IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

RMS OF GEORGIA, LLC D/B/A CHOICE REFRIGERANTS,

Applicant,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

APPLICATION TO THE HON. CHIEF JUSTICE JOHN G. ROBERTS, JR. FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Pursuant to Supreme Court Rule 13(5), RMS of Georgia, LLC d/b/a Choice Refrigerants, hereby moves for an extension of time of 30 days, to and including January 28, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be December 29, 2025.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the District of Columbia Circuit rendered its decision on August 1, 2025 (Exhibit 1), and denied a timely petition for rehearing on September 30, 2025 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns who must decide which private parties are permitted to participate in the multibillion-dollar refrigerant industry: the people's elected representatives, or unaccountable bureaucrats in an administrative agency.

3. Choice Refrigerants ("Choice") is a small business that manufactures refrigerants, including a patented blend of hydrofluorocarbons ("HFCs"). In 2020, Congress passed the American Innovation and Manufacturing Act of 2020 ("AIM Act") to facilitate the phasedown of HFCs. 42 U.S.C. § 7675. Congress established a cap-and-trade framework that would gradually limit the amount of HFCs that can be produced or imported in phases and then allocate those capped HFCs to market participant through "allowances." These allowances are the only way for parties to permissibly participate in the HFCs market. The AIM Act tasked the Environmental Protection Agency ("EPA") with administering the cap-and-trade program. But while the statute provides meaningful guidance on how the EPA should determine the HFCs cap for each phase, it gives no instruction on how the EPA must allocate the allowances. The Act simply provides that the EPA "shall issue a final rule … phasing down the production of [HFCs] in the United States through an allowance allocation and trading program in accordance with this section." *Id*. §7675(e)(3)(A). Put differently, the AIM Act contains no guidance, instructions, or limits on how the EPA should decide which parties are allowed to participate in the HFCs market.

4. In 2021, the EPA created a framework for implementing the AIM Act that would cover the issuance of allowances for a period of two years. *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program*

Under the American Innovation and Manufacturing Act, 86 Fed. Reg. 55,116, 55,118 (Oct. 5, 2021). Recognizing its "considerable" and "significant" discretion in assigning allowances (a considerable and significant understatement, given that the statute provides no principle to guide the EPA whatsoever), the EPA ultimately opted to assign allowances based on companies' historic HFCs production or consumption. *Id.* at 55,145. The 2021 framework only covered two years, so the EPA later adopted a new framework that would cover the 2024-2028 period. *Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years*, 87 Fed. Reg. 66,372, 66,377-78 (Nov. 3, 2022). The new framework continued to assign allowances based on historic usage. As a result of this approach, Choice received fewer allowances than its pre-AIM Act market share warranted: about 30% fewer allowances than if EPA had chosen a system that reflected actual market share. *See* 2024 *Allocation Notice*, 88 Fed. Reg. 72,060, 72,063 (Oct. 19, 2023). Choice timely filed a petition for review of this 2024 framework.

5. The Constitution gives Congress, and Congress alone, the power to legislate. U.S. Const. art. I, §1. It is well established that "[a]ccompanying that assignment of power to Congress is a bar on its further delegation: Legislative power, [the Supreme Court has] held, belongs to the legislative branch, and to no other." *Fed. Commc'ns Comm'n v. Consumers' Rsch.*, 606 U.S. 656, 672 (2025) (citing *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 472, (2001)). Thus, Congress cannot delegate to administrative agencies the "power to make the law,

which necessarily involves a discretion as to what it shall be." *J.W. Hampton, Jr., & Co. v. United States,* 276 U.S. 394, 407 (1928).

6. Yet that is precisely what the AIM Act does. Determining the right of industry stakeholders to participate in the HFC market (and to what extent) is a quintessential legislative question. *See INS v. Chadha*, 462 U.S. 919, 952 (1983) (legislative action "ha[s] the purpose and effect of altering the legal rights, duties, and relations of persons"). Thus, because the AIM Act grants the EPA unbounded discretion in issuing allowances, it constitutes an impermissible delegation of legislative power.

7. To be sure, Congress is permitted to delegate some decisionmaking authority to agencies, provided the delegation is accompanied by "an intelligible principle to which the person or body authorized to [act] is directed to conform." *J.W. Hampton*, 276 U.S. at 409. But, in doing so, Congress must "delineate[] the general policy, the public agency which is to apply it, and the boundaries of this delegated authority." *Mistretta v. United States*, 488 U.S. 361, 373 (1989) (citation omitted). Here, however, Congress has supplied no limit whatsoever on the EPA's authority to decide who should receive allowances. There is no principle in the statute. That abdication of legislative responsibility leaves the economic future of market participants—like Choice—to the unrestrained whims of unelected bureaucrats.

8. The EPA does not deny that it has virtually unchecked discretion to determine who receives allowances and in what amounts—effectively the power to decide which companies live and which companies die. Instead, it claims that because

Congress supplied guidelines on *other* aspects of the AIM Act's requirements, it need not have done so for the allowances. Specifically, the EPA highlights that Congress set caps for the overall number of HFCs that can be produced or imported and determined that this cap should be allocated through allowances. But those delegations do not solve the problem; if anything, they underscore it. The fundamental problem with this regime is that Congress provided no principle or limit on *how* the EPA should allocate those allowances. This is not, as EPA contends, "one narrowly circumscribed slice of discretion" left to the agency; it is the fundamental question that ultimately determines the rights of each market participant. Because nothing in the Act limits the EPA's authority to award allowances, that grant of life-or-death authority constitutes an unconstitutional delegation of legislative power.

9. The D.C. Circuit got things (at most) half-right. The court of appeals refused to endorse the EPA's bold contention that because Congress provided guidance on some issues, it did not have to supply an intelligible principle for allocating allowances. But rather than recognize the consequences of that conclusion, the D.C. Circuit forced an atextual interpretation onto the AIM Act—one even the EPA rejects—to manufacture an intelligible principle that is manifestly absent. The court held that the statute requires the EPA to allocate allowances according to participants' market share, and that this (nowhere codified) market-share requirement is a sufficiently concrete guidepost to satisfy delegation concerns. *iGas Holdings, Inc. v. Env't Prot. Agency*, 146 F.4th 1126, 1138 (D.C. Cir. 2025). But while market-share allocation may be "[a] natural way to allocate the allowances," *id.* at

1139, nothing in the statutory text mandates that the EPA must adopt that approach. Instead, the court relied on legislative history to create a parallel between the AIM Act and the Clean Air Act, and then assumed that because the Clean Air Act requires market-share allocation, the AIM Act should be similarly interpreted. *Id.* That interpretation cannot be squared with the plain text of the statute, which unambiguously vests boundless discretion in the EPA to determine who should receive allowances. *See Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017) ("[C]ourts must give effect to the clear meaning of statutes as written.").

10. Indeed, the EPA itself rejects the D.C. Circuit's forced reading that its authority to allocate allowances is constrained by market share. The EPA describes its allocation authority as "considerable" and "significant." 86 Fed. Reg. at 27,166; 27,178. And it affirmatively considered whether to allocate allowances based on an auction system—a method that is obviously unconnected from market share. *Id.* at 27,203. The D.C. Circuit's anomalous decision to contort the plain text of the Act rather than confront the obvious nondelegation problem the statute creates calls for this Court's intervention. After all, if it takes a court of appeals rewriting a statute to "avoid" the non-delegation problem, then the cure is no better than the ailment, as courts, no less than agencies, have license to wield legislative power.

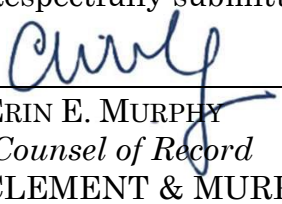
11. Applicant's counsel of record in this Court, Erin E. Murphy, was not involved in the proceedings below, and was only recently retained to represent Applicant in preparing a petition for certiorari to this Court. Applicant's counsel accordingly requires additional time to review the record of the proceedings below

and the applicable precedent in order to prepare and file a petition that will best present the issues for this Court's review.

12. Applicant's counsel thus requests a modest extension of 30 days.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including January 28, 2026, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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December 18, 2025