (9th Cir. 2000) (holding that the photographer had made decisions about “lighting, shading, angle, background, and so forth,” such that the images were “sufficiently creative, and thus sufficiently original, to merit copyright protections”); *Mannion v. Coors Brewing Co.*, 377 F. Supp. 2d 444, 452-453 (S.D.N.Y. 2005) (explaining that “a person may create a worthwhile photograph by being at the right place at the right time”); *Cruz v. Cox Media Grp., LLC*, 444 F. Supp. 3d 457, 465 (E.D.N.Y. 2020) (finding sufficient creativity in a photograph taken by amateur photographer). Here, by contrast, petitioner has identified the Creativity Machine itself as the relevant “author,” based on petitioner’s representation that the image in question “was autonomously created by artificial intelligence without any creative contribution from a human actor.” Pet. App. 8a (citation omitted).

3. Petitioner asserts (Pet. 25, 29-30) that this case warrants the Court’s review because the refusal of his application “discourage[s] investment in a critically new and important developing field” and “eliminat[es] any incentive whatsoever” “to develop and use creative AI to generate and disseminate socially valuable goods.” See Pet. 25-34. That assertion vastly overstates the significance of this case and the breadth of the court of appeals’ ruling.

Because petitioner’s own application for copyright registration represented that the image was created “autonomously by machine,” Pet. App. 7a, this case presents only the question whether an AI machine can itself be treated as the “author” of a copyrightable work. It does not present any broader question about the eligibility for copyright registration of works created using AI. The Copyright Office does not refuse to register works based solely on a human author’s use of AI or

other technological tools. See 88 Fed. Reg. at 16,192. On the contrary, between March 2023 and January 2025, the Copyright Office “registered hundreds of works that incorporate AI-generated material.” *AI Report* 3. That number has continued to grow, with the Copyright Office making case-by-case determinations as to whether human contributions to AI-generated outputs are sufficient to constitute authorship. *Id.* at 41.

In this case, however, petitioner expressly disavowed making the sort of contribution that the Copyright Office has previously found sufficient, instead representing that the image he sought to register involved no “creative contribution from a human actor” at all. Pet. App. 8a. The court of appeals correctly resolved the narrow question that petitioner’s application presented, without addressing any broader issue concerning the circumstances in which a human user of AI technology can qualify as the “author” of an AI-assisted work. The decision below accordingly does not warrant further review.²

² Contrary to the letter that petitioner submitted, there is no need to hold this case pending consideration of *Blanche v. Perlmutter*, No. 25A478, or *Trump v. Slaughter*, No. 25-332 (argued Dec. 8, 2025). The Review Board issued its final decision concerning the refusal of petitioner’s application for copyright registration years before either of those cases arose. See C.A. App. 71-77 (Review Board’s denial of petitioner’s Second Request for Reconsideration, dated February 14, 2022). The ultimate disposition of those cases will have no bearing on the propriety of that decision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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