

No. 25-1079

IN THE
Supreme Court of the United States

RMS OF GEORGIA, LLC, d/b/a Choice Refrigerants,
Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit**

**BRIEF IN OPPOSITION
FOR RESPONDENTS AIR-CONDITIONING,
HEATING AND REFRIGERATION INSTITUTE
AND ALLIANCE FOR RESPONSIBLE
ATMOSPHERIC POLICY**

Elizabeth B. Dawson
Counsel of Record
Robert J. Meyers
Thomas A. Lorenzen
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 624-2500
edawson@crowell.com

QUESTION PRESENTED

The American Innovation and Manufacturing Act (“AIM Act”) implements the United States’ treaty obligations under the Kigali Amendment to the Montreal Protocol to reduce the Nation’s production and consumption of hydrofluorocarbons (HFCs)—chemicals that serve as refrigerants, solvents and propellants, among other applications—and contains provisions intended to spur development of environmentally beneficial replacements. The Act establishes mandatory phasedown schedules with specific percentage-based reduction targets, defines the universe of regulated producers and consumers, and gives EPA authority to both restrict specific uses of HFCs and allow continued essential uses of such chemicals. As part of this statutory structure, the Act directs EPA to implement the phasedown of HFCs using an allowance allocation and trading program. Petitioner took issue with the number of allowances it received pursuant to regulations promulgated under that provision of the Act. But instead of challenging EPA’s allocation methodology, Petitioner sought to invalidate the entire program. The District of Columbia Circuit exercised its independent judgment and, without deference to the agency, applied the traditional tools of statutory construction and this Court’s longstanding intelligible-principle test to hold that the allowance allocation and trading provision does not violate the Vesting Clause of Article I of the Constitution.

The question presented is whether the D.C. Circuit correctly upheld the AIM Act’s allowance allocation and trading program.

PARTIES TO THE PROCEEDING

All parties to the proceeding are identified in the Petition for Writ of Certiorari.

CORPORATE DISCLOSURE STATEMENT

The Air-Conditioning, Heating, and Refrigeration Institute (“AHRI”) is a trade association representing more than 330 members, including manufacturers of heating, cooling, water heating, and commercial refrigeration equipment; and refrigerant producers. AHRI has no parent companies and no publicly held companies own 10% or more of the Respondent’s stock.

The Alliance for Responsible Atmospheric Policy (“Alliance”) is a trade association whose members consist of manufacturers and businesses in a number of industry sectors, including air-conditioning, refrigeration, heating, foam insulation manufacturing, and aerosol manufacturing. The Alliance has no parent companies and no publicly held companies own 10% or more of the Respondent’s stock.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
CORPORATE DISCLOSURE	
STATEMENT	iii
INTRODUCTION	1
STATEMENT	3
I. Since 1988, Congress Has Been Regulating Ozone-Depleting Substances and Their Replacements.....	3
II. With the AIM Act, Congress Built on the Success of Title VI.....	4
III. EPA Has Been Implementing the AIM Act’s Allowance Allocation and Trading Program Since 2021.	11
IV. The D.C. Circuit Upheld the 2024 Rule	12
REASONS FOR DENYING THE PETITION	14
I. The Decision Below Presents Neither a Conflict with Any Decision of Any Court Nor a Question of Exceptional Importance.....	14
II. The D.C. Circuit’s Decision Is an Unremarkable—Though Faithful and Correct—Application of This Court’s Nondelegation and Statutory- Construction Precedents.	18

A.	The D.C. Circuit correctly held that the AIM Act satisfies the intelligible-principle test.....	18
B.	The D.C. Circuit did not commit an Article III violation by interpreting the statute.	21
III.	The AIM Act Is a Poor Vehicle for a Nondelegation Exploration.	24
A.	The AIM Act implicates international trade, treaty obligations, and decades of commercial investment and innovation.....	24
B.	Other, more suitable vehicles to explore nondelegation and the intelligible-principle test will inevitably present themselves.....	28
	CONCLUSION.....	29

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Am. Power & Light Co. v. SEC</i> , 329 U.S. 90 (1946).....	19
<i>Baker v. Carr</i> , 369 U.S. 186 (1962).....	25
<i>FCC v. Consumers' Rsch.</i> , 606 U.S. 656 (2025)	19, 20, 21, 22, 23, 24, 25
<i>Gundy v. United States</i> , 588 U.S. 128 (2019).....	19, 21, 23, 24
<i>Heating, Air Conditioning & Refrigeration Distrib. Int'l v. EPA</i> , 71 F.4th 59 (D.C. Cir. 2023)	11, 12, 16
<i>Japan Whaling Ass'n v. Am. Cetacean Soc'y</i> , 478 U.S. 221 (1986).....	25
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024).....	22
<i>Missouri v. Holland</i> , 252 U.S. 416 (1920).....	25
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989).....	19

<i>RMS of Ga., LLC v. Dynatemp Int’l, Inc.</i> , No. 23-CV-86, 2024 WL 3313349 (N.D. Ga. June 3, 2024)	28
<i>RMS of Ga., LLC v. EPA</i> , 64 F.4th 1368 (11th Cir. 2023)	11
<i>Sanchez v. Off. of State Superintendent of Educ.</i> , 45 F.4th 388 (D.C. Cir. 2022)	20
<i>Whitman v. Am. Trucking Ass’ns</i> , 531 U.S. 457 (2001).....	19
Statutes	
42 U.S.C. §7671(2).....	7
42 U.S.C. §7671(6).....	4
42 U.S.C. §§7671-7671q	7
42 U.S.C. §7671b(c)	7
42 U.S.C. §7671c	7
42 U.S.C. §7671c(a)	7
42 U.S.C. §7671c(a)-(c)	3
42 U.S.C. §7671d(a)-(c)	3
42 U.S.C. §7671d(b).....	7
42 U.S.C. §7671f.....	3

42 U.S.C. §7675(a)-(k)	7
42 U.S.C. §7675(e)(1)(B)	11
42 U.S.C. §7675(e)(1)(B)-(C)	7
42 U.S.C. §7675(e)(2)(A)	8
42 U.S.C. §7675(e)(2)(B)	8
42 U.S.C. §7675(e)(2)(C)	7, 17
42 U.S.C. §7675(e)(2)(D)(i).....	8
42 U.S.C. §7675(e)(2)(D)(ii).....	8
42 U.S.C. §7675(e)(3)	9, 10, 20
42 U.S.C. §7675(e)(3)(A)	9
42 U.S.C. §7675(e)(3)(A)-(B)	8
42 U.S.C. §7675(e)(3)(B)	9
42 U.S.C. §7675(e)(4)(B)(i)-(iii)	8
42 U.S.C. §7675(e)(4)(B)(i)-(v)	10
42 U.S.C. §7675(e)(4)(B)(ii)	9
42 U.S.C. §7675(e)(4)(B)(ii)(II).....	10
42 U.S.C. §7675(e)(4)(B)(iv)	8
42 U.S.C. §7675(e)(4)(B)(iv)(I)	9
42 U.S.C. §7675(e)(4)(B)(iv)(II).....	10

42 U.S.C. §7675(k)(1)(C)	7
Pub. L. No. 116-260, §103, 134 Stat. 1182 (2020).....	5
Regulations	
40 C.F.R. §82.5	4
40 C.F.R. §82.6	4
40 C.F.R. §84.9	9, 17
40 C.F.R. §84.11	17
Rules	
Sup. Ct. R. 10	14
Sup. Ct. R. 10(a).....	14
Other Authorities	
86 Fed. Reg. 55,116 (Oct. 5, 2021)	11
87 Fed. Reg. 66,372 (Nov. 3, 2022)	12
88 Fed. Reg. 46,836 (July 20, 2023).....	12
Coalition Letter on the Kigali Amendment to the Montreal Protocol (June 22, 2022)	25

Comments of Choice Refrigerants, EPA Dkt. EPA-HQ-OAR-2022-0430-0103 (Dec. 19, 2022), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0430-0103>..... 12, 16

Cong. Rsch. Serv., *Stratospheric Ozone Treaties and the Kigali Amendment: Ratification Considerations* (Mar. 23, 2022)..... 25

Final Petitioner’s Opening Brief, *RMS of Ga., LLC v. EPA*, Case No. 23-1263 (D.C. Cir.) (Doc. 2057031)..... 13

H.R. 5544, 116th Cong. (2020)..... 5

Motion, *RMS of Ga., LLC v. EPA*, Case No. 22-1025 (D.C. Cir.) (Doc. 2013880) 11

Petition for a Writ of Certiorari, *Pheasant v. United States*, No. 25-6911 28

Promoting American Innovation and Jobs: Legislation to Phase Down the Use of Hydrofluorocarbons: Hearing on H.R. 5544 Before the H. Energy & Com. Subcomm. on Env’t & Climate Change, 116th Cong. 11 (2020)..... 6

S. Exec. Rep. No. 117-2 (2022)..... 5

U.S. EPA, <i>International Actions - The Montreal Protocol on Substances that Deplete the Ozone Layer</i> , https://www.epa.gov/ozone-layer-protection/international-actions-montreal-protocol-substances-deplete-ozone-layer	3
U.S. EPA, <i>Timeline of Actions on HFCs</i> (Apr. 15, 2015).....	26
U.S. Senate Comm. on Env't & Public Works, <i>Phasing Down HFCs</i> , https://www.epw.senate.gov/public/index.cfm/phasing-down-hfcs	27

INTRODUCTION

Petitioner Choice Refrigerants (“Choice”) initiated this lawsuit with a straightforward commercial grievance: it received fewer hydrofluorocarbon (“HFC”) allowances than it wanted under EPA’s allocation methodology under the American Innovation and Manufacturing Act of 2020 (“AIM Act”). Unable to prevail on the merits the first time, Choice declined even to attempt a merits challenge the second, opting instead to dress its commercial disappointment in constitutional garb. Choice now asks this Court to refashion the nondelegation doctrine to suit its business purpose. The D.C. Circuit unanimously and correctly rejected that effort, and this Court should decline review for three independently sufficient reasons.

First, this case presents none of the circumstances that ordinarily warrant this Court’s review. No conflict with any court exists. Nor does this case present any question of extraordinary importance. Choice’s rhetoric notwithstanding, participation in a billion-dollar marketplace is not at stake—*Choice is already a participant*. Choice’s business decision to allow its importer of record to import HFCs on its behalf, resulting in fewer allowances than it believes it deserved, need be of no concern to this Court. Choice commented on EPA’s allowance allocation and trading framework and had the opportunity to challenge the rule on its merits, but did not. Choice can raise its concerns during the next allocation proceeding. This Court need not intervene.

Second, the D.C. Circuit appropriately rejected Choice’s nondelegation challenge, faithfully applying

this Court's instructions. The AIM Act is not the blank check Choice depicts. Congress passed the AIM Act to require an 85-percent reduction in U.S. production and consumption of HFCs by 2036, specifying that the phasedown be accomplished through a cap-and-trade program administered by EPA. The Act provides EPA a comprehensive framework based on historic HFC production and consumption data, enlisting EPA's expertise and prior experience to implement that framework—and that is all the Constitution requires. The D.C. Circuit carefully applied this Court's nondelegation precedents—in conjunction with its statutory-interpretation and administrative law jurisprudence—and correctly concluded that Congress supplied ample guidance.

Third, besides this Court's docket being an inappropriate forum to elevate Choice's commercial dispute, this case is a poor vehicle for reconsidering the intelligible-principle test. The AIM Act does not provide the clean vehicle for a nondelegation challenge that Choice suggests. Its relationship to the global HFC marketplace, an already-tested statutory framework, and United States treaty obligations renders the AIM Act particularly unsuited to such a challenge. Opportunities to apply the nondelegation doctrine and again consider the intelligible-principle test will invariably present themselves—indeed, at least one other such petition is currently being briefed. But *this* petition should be denied.

STATEMENT**I. Since 1988, Congress Has Been Regulating Ozone-Depleting Substances and Their Replacements.**

In 1988, the U.S. Senate unanimously gave its advice and consent to the Montreal Protocol on Substances that Deplete the Ozone Layer,¹ the first United Nations treaty to achieve universal ratification.² To implement the treaty, Congress added Title VI to the Clean Air Act in 1990, pursuant to which EPA built an allowance allocation and trading program to transition away from ozone-depleting substances. The program (1) capped total emissions of CFCs and HCFCs, (2) authorized EPA to allocate emissions allowances to market participants, (3) authorized trading of unused allowances, and (4) outlawed emissions of regulated substances without a corresponding allowance. *See* 42 U.S.C. §§7671c(a)-(c), 7671d(a)-(c), 7671f; *see also* Pet.App.3.

¹ <https://www.congress.gov/treaty-document/100th-congress/10> (last visited May 11, 2026).

² U.S. EPA, *International Actions – The Montreal Protocol on Substances that Deplete the Ozone Layer*, <https://www.epa.gov/ozone-layer-protection/international-actions-montreal-protocol-substances-deplete-ozone-layer> (last updated Mar. 23, 2026).

EPA based allowance allocations on the past production and consumption³ of CFCs, halons, and other ozone-depleting chemicals. Allowances were allocated to companies required to phase out the production and importation of ozone-depleting substances. These companies were required to develop and supply new chemicals to take the place of the ozone-depleting substances needed to make air conditioners work, solvents to perform multiple industrial tasks, and propellants to safely discharge hundreds of different consumer products, and medical devices like asthma inhalers. Allowances were allocated to those who had produced CFCs and other ozone-depleting substances in 1986 and 1989 and who had produced, imported to produce, and imported such substances in these same years. 40 C.F.R. §§82.5, 82.6. The end result was a smooth transition to new chemical alternatives and the development of new U.S. industries.

II. With the AIM Act, Congress Built on the Success of Title VI.

A. Title VI worked as intended, dramatically reducing the use of ozone-depleting substances and helping to “heal” the stratospheric ozone layer. But some replacements for these chemicals—HFCs—provided only an interim solution given their relatively high global warming potential. To address

³ “Consumption” is a term of art meaning “the amount of that substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol.” 42 U.S.C. §7671(6). It does not mean physical “use” of a controlled substance such as a CFC.

this, Congress approved the AIM Act in 2020.⁴ The AIM Act requires an 85-percent reduction in U.S. production and consumption of HFCs by 2036, to be accomplished through a cap-and-trade program administered by EPA, consistent with the requirements of the Kigali Amendment to the Montreal Protocol. During its deliberations on the Kigali Amendment, the Senate Committee on Foreign Relations stated the AIM Act “provides the Executive Branch with the necessary authorities to phase-down the production and consumption of HFCs in the United States, consistent with the Kigali Amendment.” S. Exec. Rep. No. 117-2, at 2-3 (2022).⁵

When structuring the HFC-phasedown program, Congress naturally and deliberately looked to similar predecessor legislation implementing an international treaty to address global atmospheric conditions, Title VI of the Clean Air Act:

H.R. 5544⁶ builds upon our previous experience in phasing out CFCs and their replacement chemicals, HCFCs. Our success working with other nations within the global framework of the

⁴ American Innovation and Manufacturing Act of 2020, Pub. L. No. 116-260, div. S, §103, 134 Stat. 1182 (2020) (codified at 42 U.S.C. §7675).

⁵ <https://www.congress.gov/committee-report/117th-congress/executive-report/2/1?outputFormat=pdf> (last visited May 12, 2026).

⁶ H.R. 5544 is one of the bills introduced that eventually became the AIM Act. H.R. 5544, 116th Cong. (2020) <https://www.congress.gov/bill/116th-congress/house-bill/5544/text>.

Montreal Protocol is healing the ozone layer and reducing risks associated with higher exposures to ultraviolet radiation.

*Promoting American Innovation and Jobs: Legislation to Phase Down the Use of Hydrofluorocarbons: Hearing on H.R. 5544 Before the H. Energy & Com. Subcomm. on Env't & Climate Change, 116th Cong. 11 (2020) (statement of Rep. Pallone, Chairman, H. Comm. on Energy & Com.).*⁷

The legislation is modeled on Title VI of the Clean Air Act, which was enacted in 1990 with 401 bipartisan votes in the House and proved an able vehicle to foster an orderly, market-based phase-down of HFCs' predecessors.

Id. at 3 (statement of Rep. Tonko, Chairman, Subcomm. on Env't & Climate Change); *see also* Pet.App.17.

Consistent with their parallel aims, the AIM Act and Title VI share parallel statutory structures: (a) definitions; (b) listing of regulated substances; (c) monitoring and reporting requirements; (d) phasedown of production and consumption of regulated substances; (e) exceptions and essential uses; (f) accelerated schedule; (g) exchange authority; (h) management (recycling and reclaim) of regulated

⁷

<https://www.congress.gov/116/meeting/house/110388/documents/HHRG-116-IF18-Transcript-20200114.pdf> (last visited May 11, 2026).

substances; (i) safe alternatives/technology transitions; and (j) relationship to other law. *Compare* 42 U.S.C. §§7671-7671q *with id.* §7675(a)-(k). Congress also provided that certain Clean Air Act provisions shall apply to the AIM Act “as though [the AIM Act] were expressly included in title VI [of the Clean Air] Act,” including provisions relating to judicial review, rulemaking, and enforcement. *Id.* §7675(k)(1)(C).

The AIM Act’s allowance provisions also harken back to and closely mirror those of Title VI. Title VI provides for the use of historical “baseline” years for production and consumption of regulated substances (1986, 1989) from which the required phaseout of such substances is mandated. 42 U.S.C. §§7671(2), 7671b(c), 7671c(a), 7671d(b). In a parallel fashion, the required phasedown of HFCs under the AIM Act is based on historical production and consumption of HCFCs (from 2011 to 2013) and CFCs (in 1989). 42 U.S.C. §7675(e)(1)(B)-(C). Under subsection (e)(2)(C), HFC production and consumption is capped at 90 percent of baseline for 2020-2023; 60 percent for 2024-2028; 30 percent for 2029-2033; 20 percent for 2034-2035; and 15 percent by 2036. *Compare id.* §7675(e)(2)(C) *with id.* §7671c, Table 2 (providing for staggered phase-out of class I ozone depleting substances).

B. Congress specifically directed EPA to phase down yearly HFC production and consumption using “an allowance allocation and trading program,” specifying that this program must be embodied in a rule issued “in accordance with this section,” *i.e.*, the AIM Act, and “in accordance with the schedule under

paragraph (2)(C).” *Id.* §7675(e)(3)(A)-(B). Congress also made unlawful any production or consumption of HFCs without “a corresponding quantity” of applicable allowances. *Id.* §7675(e)(2)(A). It defined the nature of allowances, *id.* §7675(e)(2)(D)(ii), prescribed the method for determining the number of available allowances each year, *id.* §7675(e)(2)(D)(i), and directed EPA to “ensure that the annual quantity of all regulated substances produced or consumed in the United States does not exceed” the stepped-down baseline. *Id.* §7675(e)(2)(B).

Multiple provisions further direct how the mandatory allowance allocation and trading program is to operate. EPA must phase down HFC production and importation using three types of allowances and allowance allocations:

- *Mandatory allowances* are to be allocated to six specific categories of end uses. These end uses include a range of consumer products, manufacturing (semiconductor material or wafer), and “mission-critical military end uses[.]” *Id.* §7675(e)(4)(B)(iv).
- *Essential use allowances* are specified for end uses of HFCs for which there are no available safe or technically achievable substitutes, or for which there is an insufficient supply of regulated substances. *Id.* §7675(e)(4)(B)(i)-(iii).

- “*General pool*” *production and consumption allowances*.⁸ *General pool production allowances* are to be allocated pursuant to an “allowance allocation and trading program in accordance with [the AIM Act].” *Id.* §7675(e)(3)(A). *General pool consumption allowances* are to be allocated “through an allowance allocation and trading program ... subject to the same exceptions and other requirements as are applicable to the phase-down of production” allowances. *Id.* §7675(e)(3)(B).

Notably, in the AIM Act, Congress did not set a fixed amount of mandatory, essential, or general pool allowances. It is thus simply incorrect that Congress directed EPA to dictate how 98% of the HFC market will operate, *contra* Pet. 2, 20. Instead, Congress distinguished mandatory and essential uses from general uses and allowed interested parties (including parties like Choice) to petition for the ability to have their intended uses deemed essential. 42 U.S.C. §7675(e)(4)(B)(ii). There is no limit to the number of essential use allowances that can be allocated for successive five-year periods. Nor did Congress provide any cap (2% or otherwise) on how many mandatory allowances must be allocated: EPA must allocate “the full quantity of allowances necessary[.]” *Id.* §7675(e)(4)(B)(iv)(I). And these five-

⁸ The AIM Act does not itself use the term “general pool” allowances; rather, this description of the allowances allocated pursuant to section 7675(e)(3) was adopted in the Framework Rule. *See* 40 C.F.R. §84.9.

year periods are renewable, *contra* Pet. 17. 42 U.S.C. §7675(e)(4)(B)(i)-(v). The amount of allowances allocated for essential uses, and for the general pool from which Choice seeks more allowances, depends on explicit statutory criteria, is mutable, and is subject to public input. Congress thus did not hand EPA power to allocate “the vast majority” of allowances, *contra* Pet. 11. Rather, Congress explicitly delineated the parameters of the limited decision-making authority delegated to EPA: how to apportion only those allowances remaining after mandatory and essential allowances were determined, with the amount contingent upon EPA’s determination after rulemaking and consideration of petitions. 42 U.S.C. §7675(e)(4)(B)(ii)(II), (iv)(II).

Finally, a key structural feature further limits EPA’s authority over the AIM Act’s allocation framework: the allowances are fully tradeable. *Id.* §7675(e)(3). EPA is thus not the final arbiter of who produces or consumes HFCs, much less of who succeeds or fails in the HFC marketplace. EPA is not “reordering” anything, *contra* Pet. 16. EPA’s role is to develop a framework for the *initial* calculation of allowance allocations. The allowance market functions as a corrective mechanism: any initial allocation that misreads market share will be cured through trading, because entities needing more allowances can acquire them, and entities with excess allowances can sell them.

The AIM Act is a detailed instruction manual, not a blank canvas.

III. EPA Has Been Implementing the AIM Act’s Allowance Allocation and Trading Program Since 2021.

In 2021, EPA promulgated the AIM Act Framework Rule implementing subsection (e) for 2022 and 2023. 86 Fed. Reg. 55,116 (Oct. 5, 2021). The Framework Rule calculated HFC production and consumption baselines according to the statutory formula. 42 U.S.C. §7675(e)(1)(B); 86 Fed. Reg. at 55,203. EPA then used an entity’s three highest “exchange value-weighted” production and consumption amounts from 2011 through 2019 to calculate allowances for HFC producers and importers. 86 Fed. Reg. at 55,203.

Choice challenged the Framework Rule, raising concerns about EPA’s authority to regulate HFCs within blends including other chemicals. *See Heating, Air Conditioning & Refrigeration Distribs. Int’l v. EPA*, 71 F.4th 59, 63 (D.C. Cir. 2023) (“*HARDI*”) (referring to Framework Rule as “Phasedown Rule”). Choice also raised a nondelegation challenge but had not preserved it. The D.C. Circuit denied Choice’s petition on both grounds. *Id.* at 64-65.⁹ Other parties challenged EPA’s statutory authority to mandate refillable cylinders for HFC transport and to require certification and tracking for HFC distribution via QR code. The D.C. Circuit agreed that the AIM Act did

⁹ Choice raised the market-based nature of the rule with the Eleventh Circuit, which transferred the petition to the D.C. Circuit, *RMS of Ga., LLC v. EPA*, 64 F.4th 1368, 1372 (11th Cir. 2023), where Choice dismissed it. Motion, *RMS of Ga., LLC v. EPA*, Case No. 22-1025 (D.C. Cir.) (Doc. 2013880).

not confer such authority and vacated those parts of the Framework Rule. *Id.* at 66-68.

For the next phasedown period—2024 through 2028—EPA proposed to continue using historic production and consumption data from 2011 to 2019 to allocate allowances by market share, in part to minimize market disruption and in part because the dataset had been thoroughly vetted through multiple rounds of stakeholder outreach. 87 Fed. Reg. 66,372, 66,377 (Nov. 3, 2022). EPA received numerous comments, including from Choice, addressing such details as the appropriate allowance recipient (blend producer/importer vs. feedstock producer/importer), use of greenhouse gas reporting program data, and EPA’s economic analysis. Choice also raised a nondelegation argument. *Comments of Choice Refrigerants*, EPA Dkt. EPA-HQ-OAR-2022-0430-0103 (Dec. 19, 2022), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0430-0103> (“Choice Comments”). In its final 2024 Rule, EPA continued to rely on market-share data from 2011 to 2019. 88 Fed. Reg. 46,836, 46,842-50 (July 20, 2023).

IV. The D.C. Circuit Upheld the 2024 Rule

The D.C. Circuit considered two petitions for review of the 2024 Rule—Choice’s nondelegation challenge and iGas’s arbitrary-and-capricious challenge—and denied both. Pet.App.2-3.

iGas brought a standard arbitrary-and-capricious challenge, arguing that EPA should have used a different dataset upon which to base its calculations. Pet.App.2. Specifically, iGas contended

EPA should have included 2020 data to be more inclusive of the aftermarket. Pet.App.8-9. The D.C. Circuit concluded that EPA reasonably excluded that year given the market effects from COVID-19 and supply chain concerns, among other reasons. Pet.App.23-27.

Choice elected to challenge not the substance of the 2024 Rule,¹⁰ but the statute itself, claiming that in the AIM Act Congress unlawfully delegated legislative authority to EPA as to one narrow element of the program: the details regarding allocating HFC production and consumption allowances. Pet.App.2. Specifically, Choice contended that subsection (e)(3) of the Act comprised the sum and substance of Congress's instructions to EPA regarding the allowance allocation and trading scheme and was therefore an unconstitutional delegation of authority to EPA. *See* Pet.App.15.

The D.C. Circuit was not persuaded. Reading the statute as a whole, in conjunction with the intelligible-principle test this Court first set forth long ago and recently applied, the court below concluded that the AIM Act contained sufficient guidelines and constraints to cabin EPA's discretion. Pet.App.12; *see also infra* at 18-21. Choice sought rehearing, which

¹⁰ Indeed, Choice expressly disclaimed any intent to do so. Final Petitioner's Opening Brief 34, *RMS of Ga., LLC v. EPA*, Case No. 23-1263 (D.C. Cir.) (Doc. 2057031) ("Choice is not challenging the merits of EPA's decision in this proceeding[.]").

the court denied. Pet.App.28-29. Choice's petition followed.

REASONS FOR DENYING THE PETITION

I. The Decision Below Presents Neither a Conflict with Any Decision of Any Court Nor a Question of Exceptional Importance.

A. Choice advances no argument that this case presents a circuit or state-court conflict, because there is none. *See* Sup. Ct. R. 10(a). Nor is there any conflict with a decision of this Court, because the D.C. Circuit is the only court to have considered this issue. *See* Sup. Ct. R. 10(c). The AIM Act is a single federal statute creating a single federal regulatory program. No other circuit has considered its constitutional validity. This is not a question dividing courts across the country or producing inconsistent regulatory outcomes.

Neither does Choice argue that a circuit split exists regarding nondelegation jurisprudence. While Choice attempts to find a conflict between the D.C. Circuit's application in this case of the intelligible-principle test, on the one hand, and this Court's precedents on the other, Pet. 21-26, Choice's quarrel boils down to disagreeing with how the court below *applied* this Court's jurisprudence. *See infra* at 18-24. That alone is not a reason to grant *certiorari*. *See* Sup. Ct. R. 10.

Whether viewed through a narrow lens (the AIM Act) or a wide one (nondelegation jurisprudence writ large), there is no conflict demanding this Court's

intervention. The D.C. Circuit’s careful, context-sensitive analysis of the AIM Act’s text, structure, and history is fully consistent with this Court’s nondelegation precedents.

Having identified no conflict, Choice must show that this case is so extraordinary that it demands this Court’s review. It has not, because it cannot.

B. Choice’s core quarrel is with *how* EPA allocated allowances, not with *whether* EPA can constitutionally allocate them. Choice’s real complaint is that allowances were allocated to the company that arranged Choice’s imports, instead of to Choice itself. Choice claims it “received about 30% fewer allowances than it would have under a genuine market-share approach” because EPA gave Choice’s allocations to the commercial distributor that served as Choice’s import agent. Pet. 9-10, 12. Choice also complains about “EPA’s decision to set aside a designated pool of valuable allowances to new market entrants[.]” Pet. 9. These complaints read like textbook arbitrary-and-capricious challenges to EPA’s allowance allocation framework, not challenges to whether Congress lawfully delegated to EPA the role of developing such a framework in the first instance.¹¹ Choice may have prevailed had it raised

¹¹ Similarly, Choice’s constitutional argument factors into its comments to the rulemaking process only as an afterthought. Near the end, Choice provides a few paragraphs of nondelegation argument and case law. But even there, Choice reiterates its core

(continued...)

these merits arguments below as part of an arbitrary-and-capricious challenge to the 2024 Rule—but it did not. Instead, Choice now asks this Court to bring the AIM Act down altogether with a constitutional sledgehammer.

Choice also contends that the D.C. Circuit misunderstood how the 2024 Rule functioned and thus interpreted the statute in a manner inconsistent with how EPA designed the allowance allocation program. *E.g.*, Pet. 8-9. But Choice elected not to challenge the program’s design, opting instead to attack the statute itself. The court below can hardly be blamed for answering the question Choice asked.

This is not the first time Choice has complained about the allocation framework. Choice challenged the Framework Rule, on *different* merits grounds—that EPA unlawfully regulated HFC blends. The D.C. Circuit rejected that challenge, demonstrating its ability to interpret the AIM Act and to find EPA authority wanting where appropriate. *See HARDI*, 71 F.4th at 68.

Choice’s litigation history confirms what its petition reveals: Choice wants *more* allowances, and it disputes which company should get credit for certain HFC imports. But Choice abandoned any such

complaint—that importers received allowances. Choice Comments 17. Choice concludes its comments by stating it “*supports EPA’s approach to establishing an allowance allocation system for phasedown of HFCs, provided that the system takes into consideration the important issues discussed above.*” Choice Comments 18 (emphasis added).

merits arguments by not pressing them below. Choice’s petition suggests that, had EPA employed what Choice considered a “genuine” market-share approach that favored it, it would not have petitioned for review *at all*. Pet. 12. That question is not so extraordinary as to warrant this Court’s intervention.

Choice’s attempt to raise the stakes by claiming that “[t]he single most important question under a cap-and-trade program is how to allocate allowances” is *ipse dixit*. Pet. 7.¹² How to allocate allowances is clearly the most important question *to Choice*. And just as clearly, EPA’s program does not operate according to Choice’s wishes. But Choice’s remedy is a petition for rulemaking or a challenge to a future rulemaking,¹³ not a constitutional challenge to invalidate the entire phase-down program.

¹² The AIM Act is no more liberty-encroaching than any other act of Congress regulating the environmental impacts of business activity, *contra* Pet. 20. That environmental regulation may disadvantage certain businesses and advantage others is not novel.

¹³ Nothing prevents Choice from challenging future EPA rulemakings under the AIM Act, which will of necessity occur for future drawdown periods. *See* 42 U.S.C. §7675(e)(2)(C). EPA has promulgated rules to provide for the allocation of allowances for calendar years 2024 to 2028. 40 C.F.R. §§84.9, 84.11. Additional rulemaking will be required to provide for an allowance allocation methodology for 2029 and later years.

II. The D.C. Circuit’s Decision Is an Unremarkable—Though Faithful and Correct—Application of This Court’s Nondelegation and Statutory-Construction Precedents.

Choice avoids finding the intelligible principle guiding EPA’s discretion within the AIM Act through its own choice not to read the Act in its entirety. Choice frames the AIM Act as an unprecedented void—a statute that “said next to nothing,” Pet. 17, and left EPA with “zero direction,” Pet. 1. But the plain text refutes that characterization. As the petition itself acknowledges, the AIM Act specifies how quickly the phasedown should occur and authorizes EPA to provide allowances for essential uses and mandatory application-specific uses. Pet. 6-7, 17. But Congress’s guidance goes well beyond even those express directives.

The D.C. Circuit correctly recognized that the AIM Act does not present a nondelegation violation. Far from creating a separation-of-powers problem, the lower court’s decision adheres to this Court’s instructions regarding how to read statutes and identify unlawful delegations, and it properly applied those precedents to uphold EPA’s allowance allocation and trading scheme.

A. The D.C. Circuit correctly held that the AIM Act satisfies the intelligible-principle test.

Courts have long upheld delegations of decision-making authority in statutes where Congress “has

made clear both ‘the general policy’ that the agency must pursue and ‘the boundaries of [its] delegated authority’—that is, where Congress has identified an intelligible principle to govern its exercise of discretion. *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 673 (2025) (quoting *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)); see also *Mistretta v. United States*, 488 U.S. 361, 372-73 (1989); *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 475 (2001). The D.C. Circuit appropriately applied these precedents to conclude that the AIM Act satisfies the intelligible-principle test, with room to spare.

The court began by summarizing this Court’s nondelegation precedents, culminating in its recent reaffirmation in *Consumers’ Research*. Pet.App.12-14. The D.C. Circuit concluded that, “[a]gainst that backdrop, the AIM Act easily passes muster” due to its “detailed program for capping and trading HFC allowances” combined with Congress’s evident intent that EPA “model its cap-and-trade program on similar programs established under the Clean Air Act, ... [which] allocated allowances to market participants according to their market share.” Pet.App.15.

To reach this conclusion, the court began with statutory interpretation, as required. Pet.App.15 (citing *Gundy v. United States*, 588 U.S. 128, 136 (2019) (plurality op.)). It “review[ed] the AIM Act’s ‘text, considered alongside its context, purpose, and history.’” Pet.App.16 (citing *Gundy*, 588 U.S. at 136). Reading the Act’s direction that EPA allocate allowances “in accordance with” the Act,

42 U.S.C. §7675(e)(3), in conjunction with the Act’s focus on reducing HFC production and consumption on a particular schedule, the court concluded that “[a] natural way to allocate the allowances to achieve [Congress’s] purpose is to rely on the market participants’ historical market share.” Pet.App.16.

The court found further support in the cap-and-trade programs Congress enacted to phase out CFCs and HCFCs and the AIM Act’s express incorporation of certain Title VI provisions. Pet.App.16-17. Citing *Consumers’ Research*, the court explained these provisions provided “ascertainable and meaningful guideposts” to direct EPA’s development of the program.¹⁴ Pet.App.19. The court further observed that the AIM Act’s objectives were limited “to a particular subject matter ... in a particular industry[.]” Pet.App.19 (quoting *Sanchez v. Off. of State Superintendent of Educ.*, 45 F.4th 388, 401-02 (D.C. Cir. 2022)), reinforcing Congress’s ability to delegate implementation with considerable discretion. Pet.App.19.

The court disagreed with Choice’s characterization of the Act as insufficiently specific, Pet.App.20, and was unpersuaded by Choice’s complaint that the AIM Act does not expressly incorporate *additional* Title VI provisions, Pet.App.21. The court explained that it need not

¹⁴ Indeed, this Court’s analysis in *Consumers’ Research* parallels the D.C. Circuit’s in multiple ways. *E.g.*, 606 U.S. at 681 (noting language in the subject statute that “replicates or resembles the statutory terms Congress has used in other [similar] statutes,” when holding the statute passed constitutional muster).

address hypothetical future changes to EPA's regulatory framework, because they would be subject to challenge under the Administrative Procedure Act. Pet.App.21.

In sum, the D.C. Circuit correctly recognized that Congress made its policy goals for the AIM Act clear: to ensure that HFCs are phased down in line with the amounts and schedules it prescribed. Pet.App.16. Thus, in the context of the entire statutory scheme and its history, the intelligible principle setting the boundaries of EPA's discretion—limiting EPA to a market-based allocation framework—emerged clearly.

B. The D.C. Circuit did not commit an Article III violation by interpreting the statute.

The D.C. Circuit did not “supply” an intelligible principle that Congress omitted, as Choice posits. Pet. 21-28. Rather, the court below applied *Gundy*'s instruction that nondelegation analysis “begins with statutory interpretation” and that the court must “constru[e] the challenged statute to figure out what task it delegates and what instructions it provides.” Pet.App.15 (quoting *Gundy*, 588 U.S. at 136). When reviewing a statute for an intelligible principle, courts have “looked to the broader statutory contexts, which informed their interpretation and supplied the content necessary to satisfy the intelligible-principle test.” *Consumers' Rsch.*, 606 U.S. at 684. That is precisely what the D.C. Circuit did.

Choice appears to disagree with the lower court’s departure from EPA’s articulation of its authority in the course of the court’s statutory interpretation. *E.g.*, Pet. 23, 25. That is, Choice attempts to use EPA’s speculation about what it had the authority to do in a *proposed* rule, *e.g.*, Pet. 8, 18, 21—not what it actually did in the final rule—as probative of the purportedly unlawful delegation. But agency speculation in a proposal is far too thin a reed on which to rest a nondelegation argument, particularly when contrasted against the lower court’s careful reasoning. To reach its sensible conclusion, the D.C. Circuit did *exactly* what this Court instructed it to do in *Loper Bright*: Interpret the statute without deference to agency interpretations. Just as the Court instructed, the D.C. Circuit “fixed the boundaries of the delegated authority” based on its independent view of the statute and “ensured [that] the agency [acted] within those boundaries.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (internal punctuation and citations omitted). The lower court was no more bound to regard EPA’s musings in a proposed rule in the context of a nondelegation challenge than it is in any other. Choice’s invitation to this Court to craft a nondelegation exception to *Loper Bright*, wherein a reviewing court *does* defer to an agency’s interpretation of its statutory authority, is both supremely ironic and legally untenable. See *Consumers’ Rsch.*, 606 U.S. at 688 (reflecting adherence to *Loper Bright* in the course of nondelegation analysis).

The D.C. Circuit did not “graft” anything onto the AIM Act, *contra* Pet. 22. It did what courts have always done: it read the statute—all of it, in context—

and concluded that Congress's purpose, evident in the text, structure, and legislative history, supplied the guidance that the nondelegation doctrine requires. That is statutory interpretation, not legislation. Every nondelegation case requires that a court first interpret the statute and *then* ask whether the interpreted statute provides an intelligible principle. *See Gundy*, 588 U.S. at 136. Choice would collapse those two steps, treating any construction more generous to the statute's constitutionality than the petitioner prefers as impermissible judicial overreach. But that is precisely backward: statutes are to "be read, if possible, to comport with the Constitution, not to contradict it." *Consumers' Rsch.*, 606 U.S. at 691. The D.C. Circuit recognized this, noting that, "to the extent the AIM Act is susceptible to more than one plausible construction, [the court] should read the statute to avoid granting discretion that is so broad that it could create a nondelegation problem"—an application of the avoidance canon this Court endorsed just last Term. Pet.App.18 n.3.

Choice finds further flaw with the opinion below due to the lack of an express cross-reference in subsection (e)(3) to Title VI's market-share provision. Pet. 23. That objection conflates two different things. The D.C. Circuit did not hold that the AIM Act silently incorporates Title VI by reference as a binding legal requirement—it did not need to. Rather, it held that Congress's evident intent to model its program on the Title VI framework is manifest in the text, structure, and legislative history of the AIM Act, which, taken as a whole, provide an intelligible principle guiding EPA's exercise of discretion. Pet.App.15-20. That is textbook statutory

interpretation applied in the nondelegation context. *See Gundy*, 588 U.S. at 136.

In sum, this is not the decision of a court run amok; it is the decision of a court following this Court's instructions to the letter.

III. The AIM Act Is a Poor Vehicle for a Nondelegation Exploration.

Choice's single-minded focus on one provision (subsection (e)(3)) plucked from the entire statute obscures the broader context in which the AIM Act exists—a context that renders the Act a particularly unsuitable text for an academic inquiry into nondelegation.

A. The AIM Act implicates international trade, treaty obligations, and decades of commercial investment and innovation.

1. Choice's characterization of the AIM Act as "not implicat[ing] any tricky issues about overlapping Article I and Article II powers, such as '... foreign policy[.]" falters at the start. *Contra* Pet. 28 (quoting *Consumers' Rsch.*, 606 U.S. at 706 (Kavanaugh, J., concurring)). The AIM Act is critical to implementing a ratified international treaty that implicates both foreign policy and private businesses' ability to engage in international trade. Treaty ratification is a core Article II power, reflecting the President's role in

foreign policy.¹⁵ And in the realm of foreign policy, this Court is even more chary of reviewing statutes through a nondelegation lens. *See Consumers' Rsch.*, 606 U.S. at 706-07 (Kavanaugh, J., concurring); *cf. Baker v. Carr*, 369 U.S. 186, 212 (1962) (“a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute”).¹⁶ This close alignment with an international treaty regime—and Congress’s express recognition of EPA’s implementation of the Act in the Senate’s consideration of the Kigali Amendment¹⁷—make this statute particularly unsuitable as a vehicle for recalibrating the intelligible-principle test. *See supra* at 5; *cf. Missouri v. Holland*, 252 U.S. 416, 432 (1920) (“If the treaty is valid there can be no dispute about the validity of the statute ... as a necessary and proper means to execute the powers of the Government.”).

¹⁵ The Senate’s ratification enjoyed broad support, including from the U.S. Chamber of Commerce. Coalition Letter on the Kigali Amendment to the Montreal Protocol (June 22, 2022), <https://www.uschamber.com/environment/coalition-letter-on-the-kigali-amendment-2> (last visited May 12, 2026).

¹⁶ To be sure, we do not argue that this case presents a nonjusticiable political question. *See Japan Whaling Ass’n v. Am. Cetacean Soc’y*, 478 U.S. 221, 229-30 (1986). We merely note these implications in the context of this Court’s consideration whether this case is an appropriate vehicle.

¹⁷ U.S. ratification of the Kigali Amendment was crucial to U.S. companies operating in this space, because the Kigali Amendment bans Parties from trading HFCs with non-Parties. *See* Cong. Rsch. Serv., *Stratospheric Ozone Treaties and the Kigali Amendment: Ratification Considerations* (Mar. 23, 2022), <https://www.congress.gov/crs-product/LSB10712>.

EPA's allowance allocation and trading program has been, and will continue to be, subject to the D.C. Circuit's review under the time-tested arbitrary-and-capricious standard. *That* is the appropriate forum to litigate grievances regarding allocation methodology and the appropriate number of allowances any particular entity receives.

2. While Choice exaggerates the importance of this case to constitutional law, the Nation, and liberty itself, the stakes of its all-or-nothing constitutional theory are not abstract for regulated entities. For nearly three decades, American industry has organized itself around successive generations of cap-and-trade programs designed to phase out and replace chemicals affecting the earth's atmosphere. HFCs have played a significant role in helping the United States phase out ozone-depleting substances such as CFCs and HCFCs in many manufacturing, industrial, and consumer applications. Once HFCs' inability to serve as complete replacements became understood, policymakers and industry leaders developed a mechanism to replace them in turn.¹⁸

But the transition from and subsequent phasedown of HFCs has not been costless. Producers of alternative refrigerants, solvents, and propellants have invested substantial amounts in bringing alternatives to market and gaining government approval and public acceptance. Manufacturers of equipment and products using HFCs have spent

¹⁸ See generally, U.S. EPA, *Timeline of Actions on HFCs* (Apr. 15, 2015), https://www.epa.gov/sites/default/files/2016-12/documents/timeline_of_actions_on_hfcs.pdf.

considerable resources redesigning their products to utilize alternatives with lower global-warming-potentials.¹⁹ Those investments were made in reliance on a stable regulatory framework—the very framework Choice now seeks to demolish.

Striking down the AIM Act’s allowance program would disrupt a long-functioning marketplace for HFC alternatives and threaten the United States’ ability to meet its obligations under the Montreal Protocol. It could strand the billions of dollars of private capital invested in producing HFC alternatives and designing and manufacturing compatible equipment on the basis of a phasedown schedule that has been law for over five years. And it would eliminate the certainty that market participants—producers, importers, and manufacturers of products that still depend on HFCs and HFC blends have built into their business planning for the transition to alternatives. With no circuit split, conflict, or extraordinary question of law at stake, the Court should not entertain the complaint of a single disappointed entity.²⁰

¹⁹ “As global markets move away from HFCs, American companies continue to invest billions of dollars in producing and selling the next-generation replacement refrigerants.” U.S. Senate Comm. On Env’t & Public Works, *Phasing Down HFCs*, <https://www.epw.senate.gov/public/index.cfm/phasing-down-hfcs> (last visited May 12, 2026).

²⁰ This is especially so where this particular market participant was well-aware of the advent of these rules and had ample time

(continued...)

B. Other, more suitable vehicles to explore nondelegation and the intelligible-principle test will inevitably present themselves.

The nondelegation question is presently top of mind for jurists and non-jurists alike. *See, e.g.*, Pet. 29-30. But the Court regularly has better opportunities to take up these arguments; it need not rest an analysis of the Vesting Clause on a well-established technical regulatory program. For example, in Petition for a Writ of Certiorari, *Pheasant v. United States*, No. 25-6911, currently pending before this Court, the petitioner asks the Court to assess the constitutionality of Congress’s delegation of authority to the Secretary of the Interior to regulate criminal conduct under the Federal Land Policy and Management Act.²¹ That case would appear to present none of the thorny issues the Court would face here on the merits, such as severability and implications for international treaty obligations. But it may allow the Court to address nondelegation where liberty may truly be at stake.

and opportunity to adjust its business operations accordingly. *See RMS of Ga., LLC v. Dynatemp Int’l, Inc.*, No. 23-CV-86, 2024 WL 3313349, at *3 (N.D. Ga. June 3, 2024) (“[B]ecause the EPA employed a similar framework in the past when phasing out HCFCs, RMS claims that knowledge of the EPA’s current scheme for phasing out HFCs was predictable and ‘widespread’ to businesses and members within the refrigerant industry, including RMS and Dynatemp.”).

²¹ Question Presented, https://www.supremecourt.gov/DocketPDF/25/25-6911/396876/20260220133640272_Pheasant%20-%20Petition%20-%20As%20Filed.pdf.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

Elizabeth B. Dawson
Counsel of Record
Robert J. Meyers
Thomas A. Lorenzen
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 624-2508
edawson@crowell.com