**No. 21A658**

# In the Supreme Court of the United States

STATE OF LOUISIANA; et al.,
*Applicants*,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; et al.,
*Respondents*.

## REPLY IN SUPPORT OF APPLICATION

To the Honorable Samuel Alito
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Fifth Circuit


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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Other Authorities**

## INTRODUCTION

In Respondents' view, there's nothing noteworthy about the Executive Branch's creating an agency with the stroke of a pen—and without a hint of statutory authority—and vesting it with power to issue one of the most significant legislative rules in American history. The Executive thus appears not to have internalized this Court's recent teachings about claims to such broad authority. *See, e.g.*, *NFIB v. OSHA*, 142 S. Ct. 661 (2022). Because the States are directly injured by Executive Order 13990 and the SC-GHG Estimates, they are entitled to sue now. And because the Estimates are not authorized by even one line in the United States Code, the Executive's attempt to use them to fundamentally transform American life must be enjoined. This Court should vacate the Fifth Circuit's stay.

## I. FEDERAL COURTS HAVE ARTICLE III POWER OVER THIS CASE.

### A. The States Have Standing.

Echoing the Fifth Circuit panel, Respondents ignore the States' numerous independent sufficient grounds for standing. Respondents assert that the States' "theory of standing ... rests on the 'increased regulatory burdens that *may* result' if and when a federal agency adopts a regulation or takes other final agency action based on the interim

estimates.'" Opp. at 19. But the States have shown that they are *presently* suffering from increased regulatory burdens due to EO13990 and the SC-GHG Estimates. Stay Appl. at 28 & *id.* App. A at 19-20.

More to the point, Respondents continue to ignore several bases of standing. First, the district court held that "SC-GHG Estimates artificially increase the cost estimates of [Mineral Leasing Act oil-and-gas] lease sales, which in effect, reduces the number of parcels being leased, resulting in the States receiving less in bonus bids, ground rents, and production royalties." App. A at 20. Respondents' only answer (at 23) is that the States can challenge the Estimates sale-by-sale. But just because a legislative rule might be challenged as applied in other, future rulemakings does not foreclose a challenge to the rule itself. That's why this Court has held that a legislative rule that "alters the legal regime" under which an agency operates can be challenged separately. *Bennett v. Spear*, 520 U.S. 154, 169 (1997).

Second, Respondents ignore the States' procedural injury. *See* App. A at 43-44 ("In addition, the implementation of SCGHG Estimates without complying with the APA and the notice and comment period have divested Plaintiff States of their procedural rights."). Respondents try to

rebut this procedural injury (at 24) only by arguing against the existence of procedural standing. Respondents are correct that a procedural right must affect a "'concrete interest.'" Opp. at 24 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009)). But they are wrong to suggest that Applicants' interests here are "'*in vacuo*.'" *Id.* (quoting *Summers*, 555 U.S. at 496). The SC-GHG Estimates affect numerous concrete State interests—in oil-and-gas lease-sale revenues, in increased regulatory burdens, in cooperative federalism—all harmed by the lack of notice and comment. This is all that is needed to set out a cognizable procedural injury. *See Massachusetts v. E.P.A.*, 549 U.S. 497, 518 (2007) ("When a litigant is vested with a procedural right, that litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant.").

*Third*, the federal government is using (and coercing the States to use) the Estimates right now in cooperative-federalism programs. Respondents suggest (at 24) that this is a self-inflicted harm. But under that reasoning, any regulated party's compliance with a regulation would qualify as self-inflicted harm. The substantial pressure on the States to

adopt the SC-GHG Estimates' methodology to get the federal government's blessing in cooperative-federalism programs is a quintessential injury-in-fact. App. A at 19-20; *see also, e.g.*, *Toilet Goods Ass'n v. Gardner*, 360 F.2d 677, 685-86 (2d Cir. 1966) (Friendly, J.), *aff'd sub nom.* 387 U.S. 158 (1967), *and aff'd*, 387 U.S. 167 (1967).

More fundamentally, it is not true that any injury caused by the Estimates is speculative. The federal government is using the Estimates *right now* in agency actions across the Executive Branch, ranging from NEPA review to rulemaking. *See* App. A at 18 (citing DOI order applying the Estimates to Interior Department decisionmaking, which includes oil-and-gas leasing), *id.* at 19 (citing DOT NEPA analysis using the Estimates); *see also id.* at 15-20, 31 (documenting use of the Estimates across the government); Amicus Br. of Manufactured Housing Ass'n at 3-8. There is thus nothing speculative about the chain of causation—the Estimates are in force *right now* and being used *right now* in ways that harm the States.

Respondents' arguments do not justify the Fifth Circuit panel's sub silentio departure from this Court's holding in *Massachusetts v. EPA* that Massachusetts had standing to sue for federal *inaction* that *may* lead to

the *potential for* degradation of its shoreline at a point *far in the future*. 549 U.S. at 521. The causal chain here is far more direct, *presently occurring*, and independently sufficient. For example: the States have a procedural right to comment on the Estimates; they were denied the chance to do so; this denial affects their concrete interests in their participation in cooperative-federalism programs and their entitlement to oil-and-gas leasing revenue. Another example: the States have a statutory right under the Mineral Leasing Act to oil-and-gas lease sale revenue, 30 U.S.C. §226; in the environmental assessments for the June 2022 oil-and-gas lease sales, the Bureau of Land Management referred to the Estimates to justify a massive reduction in the parcels on offer;[1] the States will thus receive less revenue as a direct result of the Estimates. These causal chains are far more direct than those in *Massachusetts*.

Respondents' only response is to invoke (at 18-19) this Court's holding in *Trump v. New York* and to try to distinguish (at 25)

[1] *See* DOI, BLM Utah 2022 First Competitive Oil and Gas Lease Sale, DOI-BLM-UT-0000-2021-0007-EA, at 18 (Apr. 18, 2022), https://bit.ly/38s9qlc (noting that in light of the Fifth Circuit's stay, BLM was once more relying upon the SC-GHG Estimates).

*Massachusetts*. But *Trump v. New York* supports the States. As the district court found, the government has already "altered ... operations in a concrete manner," and the "challenged policy itself" requires the States to alter their conduct. *Trump v. New York*, 141 S. Ct. 530, 536 (2020). And, as discussed, the States' injuries are precisely the type of sovereign harms—pressure to change laws and policies to comply with the Estimates' approach—that entitle them to special solicitude.

Because the States' causal chain relies "on the predictable"—indeed, presently occurring—"effect of Government action on the decisions of [Government] parties," the Fifth Circuit panel made a clear error of law in holding they do not have standing. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565-66 (2019). And its unexplained failure to apply special solicitude will have massive consequences throughout the federal system.

### B. The Suit Is Ripe.

Respondents' argument that the SC-GHG Estimates are not ripe for review can be easily dismissed. This Court was clear in *Lujan v. National Wildlife Federation* that an agency action "applying some particular measure across the board" to a variety of determinations is

reviewable "at once" when it "practical[ly] ... requires the plaintiff to adjust his conduct immediately." 497 U.S. 871, 890 n.2, 891 (1990). Perhaps no statement in the United States Reports better describes the Estimates. As any regulated party or State involved in cooperative-federal programs can attest, when the regulator says that it's employing a new methodology, the regulated party must also employ that methodology or be held out of compliance. *See, e.g.*, App. A-21 ("Plaintiff States have clearly established that: (1) SC-GHG Estimates create a new cost measure the Plaintiff States must use when running cooperative federalism programs or risk serious consequences.").

The States cannot simply "wait" until the Estimates are employed in a future rulemaking. The President has directly ordered his agencies to employ the Estimates—and they've done so (and are doing so). The Estimates thus clearly alter the legal regime by dictating the outcome of the cost/benefit analysis. Indeed, the Estimates have "virtually determinative effect[s]" on subsequent rulemakings. *Bennett*, 520 U.S. at 170. What's more, agencies are not "technically free to disregard" an executive order. *Id.* Because the Estimates "pre-determine[] the future through the selection of a long-term plan (to the exclusion of others which

will not be among the available options at the implementation phase), [they are] ripe for review." *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1091 (9th Cir. 2003); *see also Texas v. Equal Emp. Opportunity Comm'n*, 933 F.3d 433, 444 (5th Cir. 2019).[2]

### C. The Estimates Are Final Agency Action.

Respondents assert (at 25-26) that the IWG is not an agency for purposes of the APA. But it is not true that the Working Group is simply an extension of the President with no substantial authority independent from the President. The IWG is not the President's alter-ego; EO13990 vests it with significant independent authority to create SC-GHG Estimates that bind executive agencies. See EO13990 §5(b)(ii)(A). No further presidential action is needed. This power to "issue guidelines to

[2] Respondents' reliance (at 10, 20) on EO13990's "in a manner consistent with applicable law" clause fails. Boilerplate savings clauses cannot override an Executive Order's commands that are mandatory and blatantly unlawful. *See Hias, Inc. v. Trump*, 985 F.3d 309, 325 (4th Cir. 2021); *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018). And even assuming that the savings clause is operative, the States would still be precluded from challenging individual agency actions on arbitrary-and-capricious grounds because agencies could point to the Executive Order as a justification for ignoring contrary comments. A regulation can be consistent with applicable law but still arbitrary and capricious. Thus the consistent-with-applicable law provision does not assure the States a full opportunity to challenge the inherent arbitrariness of the SC-GHG Estimates.

federal agencies for the preparation of" regulatory review is a hallmark of an APA agency. *Pac. Legal Found. v. Council on Envtl. Quality*, 636 F.2d 1259, 1262 (D.C. Cir. 1980).

Beyond that, the IWG is tasked with ongoing and independent research and investigative functions, another hallmark of agency status. EO 13990, §5(b)(ii)(C)-(E), (b)(iii); *Soucie v. David*, 448 F.2d 1067, 1075 (D.C. Cir. 1971) ("By virtue of its independent function of evaluating federal programs, the OST must be regarded as an agency."); *see Rushforth v. Council of Econ. Advisers*, 762 F.2d 1038, 1041 (D.C. Cir. 1985) ("initiation and support of research, awarding scholarships, fostering the interchange of information and evaluating the status of the sciences in correlating the research" are hallmarks of an agency).

Respondents' contention (at 26) that the IWG exists solely to assist the President misstates the facts in an effort to evade judicial review. Unlike the Task Force in *Meyer*, the IWG can take significant unilateral actions, including promulgating final rules that bind Executive Branch agencies. *Compare Meyer v. Bush*, 981 F.2d 1288, 1294 (D.C. Cir. 1993), *with CREW v. Office of Admin.*, 566 F.3d 219, 233 (D.C. Cir. 2009) (observing the Task Force "lacked substantial authority independent of

the President 'to direct executive branch officials'"). Indeed, *Meyer* based its holding on the Task Force's lack of "substantial independence" from the President; the court specifically found that it was reliant directly upon the President for all its functions. 981 F.2d at 1295-97. And unlike the IWG, the Task Force did not have the independent authority to bind executive agencies, but instead "found it necessary to advise the President to put such instructions in another Executive Order." *Id.* at 1294.

It thus defies precedent and common sense to suggest that an entity with independent authority to promulgate perhaps the most significant and sweeping rule in the Executive Branch's history is not an agency subject to judicial review. *See Rushforth*, 762 F.2d at 1041 (noting irrelevance of lack of grant of statutory authority to agency status and that "it was the functional role of the agency on which *Soucie* turned"). Finally, to the extent that it is relevant, IWG's lack of a statutory grant of authority makes judicial review more essential, not less.

In sum, because the IWG has been granted authority by EO13990 to act "with substantial independent authority in the exercise of specific

functions," *Soucie*, 448 F.2d at 1073, it is an agency for purposes of the APA.

And the SC-GHG Estimates are final agency action because they are the final step in the process of promulgating SC-GHG estimates for use in cost/benefit analysis and are binding upon the Executive Branch. Respondents (at 27) cannot avoid the fact that the Estimates are a blatant attempt to circumvent the APA's rulemaking process. It is well established that "where agency action withdraws an entity's previously-held discretion, that action alters the legal regime, binds the entity, and thus qualifies as final agency action." *Texas*, 933 F.3d at 442 (internal quotation marks omitted); *accord Scenic Am., Inc. v. U.S. Dep't of Transp.*, 836 F.3d 42, 56 (D.C. Cir. 2016). Binding agencies directly—and States by coercion—to use a particular number in its interactions with private and State parties clearly alters rights and obligations.

## II. EXECUTIVE ORDER 13990 AND THE ESTIMATES ARE UNLAWFUL.

The Executive Order and SC-GHG Estimates are unlawful for several reasons. As an initial matter, Respondents are wrong to fault the States for focusing on jurisdiction. The Fifth Circuit panel granted the stay based *exclusively* on jurisdiction, without discussing the merits (or,

for that matter, wresting with the district court's detailed factual findings about the States' standing). And it is incorrect to state that the States failed to discuss the merits. *See* Stay Appl. at 17-21 (discussing major questions doctrine, constitutional avoidance); *id.* at 21-23 (discussing requirements for legislative rules).

### A. The Executive Has No Authority to Promulgate the Estimates.

Respondents try (at 28-30) to portray the SC-GHG Estimates as a mine-run attempt to provide guidance for the Executive Branch. But they are anything but normal and managerial. Executive Order 12866 sets out a *neutral* cost/benefit *system* requiring agencies themselves to come up with monetization for costs and benefits of regulations. By contrast, EO13990 directs agencies to *use a specific number* in all cost/benefit analysis. That is, EO12866 creates a scale; EO13990 and the Estimates put a weight on one side of that scale.

This is no mere exercise of the President's oversight authority over the Executive Branch. Unlike EO12866, EO13990 and the SC-GHG Estimates do not create mere tools to set up internal Executive Branch decisionmaking processes. Rather, they result in a legislative rule—they dictate specific numerical values for use across all agency decisionmaking

affecting private parties. *See, e.g.*, *Catholic Health Initiatives v. Sebelius*, 617 F.3d 490, 495 (D.C. Cir. 2010) ("Judge Friendly wrote that when an agency wants to state a principle 'in numerical terms,' terms that cannot be derived from a particular record, the agency is legislating and should act through rulemaking."). Beyond that, the Estimates alter rights and obligations and remove agency discretion. *Texas*, 933 F.3d at 442 ("If a statement denies the agency discretion in the area of its coverage, then the statement is binding, and creates rights or obligations.") (cleaned up). And Defendants gloss over the fact that EO13990 directs agencies to apply the Estimates not only in rulemaking, but also in "other relevant agency actions," such as project-level NEPA reviews. This is a significant departure from EO12866 and Circular A-4, which apply to rulemakings only, not to (for example) project-level NEPA review.

The President certainly has inherent power to structure Executive Branch decisionmaking authority. But he just as certainly lacks inherent power to promulgate fundamentally transformative legislative rules in areas of vast political, social, and economic importance. *See NFIB*, 142 S. Ct. at 668 (Gorsuch, J., concurring) ("If administrative agencies seek to regulate the daily lives and liberties of millions of Americans, the [Major

Questions] doctrine says, they must at least be able to trace that power to a clear grant of authority from Congress."). Since day one, Respondents have cited no statutory authority for the Estimates—"the most the most important number you've never heard of." Cass R. Sunstein, *Arbitrariness Review (with special reference to the social cost of carbon)* at 4 (2021), https://bit.ly/3rk2hZC.

And the problem is not just that the Estimates flow from no statutory authority. Worse yet—they affirmatively conflict with statutes directing agencies to consider national (rather than global) needs or impacts. *See, e.g.*, 42 U.S.C. §6295(o)(2)(B)(i)(VI); 49 U.S.C. §32902(f). So much for this Court's holding that statutes are presumed to focus nationally—not globally. *Cf. Nabisco Inc. v. Eur. Cmty.*, 579 U.S. 325, 336 (2016) (recognizing the "commonsense notion that Congress generally legislates with domestic concerns in mind").

### B. The Estimates Violate the APA's Notice-and-Comment Requirement.

Respondents never grapple with the fact that the IWG failed to conduct notice-and-comment rulemaking before engaging in an act of regulatory legislation that binds all federal agencies to use specific numbers. *See United States v. Riccardi*, 989 F.3d 476, 487 (6th Cir. 2021)

("Precedent . . . recognizes that a specific numeric amount . . . generally will not qualify as a mere 'interpretation' of general nonnumeric language.") (collecting cases). Even the IWG itself recognized that it was engaged in an inherently legislative function. *See, e.g.*, Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide, Interim Estimates Under Executive Order 13990*, at 26 (Feb. 26, 2021), https://bit.ly/3nc5gB3 ("Uncertainty about the value of the SC-GHGs is in part inherent, as with any analysis that looks into the future, but it is also driven by current data gaps associated with the complex physical, economic, and behavioral processes that link GHG emissions to human health and well-being."). Because the Estimates are legislative rules, they are unlawful because—assuming solely for the sake of argument that some statutory basis exists to issue them—they were not promulgated using the APA's notice-and-comment requirement.

### C. The Estimates Are Arbitrary and Capricious.

As the district court correctly found, the Estimates are arbitrary and capricious for several independently sufficient reasons. *See* App. A-35-38. Respondents focus on two areas.

First, Respondents assert (at 31) that global benefits and costs are a routine and acceptable consideration in cost/benefit analysis. Not so. For decades, the baseline has been *domestic* effects. *See, e.g.*, Arden Rowell, *Foreign Impacts and Climate Change*, 39 Harv. Envtl. L. Rev. 371, 373 (2015) ("[T]he decision to count global impacts—and to count them in the way they are counted—occurs against an institutional backdrop that constitutes a bold diversion from existing regulatory policy. In other domestic regulatory contexts, the United States does not count foreign impacts. The typical agency practice is, in fact, to leave foreign impacts out of cost-benefit analyses entirely."). And Circular A-4, reflecting decades of best regulatory practice, mandates considering domestic effects, not global ones. *See* Circular A-4, at 15. Considering global effects thus not only bucks tradition and best regulatory practices but also conflicts with Congress's consistent command that agencies consider only domestic concerns. *See, e.g.*, 49 U.S.C. §32902(f) (instructing agencies to set CAFE standards for motor vehicle emissions based in part on "the need of *the United States* to conserve energy") (emphasis added).

Second, Respondents contend (at 31-32) that IWG's break with Circular A-4 did not require an explanation because the IWG's approach was actually consistent with Circular A-4. But Circular A-4 could not be clearer that focusing on domestic effects, and using a seven-percent discount rate, are fundamental tenets of sound cost/benefit analysis from which agencies should depart only in limited case-by-case scenarios. *See* Circular A-4, at 34. The Estimates' wholesale abrogation of these two requirements squarely conflicts with Circular A-4. *See, e.g.*, *State v. Bureau of Land Mgmt.*, 286 F. Supp. 3d 1054, 1069 (N.D. Cal. 2018) ("While Plaintiffs argue that the same Circular directs BLM to encompass 'all the important benefits and costs likely to result from the rule,' including 'any important ancillary benefits,' it does not specifically mandate that agencies consider global impacts."). Because IWG did not acknowledge its break with the Circular, it did not even meet its baseline requirement to "display awareness that it *is* changing position." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

### D. The Injunction Was Appropriately Tailored.

Respondents make much (at 32-35) of the scope of the district court's injunction. But their arguments do not undermine the application

of the ordinary remedy for unlawful agency activity. "'[V]acatur is the normal remedy' under the APA." *Am. Great Lakes Ports Ass'n v. Schultz*, 962 F.3d 510, 518 (D.C. Cir. 2020). So at the preliminary injunction stage, if a court finds the injunction factors are met, the ordinary remedy is to restrain Executive officers from complying with the agency action as if it were vacated. *Cf.* 5 U.S.C. §705 (authorizing a reviewing court to "postpone the effective date of *agency action*" (emphasis added)).

Even if narrower relief were possible, Respondents have not demonstrated their entitlement to it. They premise all their arguments on a misrepresentation of the injunction as an affirmative one. That is false. The injunction prevents the Executive Branch from using the Estimates. The natural result is that the still-in-force Circular A-4 would once again cover agencies' climate-related cost/benefit analysis. That is, with the Estimates enjoined, agencies once again would be subject to Circular A-4, which continues to embody best regulatory practices.

The Court need not take the States' word for it. Respondents previously represented that *even under an injunction, agencies would continue to use the Estimates*: "[W]hether or not the Interim Estimates are binding, agencies are not likely to ignore them, as they reflect years

of cutting-edge work from leading experts and academics in and out of government." Doc. 31-1 at 24, *Louisiana v. Biden*, No. 2:21-cv-1074 (W.D. La.). Thus, taking Respondents at their word, an injunction simply declaring the Estimates to be nonbinding will not prevent the harms caused when agencies (inevitably) use them.

And indeed, that's exactly how the Executive Branch proceeded even after the injunction was entered. Federal agencies continued to indicate that they will use the Estimates. *See* Dep't of Energy, Proposed Rule, *Energy Conservation Program: Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps*, 87 Fed. Reg. 11335, 11348 (Mar. 1, 2022) ("DOE uses the social cost of greenhouse gases from the most recent update of the Interagency Working Group on Social Cost of Greenhouse Gases .... The IWG recommended global values be used for regulatory analysis.").

The actions of the Department of Energy and the Bureau of Land Management since the Fifth Circuit's stay provide stark examples of why an injunction of the breadth issued by the district court is necessary. As noted, BLM expressly justified withholding massive tracts of land from oil-and-gas leasing on the basis of the Fifth Circuit's stay reinstituting

the SC-GHG Estimates. DOI, BLM Utah 2022 First Competitive Oil and Gas Lease Sale, DOI-BLM-UT-0000-2021-0007-EA, at 18 (Apr. 18, 2022), https://bit.ly/38s9qlc. This will deprive the States of vital statutory oil-and-gas lease revenues under the Mineral Leasing Act. 30 U.S.C. §226. Similarly, since the Fifth Circuit's stay, DOE published a final Environmental Impact Statement that tries to justify a manufactured housing rule based on the Estimates. *See* Final Environmental Impact Statement for Proposed Energy Conservation Standards for Manufactured Housing, https://bit.ly/3wsqpvN (Apr. 2022).

## III. THE EQUITIES FAVOR VACATING THE STAY.

The public interest and balance of harms weigh heavily against a stay. Respondents have no legitimate interest in the implementation an unlawful measure. *See, e.g.*, *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485, 2490 (2021) ("[O]ur system does not permit agencies to act unlawfully even in pursuit of desirable ends."); *see also State v. Biden*, 10 F.4th 538, 559 (5th Cir. 2021) ("[T]he 'public interest [is] in having governmental agencies abide by the federal laws that govern their existence and operations.'"). And "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League*

*of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Finally, the injunction prevents major violations of the Tenth Amendment and "the public interest plainly lies in not allowing" Respondents "to circumvent those federalism concerns." *Biden*, 10 F.4th at 559. Simply put, "[t]he public interest is also served by maintaining our constitutional structure ... even, or perhaps particularly, when those decisions frustrate government officials." *BST Holdings, L.L.C. v. Occupational Safety & Health Admin.*, 17 F.4th 604, 618-19 (5th Cir. 2021).

Respondents assert (at 36) that the Estimates do not cause the States harm. Again, this is false. The Estimates immediately apply coercive pressure to the States to change their approach to greenhouse gas regulation. *See, e.g.*, App. A at 21 ("Plaintiff States have clearly established that: (1) the SC-GHG Estimates create a new cost measure the Plaintiff States must use when running cooperative federalism programs or risk serious consequences."). This pressure, in itself, "constitutes an injury" to the States' "sovereign interest[s]," whether States actually change their policies or not, *Texas*, 933 F.3d at 446-47 (cleaned up), and that continuing harm cannot be erased or remedied through after-the-fact relief. And the harm to Plaintiff States' statutorily

entitled oil-and-gas lease-sale revenues is irreparable. Contrary to Respondents' assertion, these presently occurring damages cannot be remedied in the ordinary course of litigation because of the federal government's sovereign immunity. *See, e.g.*, *Texas v. United States*, 809 F.3d 134, 186 (5th Cir. 2015).

The irreparable harm the States will suffer without an injunction puts the public interest and balance of harms beyond doubt. Any harm to Respondents' nonexistent interest in furthering an illegal policy is easily outweighed by Plaintiff States' irreparable harms.

## CONCLUSION

For the foregoing reasons, this Court should grant the application and vacate the Fifth Circuit's order staying the district court's preliminary injunction.

Respectfully submitted,

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