No. 25-668

In the Supreme Court of the United States

JEFFREY ANDREWS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
ROBERT N. STANDER
Deputy Assistant Attorney General
BRIAN C. TOTH
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

The question presented in the petition for a writ of certiorari (Pet. i) is as follows:

"Was the Second Circuit correct to uphold Clean Water Act authority over wetlands that are not 'as a practical matter indistinguishable' from covered waters?"

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-7a) is available at 2025 WL 855763. The order of the district court granting the government's motion for summary judgment on liability (Pet. App. 8a-38a) is reported at 677 F. Supp. 3d 74. The order of the district court granting an injunction (Pet. App. 39a-46a) is available at 2024 WL 2800232.

JURISDICTION

The judgment of the court of appeals was entered on March 19, 2025. A petition for rehearing was denied on July 24, 2025 (Pet. App. 47a). On September 24, 2025, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including November 21, 2025, and the petition was filed on November 20, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress enacted the Clean Water Act (CWA or Act), 33 U.S.C. 1251 *et seq.*, to protect "the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). To achieve that objective, the CWA generally prohibits "the discharge of any pollutant by any person." 33 U.S.C. 1311(a). The Act defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. 1362(12). The term "pollutant" means, among other things, "dredged spoil," "rock," and "sand." 33 U.S.C. 1362(6). The term "point source" means "any discernible, confined and discrete conveyance," including bulldozers, backhoes, and tractors. 33 U.S.C. 1362(14). And the term "navigable waters" means "the waters of the United States, including the territorial seas." 33 U.S.C. 1362(7).

Section 1311's prohibition on "the discharge of any pollutant" is subject to certain exceptions. 33 U.S.C. 1311(a). One of them appears in 33 U.S.C. 1344, which authorizes the Army Corps of Engineers (Corps) to "issue permits" for "the discharge of dredged or fill material into the navigable waters at specified disposal sites." 33 U.S.C. 1344(a). If the Environmental Protection Agency (EPA) finds that a person is violating Section 1311, it may issue an order requiring that person to comply. 33 U.S.C. 1319(a)(3). EPA may also commence a civil action for appropriate relief, including an injunction and civil penalties. 33 U.S.C. 1319(b) and (d).

2. This case involves property in New Haven County, Connecticut. D. Ct. Doc. 224-6, at 9 (Oct. 21, 2022). Petitioner and his wife purchased the property in 2001, and in 2011 they transferred ownership of the property to their three adult children. D. Ct. Doc. 224-2, at 1 (Oct.

21, 2022). The property consists of both upland areas and freshwater wetlands. Pet. App. 12a. Running through the property is an unnamed tributary of the Farm River, which flows into Long Island Sound. *Id.* at 12a, 32a-33a.

In 2010, petitioner began using bulldozers and other heavy machinery to engage in "clear-cutting, stumping, grubbing, filling, and grading" on the property. Pet. App. 27a-28a. By 2016, those activities had caused the filling of approximately 13.3 acres of wetlands. *Id.* at 14a, 28a. After learning about those activities through local officials, the Corps visited the property and "confirm[ed] the presence of wetlands as well as the filling of those wetlands without the requisite permit." *Id.* at 16a. The Corps referred the matter to EPA, which conducted an inspection of the property and issued a "Notice of CWA Violations." *Id.* at 18a; see *id.* at 17a-18a.

3. a. In 2020, the United States filed a civil enforcement action in federal district court against petitioner, his wife, and his three adult children. Compl. ¶¶ 1, 7-10. The United States alleged that the defendants had violated Section 1311 by causing the discharge, without a permit, of dredged or fill material into wetlands, as well as a tributary, that are "waters of the United States." Compl. ¶¶ 63-64. The United States sought injunctive relief and civil penalties. Compl. ¶¶ 65-66.[1]

b. The parties proceeded to discovery. Pet. App. 19a-21a. In March 2022, the government sent petitioner a set of requests for admission pursuant to Federal Rule of Civil Procedure 36. Pet. App. 28a. The government

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[1] The United States also alleged that the defendants had failed to respond to EPA's requests for information, in violation of 33 U.S.C. 1318. Compl. ¶¶ 68-72. The district court granted the government's motion for summary judgment as to liability on that claim, Pet. App. 36a-37a, and the court of appeals affirmed, *id.* at 4a-6a.

asked petitioner to admit, among other things, that he (or others working under his direction) had placed dredged or fill material into wetlands "that are hydrologically connected by surface waters to navigable waters." D. Ct. Doc. 224-3, at 7 (Oct. 21, 2022). Under Rule 36, "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed" responds. Fed. R. Civ. P. 36(a)(3). Petitioner "failed to respond" within 30 days. Pet. App. 28a.

c. In October 2022, the government moved for summary judgment on liability. D. Ct. Doc. 224 (Oct. 21, 2022). The government explained that, in order to establish that petitioner had violated Section 1311, the government was required to "demonstrate that (1) the areas in which the fill activities occurred satisfy the regulatory definition of a wetland and (2) those wetlands are 'waters of the United States' * * * within the regulatory jurisdiction of the CWA." D. Ct. Doc. 224-1, at 33 (Oct. 21, 2022).

With respect to the first prong, the government observed that the applicable regulations define "wetlands" as those "areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." D. Ct. Doc. 224-1, at 34 (citation omitted). The government argued that there was no genuine dispute of material fact that the areas petitioner had filled satisfied that definition. *Ibid.*

With respect to the second prong, the government relied on this Court's decision in *Rapanos* v. *United States*, 547 U.S. 715 (2006). D. Ct. Doc. 224-1, at 34-39. The government observed that *Rapanos* had "generated no majority opinion for the Court." *Id.* at 34. Instead, four Jus-

tices concluded that the CWA covers only those wetlands with a "continuous surface connection" to "a relatively permanent body of water connected to traditional interstate navigable waters," "making it difficult to determine where the 'water' ends and the 'wetland' begins." *Rapanos*, 547 U.S. at 742 (plurality opinion). In contrast, the Justice who provided the fifth vote for the judgment, Justice Kennedy, concluded that the CWA covers only those wetlands that have a "significant nexus" with navigable waters, and that such a nexus exists where "the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity" of those waters. *Id.* at 779-780 (Kennedy, J., concurring in the judgment).

The government contended that the wetlands in this case satisfy both the *Rapanos* plurality's test and Justice Kennedy's test. D. Ct. Doc. 224-1, at 36. Under the plurality's test, the government argued that the Farm River is a traditional navigable water, and that the unnamed tributary is a relatively permanent body of water connected to the River. *Id.* at 37. The government further contended that the wetlands in this case have a "continuous surface connection" to the unnamed tributary. *Ibid.* The government expressed the view that a "'continuous surface connection' is a 'physical connection requirement,' but does not require surface water to be continuously present between the wetland and the tributary." *Ibid.* (citation omitted). The government then argued that the requisite connection exists in this case, citing, among other things, the expert report of Dr. T. Andrew Earles, who had found "continuous surface flow paths during runoff events connecting the wetlands [in this case] with the Unnamed Tributary." *Id.* at 38 (citation omitted); see D. Ct. Doc. 224-6, at 3, 21.

As the local rules of the district court required, the government also filed a statement of undisputed material facts. D. Ct. Doc. 224-2. The government stated that there was no genuine dispute that the wetlands in this case "have a continuous surface connection to the Unnamed Tributary," or that there are "continuous surface flow paths during runoff events connecting the wetlands" with that tributary. *Id.* at 16.

After the government filed its summary-judgment motion, the district court held an in-person status conference "for the sole purpose of ensuring" that petitioner, who was proceeding pro se, had received copies of all filings and was aware of his obligation under the local rules to respond to the government's statement of undisputed material facts. Pet. App. 10a; see *id.* at 9a-10a. In January 2023, petitioner filed a one-page opposition that did not respond to the government's statement, cite any "evidence that would be admissible at trial," or "mention any facts at issue in this case." *Id.* at 10a-11a; see D. Ct. Doc. 240 (Jan. 19, 2023). Instead, the opposition asserted only that petitioner had "[c]onstitutionally enumerated and protected rights" to build on his private property. D. Ct. Doc. 240, at 1. In reply, the government noted that petitioner had "failed to identify any legal theory that would excuse his violations of the [CWA]." D. Ct. Doc. 241, at 4 (Feb. 1, 2023).

4. While the government's summary-judgment motion was pending, this Court issued its decision in *Sackett* v. *EPA*, 598 U.S. 651 (2023). The *Sackett* Court adopted the *Rapanos* plurality's "formulation of when wetlands are part of 'the waters of the United States.'" *Id.* at 678. The *Sackett* Court therefore held that "the CWA extends to only those wetlands that are 'as a practical matter indistinguishable from waters of the United States,'" which

"requires the party asserting jurisdiction over adjacent wetlands to establish": (1) "'that the adjacent body of water constitutes * * * a relatively permanent body of water connected to traditional interstate navigable waters'"; and (2) "'that the wetland has a continuous surface connection with that water, making it difficult to determine where the "water" ends and the "wetland" begins.'" *Id.* at 678-679 (quoting *Rapanos*, 547 U.S. at 742, 755) (brackets omitted).

5. In June 2023, after this Court's decision in *Sackett*, the district court granted the government's motion for summary judgment on liability. Pet. App. 8a-38a. At the outset, the court stated that the "'special solicitude'" that "'*pro se* litigants'" are owed "does not absolve [petitioner] of his obligations under the Federal and Local Rules." *Id.* at 11a (citation omitted). The court deemed the "factual assertions" in the government's statement of undisputed facts to be "admitted" because petitioner had failed to respond to that statement. *Ibid.* The court also deemed "admitted" the material in the government's requests for admission because petitioner had "failed to respond" to those requests. *Id.* at 28a.

The district court then held that the government had shown that petitioner had discharged pollutants from a point source into navigable waters. Pet. App. 24a-33a. First, the court found that the government had "demonstrate[d] that the filling activities occurred in areas deemed 'wetlands' under the CWA and attendant regulations." *Id.* at 29a; see *id.* at 29a-30a. The court noted that the regulations define "[w]etlands" as "areas that 'are inundated or saturated by surface or ground water.'" *Id.* at 30a (quoting 33 C.F.R. 328.3(c)(1)). And the court found no genuine dispute of material fact that the wetlands in this case satisfy that definition. *Ibid.*

Second, the district court determined that the government had "show[n] that those wetlands are 'waters of the United States'" under this Court's decision in *Sackett*. Pet. App. 29a; see *id.* at 30a-33a. The district court explained that the government had "put forward undisputed evidence showing that [a] 'continuous surface connection' exists between the wetlands and the Unnamed Tributary." *Id.* at 33a. The court pointed to Dr. Earles's expert report, "which shows that continuous surface flow paths link the wetlands with the Unnamed Tributary." *Ibid.* The court also emphasized that petitioner had "admitted" that the wetlands "are hydrologically *connected by surface waters* to navigable waters." *Id.* at 28a-29a.

In May 2024, the district court entered a default judgment against petitioner's wife and his three adult children, who had failed to appear. D. Ct. Doc. 260-1 (May 2, 2024). The court then issued an order granting an injunction against all of the defendants. Pet. App. 39a-46a. The injunction requires the defendants "to restore the disturbed wetlands" on the property in accordance with a restoration plan. *Id.* at 40a; see *id.* at 40a-45a. The order states that the injunction is "not permanent," *id.* at 44a, and that "appropriate civil penalties" will "be determined after the Restoration Plan is completed," *id.* at 45a.

6. Petitioner was the only defendant who appealed the district court's May 2024 order granting an injunction. Pet. App. 3a. In his pro se opening brief, petitioner argued that the government's own witnesses had testified that "there is no surface water and no surface water connection" on his property. Pet. C.A. Br. 11 (capitalization omitted); see *id.* at 6-7, 12; Pet. C.A. Reply Br. 5. In response, the government argued that petitioner had "confuse[d] data collected to determine the presence of wetlands meeting the regulatory definition in 33 C.F.R.

§ 328.3(c)(1) with the facts required to establish CWA jurisdiction under the *Sackett* decision." Gov't C.A. Br. 24. The government explained that the testimony petitioner had cited was an expert witness's testimony "about his process of digging soil test pits to evaluate wetland indicators, such as hydric soil and hydrology, in order to establish the presence of wetlands meeting the regulatory definition in 33 C.F.R. § 328.3(c)(1)." *Ibid.* The government emphasized that "whether there is CWA jurisdiction over a given wetland" is a separate question. *Id.* at 25. After noting that the "relevant connection for CWA jurisdiction is the 'continuous surface connection' between the wetlands meeting the regulatory definition in 33 C.F.R. § 328.3(c)(1) and a covered water of the United States," the government argued that "the evidentiary record establishes" the existence of such a connection in this case. *Id.* at 25-26 (citation omitted).

In an unpublished decision, the court of appeals affirmed "the order of the district court, to the extent that it imposed injunctive relief against [petitioner]." Pet. App. 7a; see *id.* at 1a-7a. As an initial matter, the court of appeals observed that "[t]he district court ha[d] not issued a 'final decision' within the meaning of 28 U.S.C. § 1291 because it ha[d] not decided whether to impose civil penalties and if so how much." *Id.* at 3a-4a. The court of appeals nevertheless determined that it had appellate jurisdiction under 28 U.S.C. 1292(a)(1) because the district court's May 2024 order was an interlocutory order granting an injunction. Pet. App. 4a.

Turning to the merits, the court of appeals understood petitioner's opening brief to argue that "the case should have been dismissed because there is no surface water on his property." Pet. App. 5a (citing Pet. C.A. Br. 6-7). "[D]isagree[ing]" with that argument, the court explained

that "[t]he CWA applies to wetlands that have 'a continuous surface connection' with 'relatively permanent bodies of water connected to traditional interstate navigable waters.'" *Ibid.* (quoting *Sackett*, 598 U.S. at 678) (brackets omitted). The court of appeals then agreed with the district court that petitioner's activities had occurred in areas that constitute wetlands, which the applicable regulation defines as "soil that is regularly 'saturated by surface or ground water.'" *Ibid.* (quoting 33 C.F.R. 328.3(c)(1)). The court of appeals also agreed with the district court that petitioner had "fail[ed] to rebut the expert report" showing that those wetlands were "connected to traditional navigable waters." *Ibid.* The court of appeals therefore held that petitioner had "not shown that the district court erred by granting summary judgment to the government as to his liability under the CWA." *Id.* at 6a.

7. After the district court issued its May 2024 order granting injunctive relief, one of the other defendants, Wesley Andrews, retained counsel and began coordinating with EPA. D. Ct. Doc. 276 (June 7, 2024). Wesley Andrews recently submitted a restoration plan in accordance with the court's order. D. Ct. Doc. 386, at 1 (Mar. 27, 2026). EPA has reviewed the plan and has determined that it adequately complies with the court's injunction. *Ibid.*

ARGUMENT

Petitioner contends (Pet. 18) that, under this Court's decision in *Sackett* v. *EPA*, 598 U.S. 651 (2023), "regulable wetlands" under the CWA "must be indistinguishable from covered waters." Petitioner forfeited that argument below, however, and the lower courts did not address it. Petitioner also contends (Pet. 23) that "any surface connection between water and wetland must be

aquatic." But "undisputed evidence" established the existence of a surface-water connection in this case, Pet. App. 33a, and petitioner never argued below that the connection was insufficiently continuous.

Moreover, the meaning of "waters of the United States" is the subject of a pending rulemaking by EPA and the Corps. 90 Fed. Reg. 52,498, 52,498 (Nov. 20, 2025). There is no sound reason for this Court to preempt that rulemaking by intervening now, especially given the interlocutory posture of this case. The petition for a writ of certiorari should be denied.

1. Petitioner asks this Court to grant certiorari to resolve whether wetlands must be "indistinguishable from covered waters" in order to be "regulable" under the CWA. Pet. 18; see Pet. i, 3-4. That issue does not warrant this Court's review.

Petitioner did not raise in either of the courts below the question whether *Sackett* imposes an "indistinguishability" requirement. Pet. 18. In the district court, petitioner argued only that he had "[c]onstitutionally enumerated and protected rights" to build on his private property. D. Ct. Doc. 240, at 1. And in the court of appeals, petitioner's only CWA-related argument was that his property contains "no surface water and no surface water connection." Pet. C.A. Br. 11 (capitalization omitted); see *id.* at 6-7, 12. Indeed, the word "indistinguishable" appeared only once in petitioner's merits briefs on appeal, as part of a quotation of a passage from the plurality opinion in *Rapanos* v. *United States*, 547 U.S. 715 (2006). Pet. C.A. Reply Br. 16. Neither there nor anywhere else in his briefs did petitioner contend that the Court had imposed a standalone "indistinguishability" requirement. By failing to raise the issue below, petitioner has forfeited any argument that such a require-

ment exists. See, *e.g.*, *United States* v. *Jones*, 565 U.S. 400, 413 (2012) (deeming forfeited an argument not raised or addressed below).

The courts below likewise did not consider whether *Sackett* imposes an "indistinguishability" requirement. The court of appeals understood petitioner's only CWA-related argument on appeal to be that "the case should have been dismissed because there is no surface water on his property." Pet. App. 5a (citing Pet. C.A. Br. 6-7). With respect to that argument, the court of appeals concluded that petitioner had "not shown that the district court [had] erred," *id.* at 6a, without addressing whether any "indistinguishability" requirement exists.

"Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them." *Zobrest* v. *Catalina Foothills Sch. Dist.*, 509 U.S. 1, 8 (1993) (citation omitted). Petitioner provides no reason to depart from that principle here. Accordingly, the petition for a writ of certiorari, including its request for summary reversal (Pet. 4 n.1, 32-34), should be denied.

2. Petitioner also contends that, under *Sackett*, "any surface connection between water and wetland must be aquatic." Pet. 23; see Pet. 22 (arguing that *Sackett* requires that there be "a continuous surface *water* connection between a wetland and covered water"). But even assuming that the question whether *Sackett* imposes an "aquatic surface connection requirement" (Pet. 23) is fairly included within the question presented, see Sup. Ct. R. 14.1(a), that issue does not warrant this Court's review.

By his litigation conduct below, petitioner "admitted" that a surface-water connection exists between the wetlands on his property and covered waters. Pet. App. 28a;

see p. 7, *supra*. During discovery, the government served on petitioner a set of requests for admission that asked him to admit, among other things, that he (or others working under him) had placed dredged or fill material into wetlands "that are hydrologically connected by surface waters to navigable waters." D. Ct. Doc. 224-3, at 7. After petitioner "failed to respond" to the government's requests within the period specified by Rule 36, the district court deemed the facts asserted in those requests —including the fact that the wetlands on his property "are hydrologically co*nnected by surface waters* to navigable waters"—to have been "admitted by [petitioner] and conclusively established." Pet. App. 28a-29a. The court also noted that Dr. Earles's "undisputed" expert report "shows that continuous surface flow paths link the wetlands with the Unnamed Tributary." *Id.* at 33a. And on appeal, the Second Circuit held that petitioner had "fail[ed] to rebut the expert report concluding that his property had wetlands connected to traditional navigable waters." *Id.* at 5a.

Petitioner nevertheless characterizes the court of appeals' decision as "reject[ing]" the existence of an "aquatic surface connection requirement." Pet. 23; see Pet. 24 n.11 (describing the decision below as "reject[ing]" a "surface *water* connection requirement"). According to petitioner (Pet. 22-23), the court rejected such a requirement when it stated that "the CWA does not require surface water but only soil that is regularly 'saturated by surface or ground water.'" Pet. App. 5a (quoting 33 C.F.R. 328.3(c)(1)). Petitioner misreads that sentence of the court's opinion.

Throughout this case, the government has explained that establishing a Section 1311 violation requires proof that "(1) the areas in which the fill activities occurred sat-

isfy the regulatory definition of a wetland and (2) those wetlands are 'waters of the United States' * * * within the regulatory jurisdiction of the CWA." D. Ct. Doc. 224-1, at 33; see pp. 4-6, *supra*. The district court's analysis tracked those two prongs, see Pet. App. 29a-33a, and the government's brief on appeal emphasized the distinction between them, see Gov't C.A. Br. 24; pp. 8-9, *supra*. Accordingly, the court of appeals' decision should likewise be read as tracking those two prongs, by first addressing 33 C.F.R. 328.3(c)(1)'s definition of "wetlands" and then addressing the connection between the wetlands and jurisdictional waters. See Pet. App. 5a. Petitioner therefore is wrong in characterizing (Pet. 23) the sentence of the court of appeals' decision that quotes and relies on the regulatory definition as a "rejection of an aquatic surface connection requirement." That sentence addresses only the first prong, not the second.[2]

In his petition for a writ of certiorari, petitioner does not appear to dispute the existence of *some* surface-water connection between the wetlands on his property and jurisdictional waters. Indeed, he appears to acknowledge that a "surface water connection" exists at least "during rainfall-runoff events." Pet. 6; see Pet. 32. Petitioner appears to dispute (Pet. 32) only whether such a "surface water connection" is sufficiently "*continuous*." In the courts below, however, petitioner did not argue that the relevant "surface water connection" was insufficiently

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[2] In a footnote, petitioner contends (Pet. 24 n.11) that the court of appeals' "rejection of a surface *water* connection requirement" conflicts with the Eleventh Circuit's decision in *Glynn Environmental Coalition, Inc.* v. *Sea Island Acquisition, LLC*, 146 F.4th 1080 (2025), cert. denied, 2026 WL 795140 (2026) (No. 25-908). But because the court of appeals in this case did not reject such a requirement, the asserted conflict does not exist.

continuous. To the extent that petitioner addressed the issue at all, he seemed to dispute only whether any such "surface water connection" existed. Pet. C.A. Br. 11. The courts below thus had no occasion to address the continuity of the surface-water connection between petitioner's wetlands and the unnamed tributary of the Farm River. Accordingly, this case would be a poor vehicle for considering the surface-water-connection issue that petitioner now raises.

3. This Court's review also is unwarranted because the meaning of "waters of the United States" is the subject of a pending rulemaking by EPA and the Corps. Last November, the agencies published a proposed rule that would interpret the term "[c]ontinuous surface connection" to mean "having surface water at least during the wet season and abutting (*i.e.*, touching) a jurisdictional water." 90 Fed. Reg. at 52,546 (emphasis omitted). The agencies also sought public comment on alternative approaches to the meaning of "continuous surface connection," including one that would require "the perennial presence of surface water (*i.e.*, year-round) over the wetland," *id.* at 52,529, and another that would require only that the wetland "abut[]" a jurisdictional water, *id.* at 52,530. The public-comment period closed on January 5, 2026. *Id.* at 52,498. The agencies have not yet taken final action on the rule.

There is no sound reason for this Court to intervene while the agencies' rulemaking is ongoing. This Court's consideration of the requisite connection between wetlands and jurisdictional waters would benefit from the agencies' consideration of that issue in light of public comments. Granting review at this juncture would preempt the agencies' rulemaking process and risk foreclosing some of the options the agencies are considering.

Moreover, this case is in an "interlocutory" posture. Pet. App. 4a (brackets and citation omitted); see Pet. 13 n.6 (acknowledging that "[t]he remedy phase is ongoing"). The "restorative injunction" entered by the district court is "not permanent." Pet. App. 44a. And the district court "has not issued a 'final decision' within the meaning of 28 U.S.C. § 1291 because it has not decided whether to impose civil penalties and if so how much." *Id.* at 3a-4a. Accordingly, if and when the agencies issue a final rule on the meaning of "waters of the United States," petitioner could have the opportunity before final judgment to obtain the benefit of that rule, including by asking for the injunction against him to be modified if the rule supports that request. The interlocutory posture of this case makes the Court's review particularly unwarranted at this time. See *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) (concluding that the interlocutory posture of a case "furnished sufficient ground for the denial of [an] application").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
ROBERT N. STANDER
Deputy Assistant Attorney General
BRIAN C. TOTH
Attorney

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