**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES, et al.,<br><br>Plaintiffs,<br>v.<br><br>DONALD TRUMP, et al.<br><br>Defendants. | Civil No. 1:25-cv-03745 |

**DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND CROSS MOTION FOR SUMMARY JUDGMENT AND IN RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Section 112(i)(4) of the Clean Air Act authorizes the President to grant regulated entities a 2-year exemption from compliance with air pollution standards issued under Section 112. The President may grant this discretionary exemption if he "determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4). The President exercised that authority here.

There are compelling reasons to conclude that Congress intended to preclude judicial review of this discretionary determination. First, despite the Clean Air Act's detailed, comprehensive, and exclusive scheme for judicial review, the statute does not authorize judicial review of the President's determinations under Section 112. Second, Congress required the President to "report to Congress with respect to each exemption … made under this paragraph," suggesting that Congress itself would oversee these exemptions. *Id.* And third, the consequences of applying Section 112(i)(4) are limited. The statutory authority merely grants a modest extension of time to regulated parties and restricts the rights of no one.

The statute's comprehensive review scheme also presents an insurmountable redressability problem for Plaintiffs, who seek to add EPA as a party in order to sue the President. It is bedrock law that a court may not enjoin the President or issue a declaratory judgment against the President for taking a discretionary act. And the Clean Air Act unequivocally forecloses non-statutory review of EPA actions. Because the claim against EPA must be dismissed for lack of jurisdiction, and because relief directly against the President is unavailable, Plaintiffs' claims are not redressable, and they lack standing. This jurisdictional defect is yet another reason to conclude that Congress intended to foreclose review of the President's discretionary determinations under Section 112(i)(4).

Even if ultra vires review were available, Plaintiffs' burden is insurmountable because ultra vires claims are "essentially a Hail Mary pass," not a substitute for garden-variety APA review. *NRC v. Texas*, 605 U.S. 665, 681 (2025). And here, Plaintiffs transparently attempt to "dress up a typical statutory-authority argument as an ultra vires claim," which "falls well shy of a meritorious" claim. *Id.* at 682. Even more egregiously, Plaintiffs repeatedly attempt to disguise factual arguments about the availability of technology as challenges to statutory interpretation. In truth, none of Plaintiffs' statutory arguments comes close to making out an ultra vires claim, and the President's discretionary determination as to technology and national security cannot be challenged through an ultra vires claim.

Never before in the Nation's history has the Supreme Court authorized intensive factual review of a discretionary presidential determination expressly authorized by statute. The Court should conclude that judicial review is unavailable or that it is limited to facial review of whether the President brazenly exceeded his authority under an unambiguous statute. On those grounds, the complaint should be dismissed. In the alternative, the Court should grant Defendants' cross-motion for summary judgment and deny Plaintiffs' motion for summary judgment.

**PROCEDURAL BACKGROUND**

Plaintiffs' lawsuit names as Defendants President Trump, EPA, and EPA Administrator Lee Zeldin. Plaintiffs seek a declaration that the HON Proclamation is unlawful and they seek an injunction preventing EPA from implementing the exemption and directing EPA to notify facilities subject to the exemption and permitting officials of the Court's decision. Compl., Dkt. No. 1, ¶¶ 149–183; ¶¶ A–B. Plaintiffs identify two claims for relief in their Complaint, both styled as "nonstatutory review." *Id.* at 37, 40. Count One alleges that the President has violated the Clean Air Act by issuing the exemption. *Id.* at 37. Count Two alleges that the President lacked authority to issue the exemption here. *Id.* at 40. Defendants filed their Motion to Dismiss on January 29, 2026, on several grounds, including that the Clean Air Act has foreclosed review, that Plaintiffs fail to state a claim for ultra vires review, and on standing grounds. *See* Dkt. No. 34-1. In response, Plaintiffs filed their opposition and cross moved for summary judgment. Dkt. No. 41.

In three other cases filed in this Court, multiple environmental organizations also sued President Trump and EPA for proclamations exercising the President's exemption authority under the Clean Air Act 112(i)(4) for certain coke ovens facilities, taconite iron ore processing facilities, and commercial sterilizer facilities. *See GBASP et al. v. Trump*, No. 1:25-cv-04469 (challenging the presidential proclamation exempting facilities from EPA's 2024 Coke Ovens Rule, *Regulatory Relief for Certain Stationary Sources to Promote American Coke Oven Processing Security*, 90 Fed. Reg. 54517 (Nov. 21, 2025)); *MCEA et al. v. Trump*, No. 1:26-cv-00287 (challenging the presidential proclamation exempting facilities from EPA's 2024 Taconite Rule, *Regulatory Relief for Certain Stationary Sources to Promote American Iron Ore Processing Security*, 90 Fed. Reg. 34743 (July 17, 2025)); *Cleanaire NC, et al. v. Trump*, No. 1:26-cv-00233 (challenging the presidential proclamation exempting facilities from EPA's 2024 Sterilizers Rule, *Regulatory Relief for Certain Stationary Sources to Promote American Security with Respect to Sterile Medical Equipment*, 90 Fed. Reg. 34747 (July 17, 2025)).

The plaintiffs in the other three cases (collectively the "non-t.e.j.a.s. plaintiffs") all designated their cases as related to this matter and have brought identical claims to those of the Plaintiffs, styled as nonstatutory review of "unlawful executive action in violation of the Clean Air Act" and "action in excess of statutory authority by federal officer." *GBASP*, 1:25-cv-04469-CRC, Dkt. No. 1, at 25, 29; *MCEA*, 1:26-cv-00287-CRC, Dkt. No. 1, at 30, 32; *Cleanaire*, 1:26-cv-00233-CRC, Dkt. No. 1, at 34, 36. And like the Plaintiffs in this matter, the non-t.e.j.a.s plaintiffs also allege that the President had exceeded his Clean Air Act authority to issue exemptions under 42 U.S.C. § 7412(i)(4). *GBASP*, 1:25-cv-04469-CRC, Dkt. No. 1, at 25, 29; *MCEA*, 1:26-cv-00287-CRC, Dkt. No. 1, at 30, 32; *Cleanaire*, 1:26-cv-00233-CRC, Dkt. No. 1, at 34, 36.

In February 2026, Defendants moved to consolidate the four related cases because they all present identical threshold legal issues and because Defendants' already-filed motion to dismiss in this matter could resolve all four cases. Dkt. No. 38-1. Plaintiffs and non-t.e.j.a.s plaintiffs opposed Defendants' consolidation motion. *See* Dkt. Nos. 42-45.

At the time of Defendants' consolidation motion, all four cases were assigned to Judge Cooper, who held a hearing on the motion on March 17, 2026. After that hearing, Judge Cooper granted in part and denied in part Defendants' motion to consolidate. *See* Minute Order dated March 17, 2026 in Civ. Nos. 25-04469, 26-00233, 26-00287. Judge Cooper consolidated the four cases for the "purpose of resolving common threshold legal questions" raised in Sections I and II of Defendants' Motion to Dismiss and addressed in Sections I and III of this supporting Reply. *Id*. Judge Cooper directed the non-t.e.j.a.s plaintiffs to file a consolidated response in opposition to Sections I and II of Defendants' Motion to Dismiss. *Id.* Additionally, Judge Cooper directed Defendants to file a combined reply in support of their motion to dismiss (responding to all plaintiffs) and response in opposition to Plaintiffs' motion for summary judgment. *Id.* On April 1, 2026, this matter (as well as the three consolidated matters) were reassigned to Judge Freidman. Dkt. No. 55.

Consistent with Judge Cooper's order, on April 10, 2026, the non-t.e.j.a.s. plaintiffs filed a Supplemental Brief in Response to Sections I and II of Defendants' Motion to Dismiss, Dkt. No. 56, primarily repeating the arguments made by Plaintiffs in this matter in their opposition to Defendants' Motion to Dismiss. In accordance with Judge Coopers' March 17, 2026 order, Defendants now submit this reply in support of the motion to dismiss and response to Plaintiffs' motion for summary judgment, and Defendants also cross-move for summary judgment.

## ARGUMENT

### I. The Clean Air Act's Comprehensive Judicial Review Scheme Bars Review of the President's HON Proclamation.

The Court should dismiss for lack of jurisdiction. Where Congress has provided "a detailed mechanism for judicial consideration of particular issues at the behest of particular persons," Congress has also foreclosed equitable nonstatutory review. *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 349 (1984). Here, the Clean Air Act's comprehensive judicial-review scheme forecloses Plaintiffs' claims for nonstatutory review of a discretionary presidential determination under Section 112(i)(4) of the Clean Air Act. Nothing in Plaintiffs' opposition refutes the essential premise that the Clean Air Act provides a comprehensive review scheme and Congress did not intend for review beyond what it specified in the statute.

The Clean Air Act sets forth an all-inclusive and highly detailed judicial-review scheme that governs jurisdiction and review of EPA action and inaction. *See* 42 U.S.C. §§ 7604, 7607. Section 307 governs review of EPA action by exhaustively listing each type of Agency action seriatim and then assigning jurisdiction over review of those actions to either the regional courts of appeals or the District of Columbia Circuit. *Id.* § 7607(b)(1). It specifies the "sole forum for challenging procedural determinations" during rulemaking, prohibits "interlocutory appeals," and specifies that a court may reverse any agency action "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." *Id.* § 7607(d)(8)-(9). And it expressly provides that this review scheme is exclusive in a provision entitled: "Other methods of judicial review not authorized." *Id.* § 7607(e). Nowhere does Section 307 provide for judicial review of presidential action under the Clean Air Act generally or Section 112(i)(4) specifically. And

Section 112(i)(4) has been in the statute since 1970 and repeatedly retained as part of subsequent overhauls of the statutory scheme.

Likewise, Section 304 authorizes citizen suits against EPA for failure to perform a nondiscretionary duty. 42 U.S.C. § 7604. It includes detailed provisions specifying jurisdiction, venue, and a host of procedural requirements. Nowhere does Section 304 provide for judicial review of presidential action. Meanwhile, Section 112(i)(4) requires the President to report "each exemption" "to Congress," strongly suggesting that Congressional oversight, not judicial oversight, should perform the interbranch check on this exemption. Taken together then, the Clean Air Act is a paradigmatic example of "a detailed mechanism for judicial consideration of particular issues at the behest of particular persons" that forecloses judicial review outside of the scheme. *See Block*, 467 U.S. at 349.

More still, Plaintiffs get the statutory inference exactly backwards. "Out of respect for the separation of powers and the unique constitutional position of the President, . . . textual silence is not enough" to subject the President to judicial review. *Franklin v. Massachusetts*, 505 U.S. 788, 800 (1992). Particularly where a statute contains a comprehensive review scheme, courts must require "an express statement by Congress before assuming it intended the President's performance of his statutory duties to be reviewed for abuse of discretion." *Id.* at 801. So, even if the Court is not persuaded that the Clean Air Act's comprehensive judicial review scheme demonstrates Congress's intent to foreclose judicial review here, Plaintiffs can at most demonstrate statutory silence as the basis of their equitable claim. But as instructed by *Franklin*, the inference to draw from congressional silence is that the judiciary should refrain from reviewing the President's discretionary determinations (absent some genuine constitutional claim not presented here). *Id.*

Instead, Plaintiffs' takeaway from this silence is that, because Congress did not explicitly mention the President, Congress must have intended for nonstatutory review of presidential action. Pl. Br., Dkt. No. 41-1, at 23-24. But the Supreme Court long ago rejected the notion that Congress must use magic words to foreclose judicial review. *See Block*, 467 U.S. at 349 ("[T]he Court has found the standard met, and the presumption favoring judicial review overcome, whenever the congressional intent to preclude judicial review is 'fairly discernible in the statutory scheme.'" (quoting *Ass'n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 157 (1970))). Plaintiffs' own cases reflect that point, as the Supreme Court ruled in each case they cite that judicial review was foreclosed. *See* Pl. Br. at 24 (citing *Patel v. Garland*, 596 U.S. 328 (2022) (judicial review foreclosed)); *S. Ry. Co. v. Seaboard Allied Milling Corp.*, 442 U.S. 444 (1979) (same)). And refusing to infer judicial review makes perfect sense in this case where the presidential action is expressly subject to congressional oversight, it represents a relatively minor power that exempts certain entities from complying with certain regulations for at most two years, and an exemption denies no one an individual right. *Cf. Nat'l Treasury Emps. Union v. Trump*, 780 F. Supp. 3d 237, 254 (D.D.C. 2025) (challenged action would deny union rights to collective bargaining). Indeed, it would make a mockery of Congress's intent in passing the Clean Air Act's judicial review provisions to read them and conclude that nonstatutory review remains available.

That just leaves Plaintiffs' misguided argument that Congress must have intended for review of Section 112 determinations because it did not include an express bar on such review, whereas Congress did include such a bar of different presidential determination under Clean Air Act Section 165. Pl. Br. at 24 (citing 42 U.S.C. § 7475(d)(2)(D)(ii)). But the bar on judicial review in Section 165 makes perfect sense to avoid confusion in that context, as opposed to

Section 112(i)(4), where no such confusion exists. That is so because Section 165(d) governs permitting for facilities on federal land where the final agency action issuing the permit is carried out by a State, and the State's Governor and the federal facility manager may disagree about whether a permit should issue. 42 U.S.C. § 7475(d)(2). In that circumstance, the President resolves the dispute between the Governor and federal subordinate. *Id*. Thus, because the permits themselves are subject to judicial review, *see, e.g., Sierra Club v. Moser*, 310 P.3d 360 (Kan. 2013) (reviewing state-issued permit), it is not surprising that Congress included a provision clarifying that ordinary review of the permits does not include review of the President's subsidiary finding. In contrast, here there is no statutory basis for review of any aspect of the President's exercise of exemption authority under Section 112(i)(4), so there was no need for a clarifying provision barring review.

Because Congress has foreclosed judicial review of the President's exercise of Section 112(i)(4) authority, this Court lacks jurisdiction and the case must be dismissed.

**II. EPA Is Not a Proper Party and the Court May Not Order Relief Against the President.**

For a separate reason, the Clean Air Act's exclusive judicial-review scheme, together with blackletter law foreclosing relief directly against the President, requires dismissal on threshold grounds.

**1.** To begin, EPA is not a proper party and must be dismissed because EPA has taken no action susceptible to review under the Clean Air Act or ultra vires review.

As detailed in Section I above, the Clean Air Act's comprehensive judicial review provision requires that challenges to EPA action arising under the Clean Air Act be filed in the Courts of Appeals and explicitly prohibits "other methods of judicial review." 42 U.S.C. § 7607(e); *see also Am. Rd. & Transp. Builders Ass'n v. EPA*, 865 F. Supp. 2d 72, 80 (D.D.C. 2012), *aff'd*, No. 12-5244, 2013 WL 599474 (D.C. Cir. Jan. 28, 2013) (holding that "Section

307(b)(1) of the Clean Air Act 'channels review of final EPA action *exclusively* to the courts of appeals, regardless of how the grounds for review are framed'") (emphasis added). Thus, the Clean Air Act's judicial review provision does not authorize suit against EPA in district court except in cases of inaction contrary to a nondiscretionary duty, which is not alleged here. *See* 42 U.S.C. § 7604.

Moreover, even if Congress did not foreclose nonstatutory ultra vires review of EPA action through the Clean Air Act, there is no non-frivolous basis for an ultra vires claim here because EPA did not issue the challenged exemptions, has taken no action to implement them, and Plaintiffs do not allege that EPA "plainly act[ed] in excess of its delegated power." *Changji Esquel Textile Co. v. Raimondo,* 40 F.4th 716, 722 (D.C. Cir. 2022). In their response to the Motion to Dismiss, Plaintiffs admit that they are not seeking review of any final EPA action, and that they do not allege that EPA acted ultra vires. Pl. Br. at 59, n.6. As such, Plaintiffs concede that that they do not assert a cause of action against EPA. *Id.*

Instead, Plaintiffs assert that they have named EPA as a defendant only to receive "complete relief." *Id.* at 59. This argument should be rejected. First, no "complete relief" exception exists within the Clean Air Act's comprehensive judicial review provision barring other methods of judicial review. Second, there is no relief that the Court could properly order against EPA. Plaintiffs seek an order prohibiting EPA from implementing the presidential exemptions, Dkt. No. 41-4, but the exemptions are self-executing; EPA does not implement them. And even if the exemptions were vacated, the Court does not have the authority to compel EPA to enforce the 2024 HON Rule because "an agency's exercise of its prosecutorial discretion cannot be subjected to judicial scrutiny." *Citizens for Resp. & Ethics in Wash. v. FEC*, 892 F.3d 434, 439 (D.C. Cir. 2018) (citing *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)). Plaintiffs' other requested relief in the form of an order directing EPA to notify the operators of the facilities identified in Annex I and permitting authorities that the HON Proclamation is likewise defective. *See* Dkt. No. 41-4. Plaintiffs cite no statutory mandate that would require EPA to take such action and courts generally lack authority to compel federal agencies to take affirmative action absent a clear statutory mandate. *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 65 (2004) (holding that the APA "rules out judicial direction of even discrete agency action that is not demanded by law").

Finally, Plaintiffs get nowhere by contending that the usual path to obtain relief in a presidential ultra vires case is to seek an injunction against the subordinate agency that effectuates the ultra vires action because that equitable principle does not permit district courts to circumvent Congress. Here, challenges to EPA under the Clean Air Act must (i) arise from a "final action" and (ii) be brought in the D.C. Circuit. 42 U.S.C. § 7607(b)(1). This case fails to meet either requirement, so EPA must be dismissed as a defendant. *See Royster-Clark Agribusiness, Inc. v. Johnson*, 391 F. Supp. 2d 21 (D.D.C. 2005) (dismissing action for lack of subject matter jurisdiction where plaintiff sought declaratory and injunctive relief against EPA but failed satisfy requirements for waiver of sovereign immunity under CAA Section 307(b)(1)). In other words, Plaintiffs may raise their ultra vires challenge to the President's exemptions only if EPA takes final action relying on those exemptions, and only in the form of a circuit court petition for review as prescribed by Congress.

**2.** Next, because EPA and its Administrator must be dismissed, the only remaining defendant is the President. But Plaintiffs cannot obtain the injunctive or declaratory relief they seek against the President.

It is bedrock law that a court cannot enjoin a discretionary act of the President. *Franklin*, 505 U.S. at 802–03. "[T]his court has no jurisdiction of a bill to enjoin the President in the performance of his official duties." *Id.* Nor may a court subject the President to declaratory relief, as the D.C. Circuit held in *Newdow v. Roberts*, 603 F.3d 1002, 1012 (D.C. Cir. 2010). "A court — whether via injunctive or declaratory relief — does not sit in judgment of a President's executive decisions." *Id.*; *see also Franklin*, 505 U.S. at 827 (Scalia, J., concurring) ("I think we cannot issue a declaratory judgment against the President"); *Swan v. Clinton*, 100 F.3d 973, 976 n. 1 (D.C. Cir. 1996) (identifying separation of powers issues raised by requests for declaratory relief against the President).

Plaintiffs nevertheless ask for a declaratory judgment directly against the President, mistakenly relying on *Clinton v. City of New York*, 524 U.S. 417 (1998). Pl. Br. at 62. *Clinton* is inapplicable for at least two reasons. First, other parties were properly named as defendants in *Clinton*, so any declaratory judgment was presumptively issued against those defendants, not the President. *See City of New York v. Clinton*, 985 F. Supp. 168, 169 (D.D.C. 1998) (naming additional agency defendants). Here, however, no other proper party exists for the reasons described above. Second, the plaintiffs in *Clinton* challenged the constitutionality of a statute, not "a decision committed to the executive discretion of the President." *Newdow*, 603 F.3d at 1012. *Newdow* distinguished *Clinton* on that basis and denied a request for declaratory relief. *Id.* This Court should do the same here.

For these two jurisdictional and remedial reasons, the complaint must be dismissed on threshold grounds.

## III. Even if the Clean Air Act Does Not Foreclose Judicial Review and Plaintiffs' Claims Are Redressable, Plaintiffs Fail to State an Ultra Vires Claim as a Matter of Law.

Even assuming that Plaintiffs could seek judicial review here, that review is extremely narrow and circumscribed by the test set forth in *NRC v. Texas*. As stated there, an ultra vires claim is available only where the President acts "entirely 'in excess of [his] delegated powers and contrary to a specific prohibition'" in a statute that confers rights on the party seeking review. 605 U.S. at 681.

Plaintiffs have not alleged, let alone shown, that the President violated any rights-conferring statutory prohibition. Plaintiffs have failed even to assert that Clean Air Act Section 112 confers rights, as required by *NRC*, so this argument is forfeited. Furthermore, despite Plaintiffs' transparent attempts to dress up a garden-variety APA claim as an ultra vires claim, they have no serious argument that the President adopted an "utterly unreasonable" interpretation of the statute. Instead, Plaintiffs repeatedly rely upon a dispute of fact between themselves and the President and then use the President's alleged mistake of fact to argue that the President violated the law. But the Presidents' discretionary determinations based on his factfinding are unreviewable under any conception of an ultra vires claim in this context; there is no judicial second-guessing of an alleged "error in the exercise of [delegated] power," as opposed to an error in determining whether the authority itself exists. *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 690 (1949).

It is undisputed here that the Clean Air Act authorizes the president to issue exemptions if he (1) determines that the technology to implement the standards are unavailable and that it is in United States' national security interests; (2) the exemption lasts no more than two years; and (3) the President reported the exemption to Congress. 42 U.S.C. § 7412(i)(4). Plaintiffs make no allegations challenging the second and third conditions (which the President complied with in any event). Thus, the only reviewable question is whether the President made a determination, and that much is clear from the four corners of the exemption orders. *See Kreis v. Sec'y of Air*

*Force*, 866 F.2d 1508, 1513 (D.C. Cir. 1989) ("The Court's distinction between the exercise of a particular condition as an 'objective fact,' on the one hand, and an administrator's determination of the existence of that condition, on the other, has an ancient and honorable lineage."). The existence of the underlying facts, including whether the technology is available and whether an exemption is in the interest of the United States, is subject only to presidential discretion and express Congressional oversight.

### A. Ultra Vires Review Is Governed by the Supreme Court's Decision in *NRC v. Texas.*

As noted above, the Supreme Court most recently addressed ultra vires review in *NRC v. Texas*, 605 U.S. 665 (2025). There, the Supreme Court explained that ultra vires relief is available when the executive action is "in violation of the rights of the individual," was an "exercise of power that had been specifically withheld," and violated "a specific prohibition" in the statute. *Id.* at 680–81. The Court emphasized ultra vires review is available in "strictly limited" circumstances; otherwise, it could "become an easy end-run around the limitations of . . . judicial-review statutes" *Id.* at 681. And even more recently, relying on the Supreme Court's decision in *NRC*, the D.C. Circuit stated that, "[t]o prevail on an ultra vires claim, the plaintiff must establish that (1) review is not expressly precluded by statute, (2) 'there is no alternative procedure for review of the statutory claim' and (3) the challenged action is 'plainly' in 'excess of [the President's] delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory.'" *Glob. Health Council v. Trump,* 153 F.4th 1, 20 (D.C. Cir. 2025).

Plaintiffs' brief includes a lengthy discourse on why they need not allege that the President acted "contrary to a specific prohibition in the statute," as the Supreme Court and D.C. Circuit have held, to state an ultra vires claim. Pl. Br. at 27, 34-37. They claim it is enough to allege that the President "patently misconstrued" the statute. *Id.* at 36. But none of their cases justify ignoring the requirement of an actual "prohibition." For example, the D.C. Circuit has heavily emphasized that ultra vires review requires claims that the "agency plainly acts in excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory," stating that this "requirement is especially demanding." *Raimondo,* 40 F.4th 716 at 722. "Only error that is patently a misconstruction of the Act, that disregards a specific and unambiguous statutory directive, or that violates some specific command of a statute will support relief." *Id.* (quoting *Fed. Express Corp. v. U.S. Dep't of Com*., 39 F.4th 756, 764 (D.C. Cir. 2022)). *Raimondo* also reiterated that ultra vires review is "extremely limited [in] scope" and "does not 'authorize judicial review of any agency action that is alleged to have exceeded agency statutory authority,'" but is applicable only in "extraordinary circumstances." *Id.* at 721-22 (quoting *Bd. of Governors of Fed. Rsrv. Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 43 (1991) and *Boire v. Greyhound Corp.*, 376 U.S. 473, 479–80 (1964)); *see also Fed. Express*, 39 F.4th at 764 (rejecting plaintiff's effort "to dilute ultra vires review to the functional equivalent of the [APA]").

Plaintiffs' assertion (Pl. Br. at 35) that *Chamber of Commerce v. Reich* repudiates the "specific prohibition" standard holds no water. 74 F.3d 1322 (D.C. Cir. 1996). *Reich* upheld an ultra vires claim only where a presidential order "deprive[d] the [plaintiff] of a right expressly or impliedly granted by another statute." *Id.* at 1330. Here, the Orders deprive Plaintiffs of no right assured by the Clean Air Act, much less "another statute." *Id.* Certainly, Section 112(i)(4) does not create any rights and the only parties with duties at stake are the regulated parties, who support the 2-year exemption. Plaintiffs' claim thus fails because they allege no violation of a "specific statutory prohibition" nor a violation of "a statutory right" conferred by "another statute." *Id.*; *cf. Town v. DOI*, No. 22-5314, 2025 WL 1446027, at *1 (D.C. Cir. May 20, 2025) (statute "phrased entirely as a limitation on agency behavior" "contain[ed] no rights-creating language").

In the Supplemental Brief, Dkt. No. 56, the non-t.e.j.a.s. Plaintiffs mistakenly assert that *New Mexico v. Musk*, No. 25-cv-429, 2026 WL 799635 (D.D.C. Mar. 23, 2026), supports their position that they need not allege that the President violated a specific statutory prohibition. That case explained that *NRC v. Texas* applies where "an agency is alleged to have exceeded a grant of statutory authority," but not where an unappointed official acts "without any grant of authority whatsoever." *Id.* at *13. Here, unlike in *New Mexico*, Section 112(i)(4) is plainly a grant of statutory authority.

In sum, Plaintiffs do not allege that the presidential exemptions were "in violation of the rights of the individual," and they concede that the presidential exemptions do not violate any prohibition in the statute. *NRC*, 605 U.S. at 680–81. Plaintiffs' allegations must be read for what they are: disagreement with the presidential discretionary factual determinations. As such, Plaintiffs allegations do not and cannot satisfy the demanding standard required to bring an ultra vires claim, and the Complaint must be dismissed a matter of law.

### B. The Presidential Exemptions Are Well Within the Clean Air Act's Authorization.

Even if an ultra vires claim does not require a violation of a specific statutory prohibition or violation of a statutory right, by all accounts an ultra vires claim requires a brazen violation of an unambiguous statute. Attempts to "dress up typical statutory authority argument[s]" "fall well shy of [a] meritorious" claim. *NRC,* 605 U.S. at 682. The plaintiff must allege an "utterly unreasonable" violation of a "clear and specific statutory mandate." *Fed. Express,* 39 F.4th at 765 (internal citations omitted). Here, Plaintiffs' arguments that the President "plainly misinterpreted" the Clean Air Act, Pl. Br. at 32, are nothing more than "typical statutory authority arguments" and certainly do not amount to a colorable claim that the presidential exemptions are based on an "utterly unreasonable" interpretation of the statue.

Plaintiffs' attempt to water down this standard with *McAnnulty* should be rejected. *See American Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 23 (1902). Plaintiffs assert that under *McAnnulty*, "if 'in any view of the facts,' an official has made a 'clear mistake of law,' courts have the equitable authority to declare that mistake[.]" Pl. Br. at 31 (quoting *McAnnulty*, 187 U.S. at 109, 110). But in the century since *McAnnulty*, the Supreme Court has clarified that ultra vires review is extremely narrow, and it is "*not to be extended* to permit plenary district court review of [executive action] whenever it can be said that an erroneous assessment of the particular facts before [the executive] has led it to a conclusion which does not comport with the law." *Boire*, 376 U.S. at 481 (emphasis added); *see also NRC*, 605 U.S. at 681.

Here, Plaintiffs rest their ultra vires claim on the argument that the President supposedly incorrectly interpreted the Clean Air Act when he determined that the necessary technology to implement the HON Rule standards is unavailable. In doing so, Plaintiffs assert a garden-variety argument that the President misinterpreted the operative statutory language. Under *NRC* and *Boire*, such allegations cannot give rise to an ultra vires claim. *See Boire*, 376 U.S. at 481; *NRC*, 605 U.S. at 681. As is evident from their face, the presidential exemptions fall well within the Clean Air Act's authorization, and as detailed below, Plaintiffs' arguments to the contrary each fall flat.

**1.** First, Plaintiffs assert that the President exceeded his authority because he did not identify "what technology" he determined unavailable "to implement which standard." Pl. Br. at 44. But the plain language of the statue does not require what Plaintiffs demand. Section 112(i)(4) authorizes the President to "exempt any stationary source from compliance with any standard or limitation under this section . . . if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." 42 U.S.C. § 7412(i)(4). Nothing in this statutory text requires that the President enumerate each particular technology in a written order or explain why the technology is tied to a "specific standard." Nor does the statute require the President to make a determination on any particular record. As the Supreme Court has cautioned, courts must "resist reading words or elements into a statute that do not appear on its face." *Bates v. United States*, 522 U.S. 23, 29 (1997). This is particularly true for an ultra vires claim, which requires a clear violation based on an utterly unreasonable interpretation of a clear statutory mandate.

**2.** Plaintiffs next argue the Proclamation's exemptions exceed the statutory authorization because "the President must make determinations as to specific facilities," and the exemptions apply to "nearly a quarter of a source category" and exempts those sources from all the HON Rule standards. Pl. Br. at 44-45. But Plaintiffs' arguments that Section 112(i)(4) restricts the President's authority to individual facilities or to a singular standard are contrary to the express language of the statute. The statute authorizes the President to exempt "*any* stationary source" from compliance with "*any* standard." *Id.* "Any" is an expansive term, and where "Congress did not add any language limiting the breadth of that word," — which it did not here — "any" "refer[s] to all." *United States v. Gonzales*, 520 U.S. 1, 5 (1997); *see Smith v. Berryhill*, 587 U.S. 471, 479 (2019) ("Congress' use of the word 'any' suggests an intent to use that term 'expansive[ly]'"). Thus, it was well within the bounds of the statute's plain language for the President to exempt *any or all* stationary sources from *any or all* of the HON Rule's standards. While the statute uses the singular "standard," that does not exclude use of the plural as Plaintiffs assert. Pl. Br. at 44. The Dictionary Act, 1 U.S.C. § 1, provides that, in "determining the meaning of any Act of Congress, unless the context indicates otherwise — words importing the singular include and apply to several persons, parties, or things." Nothing in Section 112(i)(4) limits the President's authority to a singular "standard" rather than "standards" or requires the President to issue individual proclamations for individual standards.

Plaintiffs argue that allowing the President to exempt "huge swaths of an industry from an entire suite of standards" is inconsistent with Section 112(i)(3)(A)-(B), 42 U.S.C. § 7412(i)(3)(A)-(B), which requires compliance no later than three years from the effective date of promulgated emissions standards and allows EPA to extend compliance deadlines by one year. Pl. Br. at 45-46. They assert that Section 112(i)(3)(B) is the "exclusive mechanism[] for providing additional time for compliance and correcting flawed standards." *Id.* But Plaintiffs are obviously wrong. By the terms of the statute, Section 112(i)(3)(B) is *not* the exclusive mechanism for providing additional time. In the very next paragraph, Section 112(i)(4), Congress included a mechanism by which *the President* can delay compliance by up to two years if the President determines the technology to implement the standards is not available and it is in the interest of national security, which is exactly what occurred here. Since 1970, Section 112 has included distinct authorization for EPA and for the President. Plaintiffs may prefer Section 112(i)(4) not to have been included, but they err in asking this Court to read the provision out of the statute. Plaintiffs' arguments about statutory construction cannot support an ultra vires claim.

Additionally, Plaintiffs cite Clean Air Act Section 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B), which authorizes EPA to stay rules pending completion of a statutory reconsideration process for up to three months. Plaintiffs assert that the presidential exemptions are an "improper attempt to shoehorn a stay of the HON Rule's requirements pending reconsideration." Pl. Br. at 46. Plaintiffs are wrong. That Congress limited EPA's authority to stay a rule pending reconsideration for three months does not negate Congress' express authorization of the President to exempt stationary sources from compliance with Clean Air Act standards under Section 112(i)(4) for up to two years. Plaintiffs' arguments to the contrary are unavailing because there is no basis to read this distinct authority, which applies by its terms only to reconsideration proceedings granted by EPA, onto an entirely different context. None of this is grist for an ultra vires claim.

**3.** Plaintiffs next contend that the presidential exemptions are unlawful because he "misconstrues 'available' to be 'achievable,'" and the latter is EPA's exclusive role to determine. Pl. Br. at 47; *see also* Dkt. No. 56 at 15-16. But this argument directly conflicts with the President's actual determination that the technologies "[are] not available," 90 Fed. Reg. 34587, 34588 (July 17, 2025) (HON Rule Proclamation); *see also* 90 Fed. Reg. at 34747 (Sterilizer Rule Proclamation); 90 Fed. Reg. at 54517 (Coke Ovens Rule Proclamation); 90 Fed. Reg. at 34743 (Taconite Rule Proclamation), and is just another attempt to shoehorn abuse of discretion review into an ultra vires challenge where such review is not available. Moreover, the portion of the Proclamation that Plaintiffs quote to support their assertion speaks only about availability: "[t]he HON Rule imposes requirements that assume uniform *technological availability* across facilities, despite significant variation in site conditions, permitting realities, and equipment configurations." 90 Fed. Reg. at 34587 (emphasis added).

Plaintiffs assert that, when setting standards pursuant to Section 112(d)(2)(3), 42 U.S.C. § 7412(d)(2)(3), EPA assesses (i) whether standards are achievable and (ii) the technologies needed to comply. Pl. Br. at 47. Here, contrary to Plaintiffs' assertion, the President's Proclamation goes only to the second finding, and the President determined that the technology needed to comply is not available. Thus, Plaintiffs' argument that the Proclamation misconstrues "available" to be "achievable" is an attempt to contort the President's determination into something it plainly is not. Plaintiffs' baseless argument should be rejected.

**4.** Plaintiffs next argue the President exceeded his authority because the exemptions apply to standards that are implemented through "'processes' or 'practices,' rather than 'control technologies.'" Pl. Br. at 48. However, contrary to Plaintiffs' assertions, the Clean Air Act broadly contemplates "technology" to include not only pollution control equipment but also production processes, fuel modifications, operational techniques, and innovative systems that are tailored to specific source categories. *See, e.g.*, 42 U.S.C. § 7479(3) (defining "best available control *technology*" as "application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant") (emphasis added). Thus, the President's consideration of technology is consistent with the statute and certainly is not an utterly unreasonable interpretation or a brazen violation of any clear mandate.

**5.** Plaintiffs also assert that the President misinterpreted the meaning of "unavailable" because "facilities already possess the technology to implement" the standards. Pl. Br. at 51. Here, Plaintiffs are transparently contesting the President's factual and discretionary determination that technology is not available. As detailed in Section III.C below, the President's discretionary findings are not subject to judicial review. Moreover, even if they were, ultra vires review is "*not to be extended* to permit plenary district court review" of allegations that an official "erroneous[ly] assess[ed] of the particular facts before [him]." *Boire*, 376 U.S. at 481.

**6.** Finally, Plaintiffs contend that the Proclamation "improperly construes 'not available' to mean that more time is needed for compliance." Pl. Br. at 57–58. That is a distinction without a difference — unavailability necessarily relates to the timeline needed for compliance. The title of Section 112(i), under which the President's exemption authority exists, is "Schedule for compliance." 42 U.S.C. § 7412(i). That title demonstrates that Congress *intended* presidential exemptions to extend compliance dates to the extent the President determines to be necessary. *See Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("'[T]he title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute.") (quoting *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998)). Here, the President determined that the technology to implement the HON Rule standards is unavailable; it logically follows then that the facilities will be unable to meet the "timeline for compliance" with the standards. 90 Fed. Reg. at 34587. The President's determination is *consistent* with the purpose of the exemption provision and not ultra vires as Plaintiffs assert. Pl. Br. at 57. Though Plaintiffs again cite Section 112(i)(3)(B), arguing that it grants EPA exclusive authority to determine how long facilities need to comply with the standards, that argument once again ignores the President's clear extension authority in Section 112(i)(4). "[S]tatutes must 'be read as a whole.'" *Territory of Guam v. United States*, 593 U.S. 310, 316 (2021) (quoting *United States v. Atl. Rsch. Corp.*, 551 U.S. 128, 135 (2007)).

The fact of the matter is that Plaintiffs disagree with the President's determination. Or, perhaps more precisely, they disagree with Congress' decision to include a presidential exemption in the Clean Air Act. Nevertheless, Congress included Section 112(i)(4); thus, Plaintiffs' efforts should be redirected to the legislative branch because their claims are not reviewable here.

### C. Plaintiffs' Remaining Arguments Are Factual Disputes Dressed Up as Legal Disputes for which There Is No Judicial Review.

The foregoing resolves Plaintiffs' arguments that the President acted ultra vires notwithstanding express authorization in the Clean Air Act. *See* Pl. Br. Part III.B, E. Plaintiffs remaining arguments are attempts to dispute the President's findings by asserting facts they believe warrant a different determination. *Id.* Part III.C–D; *see also* Suppl. Br., Dkt. No. 56, at 14-18 (discussing conditions at Coke facilities), 19-21 (discussing conditions at Sterilizer facilities), 22-23 (discussing conditions at Taconite facilities). Regardless whether the Court has jurisdiction to conduct ultra vires review, the granular factual inquiry Plaintiffs propose here is beyond the pale of such review because it entails review of discretion that Congress entrusted exclusively to the President.

Where a statute "commits decisionmaking to the discretion of the President, judicial review of the President's decision is not available." *Dalton v. Specter*, 511 U.S. 462, 477 (1994); *accord Trump v. Hawaii*, 585 U.S. 667 (2018); *Franklin*, 505 U.S. at 801; *Chi. & S. Air Lines, Inc. v. Waterman S. S. Corp.*, 333 U.S. 103 (1948); *United States v. George S. Bush & Co.,* 310 U.S. 371 (1940); *Dakota Cent. Tel. Co. v. South Dakota ex rel. Payne*, 250 U.S. 163 (1919). Absent "an express statement by Congress," courts may not assume that legislators "intended the President's performance of his statutory duties to be reviewed for abuse of discretion." *Franklin*, 505 U.S. at 801.

Plaintiffs' attempts to set up a legal dispute based on review of presidential fact-finding would turn this century of jurisprudence on its head. As an initial matter, Plaintiffs are incorrect that they are entitled to dispute the President's factual findings on technological availability or national security. Indeed, Plaintiffs' request for "a searching inquiry into the persuasiveness of the President's justifications is inconsistent with the broad statutory text and the deference traditionally accorded the President in this sphere." *Hawaii*, 585 U.S. at 686. In such circumstances, the Supreme Court has never required the President to make a predicate determination in "sufficient detail to enable judicial review." *Id.*; *see also Utah Ass'n of Cntys. v.*

*Bush*, 316 F. Supp. 2d 1172, 1186 (D. Utah 2004) (holding judicial review is unavailable to evaluate "the President's judgment as to the existence of the facts on which his discretionary judgment is based" or "to assess a particular exercise of presidential discretion"). Were the rule otherwise, this Court would need to undertake a nationwide review of the chemical manufacturing industry, available technology, and the nexus of that industry to national security just to rule on Plaintiffs' motion for summary judgment. To do so de novo would be virtually impossible; even Plaintiffs seem to concede as much because their statement of undisputed facts relies almost exclusively on citations to the Federal Register. But as noted above, the President is not bound by the agency fact-finding requirements set out in the Clean Air Act or the APA in exercising authority under Section 112(i)(4). As Plaintiffs note, pursuant to Section 112(d), EPA issues standards that it determines are "achievable." Supp. Br., Dkt. No. 56, at 15-16. But under the Section 112(i)(4), the President can exempt facilities from standards based on availability, even if availability may be considered in EPA's achievability finding. *Compare* 42 U.S.C. § 7412(d)(2), *with id.* § 7412(i)(4). Congress plainly envisioned circumstances where EPA's predictions during the standard-setting process were flawed or did not play out as anticipated. So, at most, those facts demonstrate a difference in perspective between the President and EPA reflective of their differing roles under the Clean Air Act.

Plaintiffs' reliance upon the National Monuments jurisprudence as their primary counterargument is unavailing. *See* Pl. Br. at 31-33. In those cases, no court ever held that factual development was an appropriate aspect of judicial review. In *Massachusetts Lobstermen's Association v. Ross*, *Mountain States Legal Foundation v. Bush*, and *Tulare County v. Bush*, the courts each time resolved the case on the alternative theory that the pleadings were inadequate to warrant further factual development and thus presented the court "with no occasion to decide the ultimate question of the availability or scope of review for exceeding statutory authority." *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1137 (D.C. Cir. 2002); *see also Mass. Lobstermen's Ass'n v. Ross,* 945 F.3d 535, 540 (D.C. Cir. 2019); *Tulare County v. Bush,* 306 F.3d 1138, 1143 (D.C. Cir. 2002). This Court should not be the first to break this new ground and thereby enmesh itself in the thicket of presidential fact-finding.

Finally, Plaintiffs contend that the Court may review the President's factual determinations because Plaintiffs assert that they have rebutted the presumption of regularity. Pl. Br. at 32. That contention is incorrect on two fronts. First, there is no binding legal authority to that effect. Even Plaintiffs' cited authority for this proposition — a non-binding concurrence on a motions panel — ultimately would have rested its analysis not on a disagreement with the President's factual determinations but on the conclusion that the executive order at issue in that case "provid[ed] no indication that the President made the requisite determinations." *Fed. Educ. Ass'n v. Trump*, No. 25-5303, 2025 WL 2738626, at *10 (D.C. Cir. Sep. 25, 2025) (Pan, J., concurring). Nor is it obvious as a matter of constitutional theory that the presumption of regularity is the reason the Supreme Court has never sanctioned review of presidential fact-finding. Rather, delegations to the President to make discretionary determinations based on factual predicates are usually unsuited for judicial second-guessing because they would enmesh the judiciary in questions of "[p]residential discretion as to political matters beyond the competence of the courts to adjudicate." *Dalton*, 511 U.S. at 475 (quotation omitted).

Moreover, even assuming that rebutting the presumption of regularity could allow for review of the President's predicate determinations, Plaintiffs have not rebutted the presumption here. At most, the evidence cited by Plaintiffs demonstrates that the President intended to explore all available tools to provide regulatory relief, and Section 112(i)(4) is expressly designed for that purpose. Finding, as the statute provides, that technology is unavailable and that it is in the national security interests of the United States to issue a time-limited exemption reported to Congress is not acting "contrary to a specific [statutory] prohibition," but complying with the terms of the statute. *See NRC*, 605 U.S. at 681. Consider for instance, as we are just past tax season, a client who meets with his accountant and says, "I want you to look for every available legal deduction for me." The taxpayer only violates the tax code by claiming a deduction that he does not actually qualify for, not by taking advantage of every deduction available. Nor is it at all strange, as Plaintiffs seem to think, Pl. Br. at 38, that the President issued the HON Proclamation despite the Clean Air Act not permitting stays of Section 112 rules. By the statute's very design, the *only* scenario where the President can issue a Section 112(i)(4) exemption is where EPA has already promulgated a regulation (that it cannot stay itself for more than three months) after determining that technology to comply with the rule is achievable. *See* 42 U.S.C. § 7412(d)(2) (requiring EPA to set emissions standards its determines are "achievable").

The Court should therefore dismiss Counts One and Two for lack of jurisdiction or failure to state a claim. Alternatively, the Court should deny Plaintiffs' motion for summary judgment and enter summary judgment in the United States' favor.

## IV. Plaintiffs Have Not Established Standing.

### A. Plaintiffs' Claims Are Not Redressable.

For the reasons discussed in Section II, Plaintiff claims are incapable of redress because, as a matter of law, they cannot obtain the relief they seek.

### B. Plaintiffs Have Not Established Associational Standing for 25 of the Exempted Facilities.

Even if the Court were to find Plaintiffs' claims were legally redressable, Plaintiffs have failed to demonstrate an injury resulting from the presidential exemptions at 25 of the chemical manufacturing facilities at issue here. As the Supreme Court explained in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), the burden of production a plaintiff must bear to show it has Article III standing varies with the procedural context of the case. At the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice," and the court "presum[es] that general allegations embrace those specific facts that are necessary to support the claim." *Id.* On a motion for summary judgment, however, "the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' . . . which for purposes of the summary judgment motion will be taken to be true." *Id.* (quoting Fed. R. Civ. P. 56(e)); *see also Humane Soc'y of the U.S. v. Perdue*, 935 F.3d 598 (D.C. Cir. 2019) (dismissing case for lack of standing at summary judgment stage).

While Plaintiffs have included some declarations to support standing for additional facilities beyond the 11 identified in the Complaint, they still fail to establish that their members have been harmed by the Proclamation's exemptions granted to 25 facilities in Annex 1.[3] Plaintiffs assert that they need not establish standing for each exempted facility because they are

[3] The 25 for which Plaintiffs have not established standing, as they are identified by Plaintiffs, are: Ascend Performance Operations, Cantonment, FL; Axiall (formerly Georgia Gulf Lake Charles), Westlake, LA; Borger Refinery, Borger, TX; Celanese Acetate/Duke Energy Generation Services, Giles, VA; Chevron Phillips Chemical Sweeny Refinery Complex, Old Ocean, TX; Citgo Corpus Christi Refinery East Plant, Corpus Christi, TX; Eagle Us 2 LLC - Lake Charles Complex, Westlake, LA; Eastman Chemical Texas Operations, Longview, TX; Formosa Point Comfort Plant, Point Comfort, TX; Georgia Pacific Chemicals, Crossett, AR; Georgia Pacific Chemicals, Taylorsville, MS; Georgia-Pacific Chemicals, Conway, TX; Georgia-Pacific Resins Lufkin Plant, Lufkin, TX; Hexion, Inc., Louisville, KY; Lemont Refinery, Lemont, IL; Oak-Bark Corp/Hexion Inc.-Acme Operations/Wright Corp/Silar LLC, Riegelwood, NC; Oq Chemicals Bay City Plant, Bay City, TX; Oxea Bishop Facility, Bishop, TX; Sabic Innovative Plastics Mt Vernon, LLC, Mount Vernon, IL; Sasol Chemicals (USA) LLC-Lake Charles Chemical Complex, West Lake, LA; Trinseo LLC (Formerly Dow Chemical Co. Dalton Plant), Dalton, GA; Trinseo LLC, Midland, MI; Union Carbide Seadrift Operations, Seadrift TX; Westlake Petrochemical, LP, Sulphur, LA; and Westlake Styrene LLC-Marine Terminal, Sulphur, LA.

challenging a unitary executive action. Pl. Br. at 16. But the presidential exemption was granted for all the facilities identified in Annex 1. The President could have issued a separate exemption for each of the facilities. And, in that scenario, Plaintiffs would presumably agree that they would have to show standing for each one to challenge its exemption. The fact that the President bundled the exemptions into one Proclamation and Federal Register notice for administrative convenience does not alter the basic Article III requirements.

Indeed, the facts here are analogous to challenges to EPA's attainment designations for the National Ambient Air Quality Standards (NAAQS) under the Clean Air Act, in which the petitioners challenged different attainment areas' designations that EPA bundled into one rule. *See, e.g., Clean Wis. v. EPA*, 964 F.3d 1145, 1156 (D.C. Cir.), *judgment entered*, 812 F. App'x 4 (D.C. Cir. 2020) (reviewing EPA's ozone NAAQS designations for multiple areas set forth in a single rule). In that case, the D.C. Circuit held that, "for *each challenged designation*, the [organizational petitioner] must identify one member who suffers from a 'concrete and particularized' injury-in-fact caused by the challenged agency conduct and redressable by a favorable judicial decision." *Id.* (emphasis added). The same is true here for each facility, but Plaintiffs have failed to make that showing.

The cases Plaintiffs cite in support of their contrary argument are distinguishable. In *Healthy Gulf v. United States Department of the Interior,* 152 F.4th 180, 186 (D.C. Cir. 2025), and *Center for Biological Diversity v. Burgum*, No. 1:24-CV-02014 (TNM), 2026 WL 180258, at *6 (D.D.C. Jan. 23, 2026), the plaintiffs challenged agency actions that impacted a discrete geographical area, the Gulf of America ("Gulf"), and submitted standing declarations that supported their members' injuries across that area. For instance, in *Healthy Gulf*, the plaintiffs challenged the Department of Interior's leasing program that authorized "up to three lease sales

[with]in the Gulf" region for offshore drilling. 152 F.4th at 186. In finding associational standing, the court relied on a declaration from one of the plaintiffs' members attesting to his use of the Gulf at multiple locations to establish that the member had experienced a particularized injury caused by drilling at multiple areas within the Gulf region. *Id.* at 190 (noting that the standing declarant "attests that he has fished in the [Gulf] for decades, including in the [Outer Continental Shelf], the Mississippi Sound, Fort Bayou, and the Main Pass region.").

Similarly, in *Center for Biological Diversity v. Burgum*, the plaintiffs challenged the Department of Interior's alleged failure to update a programmatic environmental assessment under the National Environmental Policy Act. 2026 WL 180258, at *6. The court held that such a "challenge sweeps in all Gulf waters under the Secretary's leasing authority, mirroring the [programmatic environmental assessment's] 'general scope.'" *Id.* The court found that the plaintiffs' declarations sufficiently established a procedural injury because the declarant "members say that they routinely visit areas *across the Gulf* and that both are involved in conserving its wildlife." *Id.* at *5 (emphasis added).

By contrast, Plaintiffs here are challenging exemptions the President granted to facilities in distinct areas across 11 states but have not included any factual allegations to support alleged concrete injury arising from the exemptions for 25 of those facilities. The Supreme Court recently provided the following hypothetical to "appreciate how the Article III 'concrete harm' principle operates in practice." *TransUnion LLC v. Ramirez,* 594 U.S. 413, 427 (2021). "Suppose first that a Maine citizen's land is polluted by a nearby factory. She sues the company, alleging that it violated a federal environmental law and damaged her property. Suppose also that a second plaintiff in Hawaii files a federal lawsuit alleging that the same company in Maine violated that same environmental law by polluting land in Maine. The violation did not personally harm the plaintiff in Hawaii." *Id.* That hypothetical is relevant here. The fact that one of Plaintiffs' members is allegedly harmed by excess emissions from an exempted facility near where they live in Geismar, Louisiana, does not establish that the exemption of facilities in Michigan, Florida, Mississippi, or Virginia has also caused harm to that (or another) distant member.

Finally, this case is not analogous to *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 62 (D.D.C. 2019), where the plaintiffs challenged a lease sale that covered thousands of acres. There, the court held that it was sufficient that the standing declarants visited specific areas within the area of the lease sale and the plaintiffs did not need to show that they visited every specific parcel. *Id.* Here, Plaintiffs have not submitted any declarations showing their members visit or are otherwise in the vicinity of 25 geographically distinct facilities, each of which the Proclamation exempted from the HON Rule.

Moreover, the organizational Plaintiffs cannot establish particularized harm by alleging that they collectively have unidentified members who live in the vicinity of each of the 50 facilities on Annex I.[4] *See Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002). In *Sierra Club*, the plaintiffs attempted to demonstrate standing by providing street addresses of Sierra Club members who allegedly "live, work and recreate in communities adversely affected by the chemical plants." *Id.* at 898, 901. The court explained that, on a motion for summary judgment, "the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts." *Id.* at 899 (internal quotations omitted). The court found that "unidentified Sierra Club members" were "legally insufficient" to demonstrate standing. *Id.* at

[4] Indeed, to the extent this information is accurate, it begs the question why Plaintiffs did not obtain at least one member's declaration alleging harm from the other 25 facilities to the extent the members are, in fact, harmed, which again Plaintiffs have not established.

901-02 ("The Sierra Club does not submit any evidence, however, supporting the proposition that there is a 'substantial probability' of 'actual or imminent' injury to its members arising from their residing within five miles of the generating or the disposal facility.") (quoting *Am. Petroleum Inst. v. EPA*, 216 F.3d 50, 63 (D.C. Cir. 2000)).

The same is true here. Plaintiffs assert that, collectively, they have members who live within a certain number of miles from all the exempted facilities. However, Plaintiffs only provide declarations from members averring harm from 25 of the exempted facilities. For the remaining 25, Plaintiffs have not disclosed the identity of any member of their associations or organizations who asserts an injury. Under *Sierra Club*, simply referring to unidentified members who live near facilities and providing no detail as to particularized harm is insufficient. Thus, Plaintiffs have not established standing with respect to those 25 facilities.

### C. Plaintiffs Have Not Established Informational Standing.

Plaintiffs also claim they and their members have suffered an informational injury because the Proclamation's exemptions deprive them of emissions data from fenceline monitoring that the HON Rule requires. Pl. Br. at 12. However, Plaintiffs have failed to establish an informational injury because they have no statutory right to the fenceline monitoring emission data. To establish an informational injury, a plaintiff must show: "(1) it has been deprived of information that, on its interpretation, a *statute requires* the government or a third party to disclose to it, and (2) it suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016) (emphasis added); *FEC v. Akins,* 524 U.S. 11, 21 (1998) ("a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant *to a statute*") (emphasis added); *cf. TransUnion LLC v. Ramirez*, 594 U.S. at 425 (explaining that "[c]ourts must afford due respect to Congress's decision to impose a *statutory* prohibition or obligation on a defendant, and to grant a plaintiff a cause of action to sue over the defendant's *violation of that statutory . . . obligation*") (emphasis added); *Lawyers' Comm. for 9/11 Inquiry, Inc. v. Wray*, 848 F. App'x 428, 430 (D.C. Cir. 2021) (finding no informational injury where the plaintiff's reading of a statute for informational injury purposes was implausible).

Here, Plaintiffs fail to allege that the Clean Air Act entitles them to fenceline monitoring data, the information they seek. Instead, Plaintiffs allege that the HON Rule required sources to collect the data, and the Proclamation's exemption of the Rule's reporting requirements deprives them of it. But Plaintiffs do not allege that the Clean Air Act itself requires the collection of fenceline emission information. Rather, the Clean Air Act only provides (1) that EPA *may* require sources to monitor emissions and maintain such records and make reports, 42 U.S.C. § 7414(a); and (2) that to the extent EPA obtains emissions records or reports, they "shall be available to the public." *Id.* § 7414(c).

That statutory framework does not entitle Plaintiffs to fenceline emission monitoring data in the first instance, and it does not require public disclosure of information EPA does not have. Section 114(c) ensures that, to the extent EPA obtains monitoring data, EPA must make the data publicly available. *Id.* But EPA has no obligation under the Clean Air Act to collect fenceline monitoring emission data and, if it does not collect the data, Plaintiffs have no statutory right to the information. Thus, there is no valid claim of informational injury. *See Havens Realty Corp. v. Coleman,* 455 U.S. 363, 373 (1982) ("The actual or threatened injury required by Art[icle] III may exist solely by virtue of *statutes* creating legal rights, the invasion of which creates standing") (emphasis added) (internal quotations omitted); *Marino v. Nat'l Oceanic & Atmospheric Admin.*, 451 F. Supp. 3d 55, 61 (D.D.C. 2020), *aff'd*, 33 F.4th 593 (D.C. Cir. 2022) (finding no informational standing where "nothing in the [Marine Mammal Protection Act] — or any other statute — requires [the National Marine Fishery Service] to collect . . . reports [plaintiffs sought] from the marine parks and zoos it regulates").

Just recently, in *Sierra Club v. EPA*, No. 25-1112, 2026 WL 686323, at *6 (D.D.C. Mar. 11, 2026) (*Sierra Club II*), this Court found no informational injury where the plaintiffs had "not alleged that they were deprived of information to which they had a statutory right." *Id.* at *6. In rejecting plaintiffs' informational injury theory, the Court explained that "[i]nformational standing 'arises only *in very specific statutory contexts* where a *statutory provision* has explicitly created a right to information.'" *Id.* (quoting *Ass'n of Am. Physicians & Surgeons, Inc. v. FDA*, 539 F. Supp. 2d 4, 15 (D.D.C. 2008), *aff'd,* 358 F. App'x 179 (D.C. Cir. 2009) (emphasis added). The Court further clarified that informational standing does "*not extend* to situation[s] where . . . the plaintiff's view of the *statute would not directly entitle* it to the information it seeks." *Id.* (internal citations omitted) (emphasis added). Nothing in the Clean Air Act directly entitles Plaintiffs to fenceline monitoring data.

Plaintiffs rely on an out-of-circuit case, *Laufer v. Naranda Hotels, LLC*, 60 F.4th 156 (4th Cir. 2023), to support their argument that entitlement to information pursuant to a regulation is sufficient to establish informational injury. Pl. Br. at 17. In that case, the Fourth Circuit held that the plaintiff, a self-professed accommodations tester, had standing to seek declaratory and injunctive relief based on her allegations that reservation websites failed to provide her with accessibility information regarding defendant's hotel, thereby violating the Americans with Disabilities Act ("ADA"). *Laufer*, 60 F.4th at 166. In finding that the plaintiff had standing, the court relied on the Supreme Court's decision in *Havens Realty v. Coleman*. *Id.* at 163. In *Havens Realty*, the Court found that "Section 804(d) [of the Fair Housing Act] . . . establishes an enforceable right to truthful information concerning the availability of housing" and, thus, a "tester" (i.e., an individual without intent to rent a home posing as a renter) had suffered an informational injury when it received false information from a landlord. 455 U.S. at 374. Applying *Havens Realty* and its progeny, the Fourth Circuit in *Laufer* held that the plaintiff must allege that she has "fail[ed] to obtain information which must be publicly disclosed *pursuant to a statute*," *Laufer*, 60 F.4th at 166 (quoting *Akins,* 524 U.S. at 21) (emphasis added). Notwithstanding that holding, the court found the plaintiff had suffered an informational injury where the alleged entitlement came from an ADA regulation, without addressing whether the statute also provided such a right to information. Given the internal inconsistency between the *Laufer* court's holding as to the law and its ultimate finding, the Court should not credit it.

Similarly, the other cases Plaintiffs cite do not directly address whether informational injury can rest on a claimed entitlement to information collected under a regulation rather than a statute. For instance, while the court in *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 533-34 (D.C. Cir. 2017), found that the Comprehensive Environmental Response, Compensation, and Liability Act did not require disclosure of information, the court held that another statute, the Emergency Planning and Community Right-to-Know Act, did require disclosure, and that *statutory basis* was sufficient to support standing to challenge a regulation that reduced the availability of information. Additionally, in *Chiron Corp. v. NTSB*, 198 F.3d 935, 942 (D.C. Cir. 1999), the court found that petitioners did not assert an informational injury because "[n]othing in *the statute* gives petitioners the . . . rights of participation and information that they seek to enforce." (emphasis added). And in *Action Alliance of Senior Citizens of Greater Phila. v. Heckler*, 789 F.2d 931, 937-38 (D.C. Cir. 1986), the plaintiffs' allegations of injury went beyond deprivation of information and included denial of "avenues of redress." *Id.* For that reason, among others, this

Court has declined to extend *Action Alliance* on several occasions where plaintiffs have alleged informational injury. *See, e.g., Marino*, 451 F. Supp. 3d at 63 ("The Circuit's use of a different doctrinal lens in [*Action Alliance*] is unsurprising given" that case did not "present[] a pure question of informational injury"); *see id.* at n.2 (noting that *Action Alliance* "was also decided in the 1980s, well before the Supreme Court articulated the modern requirements for informational standing"); *cf. Citizens for Resp. & Ethics in Wash. v. U.S. Off. of Special Couns.*, 480 F. Supp. 3d 118, 130 (D.D.C. 2020) (noting that "both harms *together* [i.e., denial of information and an avenue of redress] motivated the Circuit's conclusions in *Action Alliance*") (emphasis in original). In sum, because Plaintiffs have not identified a statutory right to fenceline monitoring data, they cannot establish an informational injury arising from the HON Rule Proclamation's exemption that relieves facilities from collecting that data.

Additionally, Plaintiffs fail to meet the second prong of the informational standing test: the plaintiff must suffer "the type of harm Congress sought to prevent by requiring disclosure." *Friends of Animals v. Jewell*, 828 F.3d at 992. Because Congress did not mandate collection of fenceline monitoring data, Plaintiffs cannot be harmed by failure to disclose such data.

Plaintiffs assert that they need not establish that their organizations expended funds to establish standing based on an informational injury. But that is only so when informational injury is based on a statutory entitlement. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 342 (2016) ("[T]he violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified."). In the cases Plaintiffs cite to support their position, Pl. Br. at 19, the courts found informational injury existed, without any other showing of harm, because a statute entitled the plaintiffs to the information they sought. *See, e.g.*, *Ctr. for*

*Biological Diversity v. U.S. Int'l Dev. Fin. Corp.*, 77 F.4th 679, 686 (D.C. Cir. 2023) (finding informational injury where the Sunshine Act entitled plaintiffs to the information they sought); *Campaign for Accountability v. U.S. Dep't of Just.*, 155 F.4th 724, 733 (D.C. Cir. 2025) (finding that "the standing question is straightforward because 'the Supreme Court has held that an informational injury is sufficient to satisfy standing under FOIA'"); *Akins*, 524 U.S. at 21 (finding the "'injury in fact' that respondents have suffered consists of their inability to obtain information . . . that, on respondents' view of the law, the statute requires [be made] public"). And in *Friends of Animals v. Jewell*, the court held that the plaintiff's standing claim failed because the relevant statutes did not entitle the plaintiffs to the information sought. 828 F.3d at 992.

Where a statute does not entitle an organization to the information it seeks, as is the case here, the D.C. Circuit has required the organization to show that it expended funds based on an alleged informational harm. *See Indep. Mkt. Monitor for PJM v. FERC*, 162 F.4th 1167, 1172-74 (D.C. Cir. 2025).[5] In *Independent Market*, the D.C. Circuit distinguished between a case where a statute creates a right to information and the case before it, where the plaintiff sought to enforce a legal provision that "d[id] not obligate anyone to disclose anything." *Id.* at 1172. The court explained that, although Circuit precedent had found that an organization may have standing when deprived of information even though the organization had no legal right to it, "the Supreme Court has since 'cautioned against'" that approach. *Id.* at 1173. In addition, the court required the plaintiff organization to show that it used resources to counteract the injury as the second prong of the standing test. *Id.* at 1174.

[5] To establish organizational standing, the plaintiff-organization's injury "must be 'concrete,' meaning that it must be real." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). A "setback to the organization's abstract social interests" is insufficient. *Id.* at 394.

Citing the concurrence in *Independent Market*, Plaintiffs argue that our reliance on that case is misplaced because the court conflated informational injury and organizational injury. Pl. Br. at 19. However, the D.C. Circuit has questioned whether informational injury and organizational injury are actually distinct. *See Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 377 (D.C. Cir. 2017) ("We conclude that EPIC lacks standing to obtain such relief because it has suffered no cognizable informational or organizational injury. We analyze and reject those two asserted types of injury in turn without necessarily agreeing that they are in fact analytically separate here."). Ultimately, however, the Court need not decide that question because, as discussed above, Plaintiffs have failed to establish that they are statutorily entitled to the fenceline monitoring reports, which is necessary to establish an informational injury.

## V. In the Alternative, the Court Should Grant Defendants' Summary Judgment.

For all of the reasons explained above, the President is also entitled to summary judgment as a matter of law. All of the relevant questions in this case are purely legal. There is no genuine dispute that the President issued the exemption after determining "that the technology to implement such standard is not available and it is in the national security interests of the United States to do so," as required by Section 112(i)(4). Whether this Court has jurisdiction to review that determination is a question of law. And whether that determination is ultra vires is a pure question of law that turns on legal interpretation of Section 112(i)(4) as applied to the determinations contained within the four corners of the President's exemption orders. Based on the arguments above and in the motion to dismiss, the President is entitled to summary judgment or dismissal in the alternative.

## CONCLUSION

The Complaint seeks injunctive relief against the President for exercising discretion conferred upon him by Congress and for which Congress foreclosed judicial review. The Court should dismiss the Complaint. In the alternative, the Court should enter summary judgment on behalf of Defendants.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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|---|---|
| TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES, et al.,<br><br>Plaintiffs,<br>v.<br><br>DONALD TRUMP, et al.<br><br>Defendants. | Civil No. 1:25-cv-03745 |

**[PROPOSED] ORDER**

This matter comes before the Court on Defendants' Motion to Dismiss the Complaint and Plaintiffs' Motion for Summary Judgment. It is hereby ORDERED that Defendants' Motion is GRANTED and Plaintiffs' Motion is DENIED. The Complaint is hereby DISMISSED without prejudice.

IT IS SO ORDERED.

Dated: _____________, 2026

_______________________________
**The Honorable Paul L. Friedman**
**United States District Judge**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.

Defendants.

Civil No. 1:25-cv-03745

**[ALTERNATE PROPOSED] ORDER**

This matter comes before the Court on Defendants' Motion to Dismiss the Complaint and Plaintiffs' Motion for Summary Judgment and Defendants' Cross Motion for Summary Judgment. It is hereby ORDERED that Defendants' Motion for Summary Judgment is GRANTED and Plaintiffs' Motion is DENIED.

IT IS SO ORDERED.

Dated: _____________, 2026

**The Honorable Paul L. Friedman**
**United States District Judge**