No. 24-982

IN THE
Supreme Court of the United States

EXXONMOBIL CORPORATION; EXXONMOBIL CHEMICAL COMPANY; EXXONMOBIL REFINING & SUPPLY COMPANY,
Petitioners,

v.

ENVIRONMENT TEXAS CITIZEN LOBBY, INCORPORATED; SIERRA CLUB,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The questions presented are:

1. Whether, as the Fifth Circuit has held, a plaintiff in a CAA citizen suit may satisfy Article III's traceability requirement merely by showing that she suffered the "kinds of injuries" that defendants' conduct "could have" caused.

2. Whether this Court should overrule its holding, in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000), that the availability of civil penalties paid to the government can satisfy Article III's redressability requirement for private, citizen-suit plaintiffs.

RELATED PROCEEDINGS

There are no related proceedings beyond those included in petitioners' Rule 14.1(b)(iii) statement.

CORPORATE DISCLOSURE STATEMENT

Under Supreme Court Rule 29.6, Environment Texas Citizen Lobby, Inc., and Sierra Club, both non-profit organizations, state that they have no parent companies, subsidiaries, or affiliates that have issued shares to the public in the United States and that no publicly held corporation owns 10% or more of their stocks because they have never issued any stock or other security.

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INTRODUCTION

Petitioners run the country's largest petrochemical facility in Baytown, Texas. Their facility is subject to limits on emissions of numerous harmful air pollutants and to standards that prevent stinging smells, bright flares, loud noises, and explosions. But petitioners routinely exceed those limits and fail those standards. The facility's neighbors—respondents' members—are the ones who suffer. They stay inside when it hurts to breathe in chemicals. And they lie awake as flares light up the night sky and rattle their homes. After years of enduring these harms, they sued to abate the violations and gain some peace.

Petitioners responded by tossing out one novel, untested argument after another. This worked initially: A Fifth Circuit panel adopted an approach to Article III traceability that "neither [this Court] nor other circuit court[s]" have endorsed, swayed by petitioners' references to "the unprecedented number and variety of violations at issue." Pet. App. 32a-33a (Davis, J., concurring). But the defects in petitioners' theories were then laid bare: After vacating the prior panel opinions, the full Fifth Circuit wrestled with petitioners' novel arguments for nearly two years. It then issued a per curiam decision that merely affirmed the district court's latest judgment without an opinion.

Petitioners' first question presented asks this Court to wade in and become the first court to address their arguments. There is no need. The decision below "decides nothing about standing," leaving the law in the Fifth Circuit as it was before this case began. *Id.* at 200a (Oldham, J., dissenting). That settled law follows the uniform approach every other circuit takes to

address Article III's traceability requirement when people sue to abate federal pollution limit violations. That approach traces back 35 years, has proven helpful to lower courts, and reflects this Court's precedents. And the non-precedential district court judgment at issue rests on a complex, extensive factual record that would complicate review.

Petitioners' second request, which asks this Court to overrule a 25-year-old holding, is also unworthy. When a person sues to abate ongoing violations of a pollution limit and Congress has authorized her to seek civil penalties paid to the U.S. Treasury, that forward-looking relief can deter future violations and thus redress her injuries. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 186 (2000). The petition provides no reason to revisit, much less overrule, that holding.

The petition should be denied.

STATEMENT

A. Statutory and Regulatory Background

The Clean Air Act exists "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). The federal and state governments implement the Act together. Broadly speaking, the federal government sets air pollution standards to protect public health, and states implement the standards through permit limits and standards.

Texas's Commission on Environmental Quality sets emission limits in that state. Polluters may seek flexible permits (with aggregate emission limits for all sources at a site) or standard permits (with source-by-

source limits). *See* 30 Tex. Admin. Code § 116.715. Permits include a "maximum allowable emissions rate table" listing emission limits and their applicable time frame for each pollutant. *See id.* § 116.10(8). Texas requires permitholders to publicly report certain violations and record others. *See id.* §§ 101.1(71), (88), 101.201, 122.10(6), 122.145(2). Any permit violation is a violation of the Act. *See* 42 U.S.C. § 7661a(a).

The Act gives state and federal governments the primary role in addressing polluters' noncompliance and also gives the people whom polluters harm by failing to meet permit obligations a "supplement[al] role" in securing compliance. *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 60 (1987) (interpreting parallel Clean Water Act provisions). As relevant, "any person" may bring "a civil action on his own behalf" against a polluter "alleged . . . to be in violation of" "an emission standard or limitation under" the Act or an "order" respecting "a standard or limitation." 42 U.S.C. § 7604(a)(1).

The Act imposes procedural requirements on these suits. A person must "give [a violator] an opportunity to bring itself into complete compliance" and "render [the suit] unnecessary" by providing 60 days' notice of violations of the standard, limit, or order. *Gwaltney*, 484 U.S. at 59-60; *see* 42 U.S.C. § 7604(b)(1)(A) (also requiring notice to the state and federal governments). She may not sue if the government "has commenced and is diligently prosecuting a civil action . . . to require compliance." 42 U.S.C. § 7604(b)(1)(B).[1] A

[1] The federal government must be served, can intervene at any time, and must receive notice and have a chance to respond before any consent decree enters. *See* 42 U.S.C. § 7604(c)(2)-(3).

person who clears these hurdles may seek relief from intermittent or continuous "ongoing" violations. *Gwaltney*, 484 U.S. at 59; *see Laidlaw*, 528 U.S. at 185 (interpreting parallel Clean Water Act provisions).

To establish a Section 7604(a)(1) claim on the merits, a person must prove that the emission limit, standard, or order at issue is "actionable." To do so, she must show either (1) "repeated violation[s] of the same" standard, limitation, or order "before the complaint" or (2) "violation[s] of the same" standard, limitation, or order "both before and after the complaint." Pet. App. 440a (quotation omitted).

If a person does so, the Act lays out the potential remedies. A court may order injunctive relief. *See* 42 U.S.C. § 7604(a) (authorizing a court to "enforce" the "emission standard or limitation, or . . . order"). The court may also "apply any appropriate civil penalties," to be paid into a U.S. Treasury fund. *Id.*

The Act allows a court to consider the number of days a polluter has violated the emission standard, limit, or order at issue to assess an appropriate civil penalty. A court may assess a penalty "for each day of violation" of the standard, limit, or order. *Id.* § 7413(e)(2) (explaining how to identify the "days of violations"); *see* Pet. App. 297a n.2 (noting agreement that 42 U.S.C. § 7413(b)'s per-day cap applies). The court must then consider specified factors to arrive at any penalty, "in addition to such other factors as justice may require." 42 U.S.C. § 7413(e)(1). Those are: "the size of the business, the economic impact . . . on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation," "payment . . . of penalties previously assessed

for the same violation, the economic benefit of noncompliance, and the seriousness of the violation." *Id.*

The Act's citizen-suit provisions reflect the political branches' decision to allow those who are harmed when permit holders violate emission limits to protect themselves by suing to "encourage defendants to discontinue current violations and deter them from committing future ones." *Laidlaw*, 528 U.S. at 186.

B. Procedural History

1. This case concerns petitioners' Baytown, Texas facility, the largest petroleum and petrochemical complex in the United States. Pet. App. 476a. The complex consists of an oil refinery, a chemical plant, and an olefins plant. *Id.* at 475a. It can process half a million barrels of crude oil per day. *Id.* at 476a.

Google Earth image of the Baytown facility and surroundings

Neighborhoods, parks, and a nature reserve surround petitioners' facility. The neighborhoods contain homes, businesses, schools, playgrounds, and places of worship. Several thousand people live within a mile of the facility; nearly 100,000 live within five miles. *See* EPA, Enforcement and Compliance History Online, *Baytown Plant Detailed Facility Report*, bit.ly/baytownecho.

Because the facility can emit millions of pounds of harmful air pollutants, permits limit its emissions and the associated harm to the facility's neighbors. Flexible permits govern the refinery and olefins plant, and standard permits govern the chemical plant. *See* Pet. App. 511a, 513a, 515a.

For example, a permit governing one flare stack (a structure used to burn off gases) at the chemical plant limits releases of sulfur dioxide (SO_2)—a gas with a choking, irritating smell—to 2,768 pounds per hour. *See id.* at 382a (Permit 36476); Dkt. 253-10 at 6 (Oct. 31, 2016).[2] That limit is important: Among other consequences, short-term exposure to even low levels of SO_2 damages lung function. *See* 84 Fed. Reg. 9866, 9875-877 (Mar. 18, 2019). After as little as five minutes, exposure can constrict airways, impeding breathing, exacerbating asthma, and damaging the lungs. *See id.* at 9869, 9874-878; EPA, *EPA Integrated Science Assessment for Sulfur Oxides—Health Criteria*, 5-116 (Dec. 2017), bit.ly/4k5tvxq.

As another example, the refinery permit bars "upset emissions," a prohibition that also serves important purposes. Pet. App. 426a, 434a; *see* 30 Tex. Admin.

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[2] All Dkt. citations are to *Environment Texas Citizen Lobby v. ExxonMobil*, No. 4:10-cv-4969 (S.D. Tex.).

Code § 101.1(110) (defining term). The gases and liquids throughout the facility are flammable, requiring precautions to prevent them from escaping, igniting,[3] and potentially causing difficult-to-control fires or explosions.[4] Something as seemingly innocuous as a "smoldering board" is a potential ignition source that can have disastrous consequences.[5]

Petitioners repeatedly violate their permits' restrictions, often by staggering amounts. Between October 2005 and September 2013, petitioners "committed on average more than one permit violation per day, resulting in the unlawful emission of nearly ten million pounds of pollutants." Pet. App. 6a (Davis, J., concurring). For example, one violation at the chemical plant flare stack released more than 52,000 pounds of SO_2 in just a few hours, nearly 20,000 pounds above the 2,768 pounds-per-hour limit for that flare. *See* Pet. App. 210a n.17; Dkt. 253-10 at 6 (Oct. 31, 2016). Petitioners' modeling showed that the resulting SO_2 concentration in a nearby neighborhood exceeded the federal one-hour safety threshold. *See* Pet. App. 65a (Davis, J., concurring).

The Baytown facility's violations affected its neighbors' daily lives and health.

For years, Richard Shae Cottar lived a quarter-mile from the facility. Pet. App. 350a. While home, "he saw or heard flaring events" that "were audibly disruptive, woke him up, [and] rattled the windows of his

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[3] Dkt. 199 at 12:7-25 (Apr. 18, 2014); Dkt. 210 at 65:21-66:2 (Apr. 21, 2014); Dkt. 211 at 66:5-14 (Apr. 21, 2014).

[4] Dkt. 210 at 88:22-89:21 (Apr. 21, 2014); Dkt. 236-719 (Mar. 11, 2015).

[5] Dkt. 199 at 13:6-22 (Apr. 18, 2014).

house." *Id.* During these events, which sometimes lasted "for several hours," he saw "plumes of black smoke" and "large flames." *Id.* He "also smelled strong, pungent odors" that sometimes "caused him headaches and awoke him in the night." *Id.* He knew petitioners' facility was the problem. Some events were so disruptive that he looked up compliance records and matched petitioners' reported violations to the harms he experienced. Dkt. 195 at 119:6-14 (cited at Pet. App. 494a). The odors "became more intense the closer he got to the" facility. Pet. App. 350a. And the next-closest facility was ten miles away. Dkt. 195 at 111:9 (cited at Pet. App. 350a).

This continued even after Mr. Cottar moved another mile-and-a-half away out of concern for his and his family's health. Pet. App. at 351a. The distance helped, but he still felt the effects of the complex's emissions and flares. *Id.* at 350a-351a. And when he visits the Baytown Nature Center beside the facility, "he does not stay if he sees emissions" from the facility. *Id.* at 351a.

Marilyn Kingman has been similarly affected. She "shops, banks, attends church, and conducts other activities several times a week" near the facility. *Id.* at 349a. She has "smelled a chemical smell around [it], seen flares at the [facility], and seen a gray or brown haze over the" facility. *Id.* Because she fears these emissions' effects, "[s]he limits her outdoor activities in Baytown when she smells odors or sees haze." *Id.*

Mr. Cottar and Ms. Kingman are not alone. Neighbors routinely call petitioners and local authorities to complain about the facility's air pollution and flaring. *See* Dkt. 236-549 (Mar. 11, 2015); Dkt. 235-1598 at 12 (Mar. 11, 2015). One incident involving a ground-level

mist containing benzene, ethylbenzene, and toluene spurred multiple complaints. Dkt. 236-549 at 11-12 (Mar. 11, 2015). The chemical odors and flares affected some neighbors so much that they moved away. *See* Pet. App. 348a, 352a.

2. Because "[a]bsent an appropriate" court order, petitioners "will continue to violate the Act," respondents, on behalf of members including Mr. Cottar and Ms. Kingman, followed the Act's notice requirements and sued. Dkt. 1 at 3 (Dec. 13, 2010). Their suit sought to abate harms from ongoing violations (based on petitioners' reporting) of more than 60 separate emission standards and limitations.[6] Respondents sought declaratory relief, an injunction, and civil penalties. Pet. App. 474a.[7]

After the suit, Texas began an enforcement proceeding and negotiated an administrative order with petitioners. The order, among other things, "resolved enforcement for certain past" violations, imposed a penalty, and required petitioners to undertake four projects to reduce future violations. *Id.* at 341a-342a. Texas's action did not preclude respondents' suit. By operation of law, the penalties Texas imposed would offset any civil penalties entered in the suit. *See id.* at 255a, 405a; *cf.* 42 U.S.C. § 7604(c)(2).

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[6] Dkt. 236-49 (Mar. 11, 2015); Dkt. 236-50 (Mar. 11, 2015); Dkt. 236-51 (Mar. 11, 2015); Dkt. 236-52 (Mar. 11, 2015); Dkt. 236-53 (Mar. 11, 2015).

[7] Respondents sought $642,697,500 based on the number of violation days multiplied by the per-day maximum. *See* Pet. App. 540a, 541a n.267 (explaining methodology).

After a bench trial, the district court found that petitioners violated the emission standards and limits at issue thousands of times but did not grant relief.

The district court found that respondents established all of Article III's requirements for standing. *See* Pet. App. 497a-502a. On the merits, it was "undisputed [petitioners] violated some emission standards or limitations." *Id.* at 502a. The court thus addressed which claims were "actionable" under Section 7604. *See id.* at 502a-505a; *supra* at 4 (describing the actionability requirement). The district court then turned to remedy. It denied declaratory relief because it had "already" found petitioners violated the Act. Pet. App. 523a-524a. It also declined to award civil penalties or enter an injunction. *Id.* at 540a-541a, 544a-545a.

3. Respondents appealed, and the Fifth Circuit vacated and remanded. The panel held that the district court did not properly identify the full set of actionable claims. *See id.* at 441a-442a. It also held that the district court erred in balancing the civil penalty factors. For example, the district court failed to correctly determine whether petitioners benefited from noncompliance and assumed that the existence of less serious violations nullified the significance of very serious violations. *See id.* at 463a, 469a.

4. On remand, the district court reassessed which claims were actionable, how many violations were associated with those claims, and the appropriate civil penalty. The court identified 16,386 days of violations associated with actionable claims. *Id.* at 414a. The court also found that petitioners received an economic benefit of approximately $14.25 million by delaying implementation of the four facility-wide improvement

projects included in the Texas enforcement order, all of which would have helped prevent the violations at issue and could have been implemented much earlier. *See id.* at 409a, 411a. Finding further that other factors, including the seriousness and duration of the violations, warranted a civil penalty, it set a $19.95 million penalty. *Id.* at 414a-417a.

5. Petitioners appealed, and the Fifth Circuit again vacated and remanded.

This time, petitioners challenged respondents' standing. The panel described "[t]he main legal dispute" as whether respondents "must prove standing for each violation they alleged." *Id.* at 297a. It recognized that Section 7604(a)(1) provides a "cause of action—that is, a claim—only for repeated violations of a particular emission standard." *Id.* And it recognized that "no court" had found standing to seek civil penalties for some violations relevant to a claim but not others. *Id.* at 299a. But it nonetheless required respondents to show standing for each violation used to calculate the civil penalty because of "the number and variety of violations" in the case. *Id.* at 299a.

The panel then turned to how respondents could establish traceability. It rejected petitioners' view that respondents had to prove that a specific member experienced a specific harm at the specific time of a recorded violation (for example, by videotaping a flaring event in the dead of night, as one of respondents' members happened to do). *See id.* at 304a. "Requiring proof that specific" was not consistent with the requirement that an injury be *fairly* traceable to a defendant. *Id.* Petitioners "d[id] not question the vitality of" the Fifth Circuit's decision in *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 557

(5th Cir.), *cert. denied*, 519 U.S. 811 (1996). Pet. App. 305a n.4. So the panel applied the *Cedar Point* framework. Respondents had to show "that each violation in support of their claims 'causes or contributes to the kinds of injuries' they allege" and "a 'specific geographic or other causative nexus' such that the violation could have affected their members." *Id.* at 307a. The panel then offered examples of the types of harm, violations, and nexus showings that would meet these criteria. *See id.* at 307a-310a.

Judge Oldham concurred in the judgment. He questioned whether the *Cedar Point* framework could generate predictable results that satisfied Article III's traceability requirements. *See id.* at 325a-326a.

6. On remand, the district court applied the panel's traceability ruling and reassessed the civil penalty. Applying the panel's traceability test, the district court identified the violations for which respondents showed that the violations caused or contributed to the kinds of injuries alleged and showed a geographic or other causative nexus between those violations and injuries. *See id.* at 208a-229a. As to the civil penalty, the court reaffirmed that the statutory factors favored one. "There were over 1.5 million pounds of pollutants released from traceable reported violations out of the refinery alone." *Id.* at 251a. The court then reduced the penalty to $14.25 million. *Id.* at 255a.

7. Petitioners appealed again, and the Fifth Circuit affirmed.

Invoking the law of the case, the panel declined petitioners' request to "revisit [its] approach to standing." *Id.* at 261a. Petitioners did not challenge any specific traceability finding from the district court.

And the district court's analysis was "thorough and sufficiently explained." *Id.* at 270a.

Judge Oldham dissented. In his view, respondents had not shown "*causation in fact*." *Id.* at 280; *see id.* at 284a-285a.

8. Petitioners sought rehearing en banc, which the Fifth Circuit granted, vacating the two panel opinions that had addressed standing. *See id.* at 547a-548a.

Nearly two years later, the Fifth Circuit "affirm[ed] the judgment of the district court, dated March 2, 2021," in a one-paragraph per curiam opinion. *Id.* at 3a. The court did not discuss standing or the merits. It said only that it would not have granted rehearing had it known "it would take a year and a half after . . . argument" to issue an opinion. *Id.*

The en banc proceedings produced six opinions between 17 judges.

Chief Judge Elrod concurred in the per curiam opinion. She would have affirmed the third panel opinion which, along with the underlying district court opinion, "got it right." *Id.* at 2a n.**.

Judge Ho wrote separately and would have dismissed rehearing as "improvidently granted." *Id.* at 77a. As to traceability, he defended the *Cedar Point* framework. *See id.* at 82a. As to redressability, he stated that he was convinced by the dissent in *Laidlaw*, which disagreed with the majority's holding that a civil penalty remedy can deter future violations of emission limits. *See id.* at 79a. But he accepted *Laidlaw* as binding precedent. *See id.*

Judge Davis concurred, writing for seven judges. *Id.* at 3a. He addressed two threshold issues that he saw as relevant to traceability: (1) how to define a "claim"

under the Clean Air Act and (2) whether the standing analysis for citizen suits seeking civil penalties is prospective or retrospective. *See id.* at 11a. As to the first, Judge Davis explained that a claim "arises when a particular pollutant has been emitted repeatedly in violation of a permit limit." *Id.* at 31a. A claim is for "ongoing or imminently threatened injuries as a result of . . . violations"—not, as petitioners argued, to "'secure' civil penalties as compensation for injuries they may have suffered for past violations." *Id.* at 31a, 32a. As to the second issue, Judge Davis canvassed this Court's precedents and concluded that "plaintiffs may only pursue prospective forms of relief," "civil penalties are a form of prospective relief," and "the standing analysis for . . . injunctive relief applies equally to suits seeking civil penalties." *Id.* at 17a. Applying these principles, he would have affirmed the district court's earlier judgment containing a $19.95 million civil penalty award. *Id.* at 76a.

Judge Jones dissented, writing for seven judges.[8] *Id.* at 97a. She did not apply a forward-looking approach to assessing respondents' standing. *See id.* at 133a. Instead, because civil penalties were at issue, Judge Jones explained that she would require "traceability to" all of "the polluter's past illegal discharges" used to calculate civil penalties. *Id.* at 134a; *see also id.* at 127a. Relatedly, she viewed the relevant cause of action as one seeking relief "for every single reportable or recordable violation of a permit term or condition" at issue in a case. *Id.* at 127a. Based on these

[8] Judge Richman joined some portions of this dissent but wrote separately to identify places where Judge Jones's reasoning was inconsistent. *See* Pet. App. 162a.

conclusions, she viewed the case as involving "only about forty days" of traceable violations. *Id.* at 158a.

Judge Oldham dissented, writing for the same dissenters minus Judge Richman. *Id.* at 174a. After emphasizing parts of Judge Jones's dissent, he explained that the en banc court's per curiam opinion "decides nothing about standing." *Id.* at 200a.

This petition followed.

REASONS TO DENY THE PETITION

I. The First Question Presented Does Not Warrant Certiorari.

There is no precedential Fifth Circuit ruling for this Court to review. Granting review would thus amount, at best, to error correction of a nonprecedential district court opinion based on a complex, extensive factual record. At worst, review would involve addressing a test not applied below and confronting thorny antecedent questions. Petitioners ask this Court to look past all of that because the Fifth Circuit needs this Court's guidance. Petitioners are wrong. The Fifth Circuit has, for nearly 30 years, relied on *Cedar Point*'s traceability framework when a person sues to abate ongoing violations of a pollution limit. Every other circuit to address this kind of claim applies the same framework. The only instability in the law arose when petitioners injected novel Clean Air Act interpretations and standing theories into this case. The Fifth Circuit's per curiam en banc opinion resolved that instability by leaving prior circuit law in place. This Court should not revive that instability now.

A. The petition offers a terrible vehicle.

1. The petition does not actually implicate the first question presented. Petitioners state that the "Fifth

Circuit has held" that a plaintiff seeking to abate ongoing violations of pollution limits need only show "that she suffered the '*kinds* of injuries' that defendants' conduct '*could* have' caused." Pet. i. That is not the law in the Fifth Circuit. In the Fifth Circuit, both before and after this case, to show traceability a plaintiff must show: (1) discharges above the permitted limit; (2) "into a waterway" or other area "in which the plaintiffs have an interest that is or may be adversely affected by the pollutant"; (3) of a pollutant that "causes or contributes to the kinds of injuries alleged." *Cedar Point*, 73 F.3d at 557. That is the law that the district court applied to reach the judgment that the en banc Fifth Circuit affirmed without an opinion. The district court required respondents to show that any violation supporting their claims for civil penalties "causes or contributes to the kinds of injuries they allege" *and* show "the existence of a specific geographic or other causative nexus such that the violation could have affected their members." Pet. App. 208a (quotation omitted). Petitioners' first question presented omits the geographic or other causative nexus requirement and thus seeks review of a hypothetical test that was not applied below. This Court should decline that invitation.

2. Whatever else divided the judges below, there was no disagreement on one front: This case did not produce any precedential Fifth Circuit opinion that addresses standing. *See* Pet. App. 84a (Ho, J., concurring) (The per curiam en banc opinion "affirm[s] without issuing a precedential ruling on standing."); *id.* at 99a (Jones, J., dissenting) (The opinion "necessarily renders nugatory the earlier Fifth Circuit decisions in this case."); *id.* at 200a (Oldham, J., dissenting) (The opinion "decides nothing about standing."). The en

banc court vacated the panel opinions that had addressed standing. *See id.* at 548a. It then issued a per curiam opinion with just one relevant sentence: "We accordingly AFFIRM the judgment of the district court, dated March 2, 2021." *Id.* at 3a. There is therefore no legal rule on traceability for this Court to evaluate.

This petition thus asks this Court to review a district court opinion for error-correction purposes, and all the usual reasons not to do so apply here. To understand how petitioners' traceability theory might apply to the different claims at issue here, this Court would need—at a minimum—to wade into "the stipulated spreadsheet of violations to determine which" violations are and are not traceable under the tests that the merits briefing may put before the Court. *Id.* at 271a; *see also id.* at 143a-145a & n.34 (Jones, J., dissenting) (conducting "[r]esearch" into the record to discuss traceability). But this Court does not grant certiorari "to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925).

This would be a particularly poor case in which to depart from that practice. The claims here seek to abate violations of more than 60 different emission limits and standards. There is an extensive record relevant to those claims. *See* Pet. App. 203a n.2 ("1,148 exhibits that span thousands of pages" and testimony from "25 witnesses"). Given the procedural history and its familiarity with the record, the district court "describe[d] the criteria it used to identify the traceable violations" but did not "list[] each justiciable violation individually." *Id.* at 270a. Its opinion satisfied Federal Rule of Civil Procedure 52(a)(1), *see id.* at 271a, but does not contain the kind of filtering of

factual questions that this Court normally requires from an appellate opinion before it grants review.

3. The "smoldering rubble" that petitioners see in the non-precedential en banc opinions stems largely from disagreement over the resolution of two novel antecedent disputes, not the basic rules governing traceability. Pet. 4.

To start, "[t]he parties dispute what constitutes a 'claim'" under Section 7604(a)(1) of the Clean Air Act "for purposes of" assessing standing here. Pet. App. 28a (Davis, J., concurring); *see also id.* at 126a (Jones, J., dissenting). Because (as all agree) a plaintiff must establish standing for each claim she raises, the standing inquiry "often turns on the nature and source of the claim asserted" even though it is independent of the merits. *Warth v. Seldin*, 422 U.S. 490, 500 (1975). This is why the judges below noted the need to resolve the "interaction between Clean Air Act claims, violations and penalties" to address traceability in this case. Pet. App. 125a (Jones, J., dissenting) (quotation omitted); *see also id.* at 11a-12a (Davis, J., concurring).

Respondents, for their part, read Section 7604(a)(1) the same way that this Court read materially identical language in the Clean Water Act. It allows a person to sue for relief from "*ongoing violations*" of a specific emission standard or limit. *Laidlaw*, 528 U.S. at 185 (emphasis added); *see also* 42 U.S.C. § 7604(a) (authorizing a court "to enforce such an emission standard or limitation"). A plaintiff must therefore prove standing as to each emission limit or standard for which she seeks relief (whether injunctive or civil penalties). Past violations may be *evidence* of the likelihood of ongoing or future injury from violations of that

standard or limit. *See, e.g.*, *Murthy v. Missouri*, 603 U.S. 43, 59 (2024). And past violations may be relevant if a court reaches the remedy stage and calculates an appropriate civil penalty. *See supra* at 3-5 (discussing how evidence of violations, whether pre- or post-dating the complaint, factors into a civil penalty). But a plaintiff does not (and cannot) seek relief under Section 7604(a)(1) for purely past violations.

Petitioners—in contrast—offer a brand-new view of Section 7604(a)(1). They insist (at 18) that when a person sues under Section 7604(a)(1) and seeks civil penalties (but not when she seeks an injunction), her claim is one for relief for past injuries from *past violations* that may factor into a civil penalty calculation. As judges below noted, no other court has embraced (or, it seems, even addressed) petitioners' view. Pet. App. 32a (Davis, J., concurring) ("Exxon recognizes that neither *Laidlaw* nor other circuit court . . . cases have applied a violation-by-violation approach to standing."); *id.* at 299a ("[N]o court appears to have" adopted petitioners' view.).

There is also a dispute over the proper time frame to assess standing in a Section 7604(a)(1) case.

On respondents' view, "the normal standing requirement[s]," Pet. 24, that apply to all suits seeking prospective relief apply to these suits too. Each part of the inquiry is forward-looking. A plaintiff must show an "injur[y] or threatened . . . injury as a consequence of [the] ongoing unlawful conduct" (continually violating an emission standard or limit). *Laidlaw*, 528 U.S. at 186. Civil penalties provide redress because they can "encourage defendants to discontinue current violations and deter them from committing future ones." *Id.*

On petitioners' view, a court must assess some standing elements prospectively and one element retrospectively. On injury, petitioners seem to agree that a court looks forward and asks if future violations of the emission standard or limit may be likely to cause injury. But as to causation, petitioners argue that a court must then switch perspective to look *backwards* and require a plaintiff to show that "*each* violation" of an emission standard or limitation that might factor into a civil penalty at the remedy stage "likely *caused* them a concrete injury." Pet. 18 (second emphasis added). As to redressability, the court then has to go back to looking at the future and apply *Laidlaw*'s holding that civil penalties provide forward-looking redress. No court has endorsed this approach.

Petitioners do not ask this Court to review either of those antecedent questions, with good reason. There is no precedential opinion addressing them, other appellate courts have not discussed them, and there is certainly no split. Respondents would be free to raise these issues here, as they did below. *See* Sup. Ct. R. 15.2. Granting review on the first question presented thus risks forcing this Court to resolve these antecedent questions first, without guidance from developed appellate opinions. *See* Pet. App. 11a-12a (Davis, J., concurring) (addressing these "issues first given their broader impact on" the "standing analysis"). "[T]his mare's nest could stand in the way of . . . reaching the question presented . . ., or at the very least, complicate [its] resolution," counseling strongly against review. *Arizona v. City & County of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, C.J., concurring) (explaining a dismissal as improvidently granted).

B. Petitioners do not allege a split, none exists, and the circuits' approach aligns with this Court's cases.

There are yet more reasons to deny review.

1. Petitioners do not allege any circuit split on traceability. None exists. Each circuit to confront how to assess traceability in a suit seeking to abate ongoing violations of emission limits has found the same framework helpful. To sum up the consensus: "[T]he view of courts" is that "a person injured by air or water pollution has standing . . . to seek a remedy from a defendant that emits the injurious pollutant in the geographic vicinity of where the person is injured" but "may lack standing to challenge actions by a too-distant polluter." *Utah Physicians for a Healthy Env't v. Diesel Power Gear, LLC*, 21 F.4th 1229, 1245, 1246 (10th Cir. 2021). Applying this basic framework, courts reach outcomes—sometimes a finding of traceability, sometimes not—that reflect the facts at hand.

In *Powell Duffryn*, the Third Circuit confronted a facility that "consistently and uninterruptedly" unlawfully "dumped pollutants" into a river also polluted by other sources. *Pub. Int. Rsch. Grp. of N.J., Inc. v. Powell Duffryn Terminals Inc.*, 913 F.2d 64, 69, 72 (3d Cir. 1990), *cert. denied*, 498 U.S. 1109 (1991). The court recognized that the "fairly traceable" requirement does not demand "scientific certainty that defendants' effluent . . . alone" caused the harm. *Id.* at 72. But it does demand that a plaintiff show a "substantial likelihood" that the defendant is causing her injuries by "discharg[ing] some pollutant" unlawfully, "into a waterway in which [she has] an interest that is or may be adversely affected by the pollutant," and that the pollutant at issue "causes or contributes to the kinds

of injuries alleged." *Id.* (quotation omitted). This requires more than permit violations: If a plaintiff alleges, for example, that pollution harms her recreational fishing, but "fail[s] to show that [the] defendant's effluent contains pollutants that harm aquatic life," she has not shown traceability. *Id.* at 72-73.

The Fifth Circuit found that approach "useful" in *Cedar Point* when it addressed a facility expelling "between 500 to 1200 barrels" of contaminated water into Galveston Bay daily without a permit. 73 F.3d at 551, 557. Like the Third Circuit, it recognized that the fairly traceable requirement does not demand "scientific certainty" that a defendant's unlawful discharges are the sole cause of the injury at issue. *Id.* at 558 (quotation omitted). It also recognized that some waterways "may be so large that plaintiffs should rightfully demonstrate a more specific geographic or other causative nexus" to meet the traceability requirement. *Id.* at 558 n.24. In the case before it, the plaintiffs tied their injuries to "that part of Galveston Bay where [the] discharge is located." *Id.* (emphasis omitted). In later cases, the Fifth Circuit has held that the record did not show traceability under this framework. *See, e.g.*, *Friends of the Earth, Inc. v. Crown Cent. Petroleum Corp.*, 95 F.3d 358, 361 (5th Cir. 1996) (finding a waterway "too large to infer causation solely from the use of some portion of it" and plaintiffs had not shown that discharges reached the part they used).

In *Gaston Copper*, the Fourth Circuit joined in this approach. It addressed a facility that discharged pollutants into a river that fed into a lake just a few miles downstream on a plaintiff's property. *See Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 152 (4th Cir. 2000) (en banc). Like its sister

courts, the Fourth Circuit recognized that the fairly traceable requirement "means it must be likely that the injury was caused by the conduct complained of" but does not require proof "to a scientific certainty." *Id.* at 154, 161 (quotation omitted). Instead of "pinpointing the origins of particular molecules," a plaintiff must "show that a defendant discharges a pollutant that causes or contributes to the kinds of injuries alleged in the specific geographic area of concern." *Id.* at 161 (quotation omitted). And like other circuits, the Fourth Circuit distinguished plaintiffs who lie within the polluter's discharge zone from "those who are so far" away "that their injuries cannot fairly be traced to that defendant." *Id.* at 162 (citing cases). It found traceability because the plaintiffs showed that the discharge could reach the lake and prior testing of the lake identified metals of the kind the facility discharged. *See id.* at 161-162.[9]

The Tenth Circuit followed these courts in *Diesel Power*, where defendants removed or bypassed trucks' required emission controls, increasing nitrogen oxide and particulate matter pollution in a specific airshed. 21 F.4th at 1238-239. The court recognized that Article III "require[s] proof of a substantial likelihood that the defendant's conduct caused plaintiff's injury." *Id.* at 1242 (quotation omitted). Adopting "the view of courts in other circuits," the Tenth Circuit held that where a defendant "emits the injurious pollutant in

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[9] The Ninth Circuit also adopted this approach. *See Nat. Res. Def. Council v. Sw. Marine, Inc.*, 236 F.3d 985, 995 (9th Cir. 2000) (finding traceability where plaintiffs recreated in an area next to the defendant's shipyard and showed that the area "contained elevated concentrations of pollutants," the defendant discharged those "same pollutants," and the area was "devoid of life" (quotation omitted)), *cert. denied*, 533 U.S. 902 (2001).

the geographic vicinity of where the person is injured," the injury can be "fairly traceable to the polluter." *Id.* at 1244-245 (quotation omitted). Noting that *Cedar Point* "persuasively discussed" a "need for geographic limitations as part of the traceability inquiry," the Tenth Circuit declined to find traceability for conduct that could not have affected the airshed that the plaintiffs lived in. *Id.* at 1246-247.[10]

And in *Academy Express*, the First Circuit adhered to this uniform approach. There, it addressed claims that a company serially violated bus idling restrictions, exposing plaintiffs to harmful exhaust. *Conservation Law Found., Inc. v. Academy Express, LLC*, 129 F.4th 78, 87 (1st Cir. 2025). Like all other circuits, the First Circuit did not "requir[e] a conclusive link" to meet the "fairly traceable" requirement. *Id.* at 91. It instead followed the "analogous approaches" of its "sister circuits," finding that "geographic proximity can satisfy traceability in this type of case." *Id.* The First Circuit explained that a plaintiff very close to an emission source can satisfy traceability even if there are similar pollution sources nearby. *See id.* But it remanded for consideration of "how the pollution travels to, and ultimately affects," those farther away. *Id.* at 92.

All of this belies petitioners' claims of "an ever-growing mountain" of different approaches or "muddled" tests. Pet. 20, 22 (quotation omitted). There is one clear approach. Respondents found additional published opinions following that same approach from

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[10] Petitioners' view (at 24) that *Diesel Power* contains some disagreement with the role a geographic nexus has in assessing traceability is perplexing in light of the decision's express endorsement and application of considerations of proximity.

two circuits. *See supra* at 23 n.9, 24 (discussing *Southwest Marine* and *Academy Express*). Petitioners' only evidence of disagreement is a *dissent* in the en banc proceedings below questioning whether the uniform framework should apply to unlawful air emissions. The upshot is that over 35 years, six circuits adopted the same approach to traceability.[11]

2. Petitioners claim (at 17) that the courts of appeals' consensus approach conflicts with decisions from this Court. There is no conflict.

The circuits' uniform approach is faithful to this Court's precedents. The traceability standard is a familiar one: A plaintiff must show her injury "likely will be caused by the defendant's conduct." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024); *Murthy*, 603 U.S. at 57 (An injury must be "fairly traceable to the challenged" conduct.). Each of the circuits identified and applied that standard. *See Powell Duffryn*, 913 F.2d at 70 (laying out the injury, traceability, and redressability requirements); *Cedar Point*, 73 F.3d at 556 (same); *Gaston Copper*, 204 F.3d at 154 (same); *Diesel Power*, 21 F.4th at 1241 (same); *Academy Express*, 129 F.4th at 86 (same).

These cases reflect how—as this Court said last Term—"standing principles can develop and solidify" as courts "identif[y] a variety of familiar circumstances where" a defendant's actions "may be likely to

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[11] Citing (at 23) two Third Circuit cases (one unpublished) addressing challenges to labor union dues requirements, petitioners suggest that there is disagreement among lower courts about the relevance of but-for causation to traceability. Whatever the citations may say about an intra-circuit disagreement elsewhere, they provide no reason to review the judgment below.

cause injury." *All. for Hippocratic Med.*, 602 U.S. at 384. They did not "blindly expand[]" (Pet. 22) *Powell Duffryn*'s basic insight that harmful, unlawful pollution emitted close to a plaintiff can satisfy the fairly traceable requirement, even if other polluters exist. *See Laidlaw*, 528 U.S. at 184 (finding "nothing 'improbable' about the proposition that" "continuous and pervasive illegal discharges of pollutants into a river" would cause neighbors "to curtail their recreational use"); *see also* Pet. App. 80a-81a (Ho, J., concurring) (explaining how *Cedar Point* aligns with "well established" Article III principles). Instead, the decisions acknowledge the limits of that insight, identify common scenarios in which traceability will and will not be likely to exist, and reach traceability holdings based on the evidence. "[T]he causation inquiry can be heavily fact-dependent" and is often resolved "by comparing the allegations of [a] particular complaint to . . . prior standing cases," which is exactly what these courts have done. *All. for Hippocratic Med.*, 602 U.S. at 384 (quotation omitted).

The circuit courts' uniform approach also fully adheres to this Court's admonition that standing not be dispensed in gross. Petitioners assert that under that approach, if a person "shows a single harm resulting from a single violation," then "liability follows for essentially all [Clean Air Act] violations of the same kind." Pet. 20 (quotations and emphases omitted). Of course not. Plaintiffs must show "standing for each claim that they press and for each form of relief that they seek." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). If a person seeks to abate harm from violations of two different emission limits, each represents a distinct claim for which she must show standing.

Petitioners' charges (at 20) of "standing in gross" rest, at bottom, on their mistaken understanding of a Section 7604(a)(1) claim. *See supra* at 18-19 (discussing antecedent issue). These claims do not seek civil penalties "as compensation for any injuries." Pet. App. 32a (Davis, J., concurring). They seek civil penalties to secure "cleaner air in the future." *Id.* Using past violations of the emission standard or limit the plaintiff "seek[s] to enforce" to calculate a civil penalty does not grant relief for past violations, so a plaintiff need not show that every past violation relevant to that calculation caused her harm. *Id.* at 34a.

In the end, it is petitioners who would inject "confusion" (at 20) into this area of law. *See* Pet. App. 69a (Davis, J., concurring) ("[S]o many of [petitioners'] arguments . . . are directly incompatible with Supreme Court precedent."). Petitioners preview no alternative of their own for assessing traceability, nor do the opinions below. *See id.* at 82a n.2 (Ho, J, concurring) ("Tellingly, neither Defendants nor the dissenters call for *Cedar Point* to be overturned."). Article III's traceability requirement applies across federal cases, so entertaining petitioners' novel arguments risks destabilizing *all* cases. This Court should not do so. *Cf. Monsalvo Velazquez v. Bondi*, No. 23-929, 2025 WL 1160894, at *12 (U.S. Apr. 22, 2025) (Thomas, J., dissenting) (describing "[c]aution" as "especially important for jurisdictional matters").

C. There is no pressing need to address the first question presented.

The two paragraphs in which petitioners attempt to identify a "need for this Court's intervention" (at 34-35) do not overcome all of the reasons disfavoring review of the first question presented.

Petitioners suggest that the Fifth Circuit cannot resolve the divisions among its judges. That is wrong. If a similar case arises in the circuit again, a future panel can address the traceability question anew. If that case warranted further review, the composition of the en banc court would be different, leaving every reason to believe the court would reach a decision. *See* Pet. App. 2a n.* (noting that Judge Ramirez did not participate). In any event, "[i]t is primarily the task of a Court of Appeals to reconcile its internal difficulties." *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam).

Petitioners also claim that companies in the Fifth Circuit are vulnerable. They do not try to prove the point. Nor could they. The civil penalty here represents just 0.04% of just one petitioner's $33.7 billion in earnings last year.[12] As to other cases, respondents looked for the numbers that petitioners failed to provide and identified just 14 Clean Air Act suits to stop ongoing pollution over the last 15 years within the Fifth Circuit. That lends no support to petitioners' claim that they need this Court's protection from the very people their pollution harms.

II. The Second Question Presented Does Not Warrant Certiorari.

Petitioners also ask this Court to overrule *Laidlaw*'s holding that civil penalties, "[t]o the extent that they encourage defendants to discontinue current violations and deter them from committing future ones," "afford redress to" those people "injured or threatened

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[12] *See* News Release, *ExxonMobil announces 2024 results* (Jan. 31, 2025), exxonmobil.co/4jKOVzp.

with injury because "of ongoing unlawful conduct." *Laidlaw*, 528 U.S. at 186. Review is not warranted.

1. Below, petitioners *conceded* that *Laidlaw*'s redressability holding is correct. They told the en banc court that "[c]ivil penalties may have forward-looking deterrent consequences that can satisfy redressability in some cases." Petrs. Supp. En Banc Br. 56; Pet. App. 19a n.65 (Davis, J., concurring) (noting concession). "Ordinarily, this Court does not decide questions not raised or resolved in the lower court." *Youakim v. Miller*, 425 U.S. 231, 234 (1976).

Instead, before the Fifth Circuit, petitioners argued only that a civil penalty in *this* case may not deter them from violating their permits. *See* Petrs. Supp. En Banc Br. 62-63; *see also* Pet. App. 312a. The courts below disagreed. *See infra* at 31. Petitioners have not sought review of that fact-bound question, which does not implicate any split. Indeed, they cite no authority addressing a similar argument.

2. Petitioners are not alone in refraining from questioning *Laidlaw*'s redressability holding, which would leave this Court without guidance if it granted review.

Judge Ho was the only judge below to suggest that this holding be revisited. Even he gave the issue summary treatment: summarizing and agreeing with the *Laidlaw* dissent in four paragraphs. Pet. App. 79a.

Nor did Judge Oldham—despite petitioners' claim—call this case "a 'particularly good vehicle to consider' whether that holding should remain the law." Pet. 27 (quoting Pet. App. 289a n.3). What he actually said is that it "appears to be a particularly good vehicle to consider *the contours* of *Laidlaw*'s redressability holding." Pet. App. 289a n.3 (Oldham, J., dissenting) (emphasis added). That is, he accepted *Laidlaw*'s holding

that civil penalties *can* redress future harm but asked if this case was one where the penalty imposed *would actually* have a deterrent effect. *See also id.* at 184a (Oldham, J., dissenting) ("*Laidlaw* requires some showing that *this* penalty will deter *that* harm.").

There is nothing else to guide this Court on the second question presented. No member of this Court has questioned *Laidlaw*'s redressability holding. Nor have courts of appeals. Petitioners point (at 15) to three concurrences issued just after *Laidlaw*. But not one discusses that holding. *See Gaston Copper*, 204 F.3d at 164 (Niemeyer, J., concurring) (criticizing *Laidlaw*'s injury discussion);[13] *id.* at 164-165 (Luttig, J., concurring) (not specifying his criticism of *Laidlaw*); *id.* at 165 (Hamilton, J., concurring) (same).

3. In any event, review is not warranted because this Court should not overrule *Laidlaw*'s redressability holding. "[T]his Court does not overturn its precedents lightly." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014). "[E]ven in constitutional cases, a departure from precedent demands special justification." *Gamble v. United States*, 587 U.S. 678, 691 (2019) (quotation omitted). No such justification exists here.

As noted, *Laidlaw*'s redressability holding has not drawn sustained (really, any) criticism. *Cf., e.g.*, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407

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[13] Judge Neimeyer did not describe *Laidlaw*'s redressability holding as an "abrupt" change in law. Pet. 28. That holding *was* the law in the Fourth Circuit until that court (mistakenly) saw *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 106 (1998), as "a superseding contrary decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 149 F.3d 303, 306 n.4 (4th Cir. 1998), *rev'd*, *Laidlaw*, 528 U.S. at 195.

(2024) (noting that several Justices had "long questioned" the overruled doctrine). That is because the holding is neither unworkable nor inconsistent with this Court's decisions.

As to workability, petitioners suggest (at 31) that *Laidlaw* did not provide enough guidance for lower courts to identify "a point at which the deterrent effect of a claim for civil penalties becomes so insubstantial or so remote that it cannot support" standing. *Laidlaw*, 528 U.S. at 186. Additional guidance was not needed here. The district court thrice issued findings that the "[c]ivil penalties . . . deter future violations," including "ongoing violations" that occurred "both before and after the complaint." Pet. App. 501a & n.152; *see also id.* at 229a & n.74, 358a & n.156. The now-vacated second panel opinion found it "straightforward that [petitioners'] almost three-year postsuit continuation of wrongdoing establishes redressability," especially because they took some steps to reduce pollution in response to this suit. *Id.* at 312a-313a. If guidance is needed in a future case, the lower courts can offer it. There is no need for this Court to address *Laidlaw*'s scope before lower courts do so. Indeed, the second question presented does not even ask this Court to do so.

As to consistency, petitioners do not identify any decision that undermines *Laidlaw*'s view that the "congressional determination" about the function civil penalties serve "warrants judicial attention and respect." 528 U.S. at 185. Rather, this Court has reiterated that questions of how a remedy will function involve policy judgments within the legislature's competence. *See, e.g.*, *Egbert v. Boule*, 596 U.S. 482, 491 (2022) ("Congress is far more competent than the Judiciary to weigh such policy considerations."

(quotation omitted)). *Laidlaw*'s redressability holding also aligns with the consistent view of the Executive Branch. *See* EPA, *Policy on Civil Penalties* 3 (Feb. 16, 1984), bit.ly/4jKrPcn ("The first goal of penalty assessment is to deter."); Memorandum from Jeffrey B. Clark, Assistant Attorney General, *Re: Equitable Mitigation in Civil Environmental Enforcement Cases* 9 & n.8 (Jan. 12, 2021), bit.ly/430mDvb ("[P]enalty relief" is necessary for "deterring future wrongdoing."); U.S. En Banc Amicus Br. in Supp. of Resps. 9 ("[C]ourts should normally presume that . . . civil penalties will make the defendant less likely to violate.").

Nor is *Laidlaw*'s redressability holding inconsistent with this Court's later decisions. Article III's redressability standard remains the same as in *Laidlaw*. *See, e.g.*, *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, (2009) (citing *Laidlaw* for Article III's requirements); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (same). To say otherwise, petitioners cite (at 32) two concurring opinions, but both describe the redressability requirement exactly as *Laidlaw* does. *Compare Laidlaw*, 528 U.S. at 180-181, 187 ("[A] plaintiff must show . . . it is likely, as opposed to merely speculative, that the injury will be redressed."), *with United States v. Texas*, 599 U.S. 670, 692 (2023) (Gorsuch, J., concurring) (same), *and id.* at 709 (Barrett, J., concurring) (agreeing with the earlier concurrence).

That leaves petitioners' disagreement with *Laidlaw*, which cannot justify review. *See, e.g.*, *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455-456 (2015) (A party must do more than claim "that the precedent was wrongly decided." (quotation omitted)). Petitioners' criticisms lack merit in any event, as they rely (at 29-31) on arguments fully aired in *Laidlaw*. The *Laidlaw* majority explained why civil penalties deter future

violations and noted that crafting remedies is a policy decision for Congress. *See Laidlaw*, 528 U.S. at 187; *see also Tigner v. Texas*, 310 U.S. 141, 148 (1940) (explaining why "the whole problem of deterrence" involves considerations "within legislative competence"). It also explained why its redressability holding aligned with precedent. *Compare* Pet. 28-29 (discussing *Steel Co.*, 523 U.S. at 106-107, and *Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973)), *with Laidlaw*, 528 U.S. at 187-188, 188 n.4 (harmonizing its holding with those precedents).

4. Petitioners' dispute with *Laidlaw* boils down to a policy disagreement with Congress's choice to authorize people to seek civil penalties as a form of relief to protect themselves from unlawful air pollution that harms them.[14] Their policy argument is appropriately directed to Congress, not this Court. Even so, their objections are unfounded. Petitioners' claims, like other "misperceptions about citizen suits," lack an empirical basis. David E. Adelman & Jori Reilly-Diakun, *Environmental Citizen Suits & the Inequities of Races to the Top*, 92 U. Colo. L. Rev. 377, 384 (2021). In reality, practical and procedural barriers make it difficult for people to sue. *Id.* at 381, 421 (reviewing data on suits and fee awards from 2001 to 2016); *see also* David Adelman, *Setting the Record Straight on*

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[14] Petitioners gesture (at 31, 33) at Article II concerns. But Article III's case-or-controversy requirement obviates any separation-of-powers issue with the civil penalty remedy in Section 7604(a)(1). *Cf. TransUnion*, 594 U.S. at 429. To the extent that petitioners assert otherwise, they have failed to "identify . . . with particularity" any separate Article II argument within the "questions presented." *Laidlaw*, 528 U.S. at 197 (Kennedy, J., concurring). Here, just as in *Laidlaw*, the case provides no basis to reach any such arguments. *See id.*; *see also* Sup. Ct. R. 14.1(a).

Environmental Citizens Suits, Envtl. Law Prof Blog (May 31, 2025), bit.ly/4kLm1Q2 (estimating, based on the available data, that from "2018 through 2024, a total of 23 citizen enforcement suits were filed under the" Clean Air Act). That reality belies petitioners' claim of "massive" (Pet. 34) consequences for corporations. It does show that in the suits that do proceed, the consequences for the ordinary people trying to protect their health despite these barriers are very real.

CONCLUSION

The petition for a writ of certiorari should be denied.

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