



1           IN THE SUPREME COURT OF THE UNITED STATES  
 2   - - - - -  
 3   HOLLYFRONTIER CHEYENNE REFINING,           )  
 4   LLC, ET AL.,                                        )  
 5                                    Petitioners,                        )  
 6                                    v.                                        ) No. 20-472  
 7   RENEWABLE FUELS ASSOCIATION, ET AL.,    )  
 8                                    Respondents.                        )

9   - - - - -  
 10                                   Washington, D.C.  
 11                                   Tuesday, April 27, 2021

12  
 13                                   The above-entitled matter came on  
 14   for oral argument before the Supreme Court of the  
 15   United States at 10:00 a.m.

16  
 17   APPEARANCES:

18  
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 20                                   of the Petitioners.  
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 22                                   General, Department of Justice, Washington, D.C.;  
 23                                   on behalf of the Federal Respondent.  
 24   MATTHEW W. MORRISON, ESQUIRE, Washington, D.C.; on  
 25                                   behalf of the Private Respondents.

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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear  
4 argument first this morning in Case 20-472,  
5 HollyFrontier Cheyenne Refining versus Renewable  
6 Fuels Association.

7 Mr. Keisler.

8 ORAL ARGUMENT OF PETER D. KEISLER

9 ON BEHALF OF THE PETITIONERS

10 MR. KEISLER: Mr. Chief Justice, and  
11 may it please the Court:

12 The statute establishing the Renewable  
13 Fuel Standard exempted all small refineries from  
14 its requirements for the first years of the  
15 program and authorizes them individually to seek  
16 extensions of that exemption at any time based  
17 on hardship.

18 The question here is whether it  
19 prohibits EPA from granting a hardship exemption  
20 to a small refinery that hasn't been  
21 continuously exempt for all prior years.

22 Respondents claim it does. Under  
23 their view, a small refinery can receive  
24 exemptions indefinitely but only if it's never  
25 able to comply without hardship. If there's

1 even one year in which it can comply without  
2 hardship, it's then disqualified for all future  
3 years.

4           Nothing in the statute's text imposes  
5 this unique prohibition. Respondents' argument  
6 rests on the word "extension," which they  
7 contend should be read temporally here to mean  
8 an increase in a length of time.

9           But even if "extension" is read in its  
10 temporal sense, that does not require  
11 continuity. No dictionary defines "extension"  
12 to require continuity. And Congress has used  
13 the term elsewhere when it's specifically  
14 authorizing the temporal resumption of a benefit  
15 after a lapse. And where Congress has wanted to  
16 limit the term in the way Respondents urge, it's  
17 added limiting words, like "successive" or  
18 "consecutive," which it didn't do here.

19           A continuity requirement would also be  
20 contrary to this statute's purposes. The  
21 statutory design is to impose burdens that  
22 escalate dramatically over time. As the  
23 Department of Energy explained in 2011, some  
24 small refineries will face inherent and  
25 disproportionate hardships that will only arise

1 or that will increase as those mandates grow.

2 Driving those small refineries out of  
3 the market would undermine the statute's energy  
4 independence goals, and that's one of the  
5 reasons Congress authorized them to petition at  
6 any time based on hardship.

7 I welcome the Court's questions.

8 CHIEF JUSTICE ROBERTS: Mr. Keisler,  
9 under your reading, which -- "extend" means to  
10 grant, you know, you extend an offer or extend  
11 condolences, could an entirely new refinery  
12 apply for an extension to it of a hardship --  
13 hardship exemption? In other words, coming onto  
14 the scene for the first time, they would, under  
15 your view, I think, have to ask for an  
16 extension?

17 MR. KEISLER: Yes, Mr. Chief Justice.  
18 If the Court adopted the make-available meaning  
19 of extension, then, yes, a completely new  
20 refinery that came into existence after the  
21 initial period would still be able to seek an  
22 extension of the exemption.

23 But the Court could also construe  
24 "extension" in the temporal sense without  
25 requiring continuity, and in that case, it's

1 certainly arguable that a new entrant would not  
2 be able to get an extension of the initial  
3 exemption, because it didn't have one, without  
4 there being any requirement that the extensions  
5 have been continuously enjoyed by others.

6 CHIEF JUSTICE ROBERTS: Well, which of  
7 those two readings of "extension," I guess, each  
8 one of which you embrace, do you think is the  
9 right one?

10 MR. KEISLER: If we were forced to  
11 choose, Your Honor, we would acknowledge that  
12 reading "extension" in that temporal sense  
13 without continuity would enable the Court to  
14 avoid having to decide whether this is one of  
15 those instances in which the same word has  
16 different meanings within the same statute, and  
17 so, for that reason perhaps, that might be a  
18 preferred reading.

19 But even in that circumstance, our key  
20 point would be that even the temporal meaning of  
21 "extension" does not require continuity.  
22 Congress has used it in exactly the other way  
23 multiple times, and no dictionary says that the  
24 temporal meaning of "extension" requires  
25 continuity.

1 CHIEF JUSTICE ROBERTS: Well, it seems  
2 like your sort of "any port in a storm" reading  
3 of this statute -- I'm not sure that -- I'm not  
4 sure that's the strongest position.

5 MR. KEISLER: Well, then, Your Honor,  
6 we would be happy to rely on the other  
7 construction of "extension" as well because  
8 "extension" is often used when there is some  
9 preexisting stat -- separately authorized  
10 benefit and it is being extended or made  
11 available to a different setting or time period  
12 or set of recipients, just like in 2015 when  
13 Congress enacted what it called an extension of  
14 Privacy Act remedies to citizens of certain  
15 foreign countries. It is a word that Congress  
16 often use when it is enlarging or extending the  
17 scope of a preexisting benefit.

18 And we'd, of course, be happy with  
19 that reading here as well. Our principal point  
20 is that there is no basis under either reading  
21 to impute a continuity requirement to the word.

22 CHIEF JUSTICE ROBERTS: So this really  
23 is a -- a freestanding exemption, and -- in your  
24 view, and I wonder -- I'm not saying it's an  
25 inconceivable construction, but is this the --



1 what you might expect if Congress were going to  
2 provide a freestanding exemption, that they  
3 would do it in this sort of roundabout way?

4 MR. KEISLER: I don't think it's all  
5 that roundabout, Mr. Chief Justice.

6 First of all, in subparagraph  
7 (B)(iii), that is exactly how Congress referred  
8 to this. It referred to the same petition and  
9 the same relief as simply a hardship exemption.  
10 It omitted the word "extension" entirely, which  
11 we think weighs strongly against Respondents'  
12 effort to ascribe such a transformative meaning  
13 to that single word.

14 In addition, this is a statute in  
15 which the obligations, as I said, intensify  
16 dramatically over time, and it seems implausible  
17 to think that Congress meant that merely being  
18 able to comply for one year in the early years  
19 of the program would mean that a small refinery  
20 would never warrant hardship relief ever again.

21 CHIEF JUSTICE ROBERTS: Counsel, I --  
22 I -- I think you would agree that there's no  
23 Chevron deference issue here because the agency  
24 has changed its position, is that right?

25 MR. KEISLER: Well, we don't agree

1 with that, Your Honor. Although, of course, we  
2 think the statute should be construed the way we  
3 urge without regard to Chevron, we do think that  
4 there is deference here because EPA adopted this  
5 interpretation in a notice and comment  
6 rulemaking in 2014, and it hasn't changed that  
7 rule.

8 CHIEF JUSTICE ROBERTS: Well, the  
9 agency doesn't abide by the same position. Are  
10 you saying just it didn't do that through notice  
11 and comment?

12 MR. KEISLER: Well, that's part of it,  
13 Your Honor, but it's also the fact that these  
14 are agency adjudications. We filed our  
15 petitions under the existing rule, and that rule  
16 has the force of law if it's lawful.

17 And, under Chevron, it's lawful if it  
18 either implements the clearly expressed intent  
19 of Congress or reasonably resolves statutory  
20 ambiguities, even --

21 CHIEF JUSTICE ROBERTS: Thank --

22 MR. KEISLER: -- in a court's --

23 CHIEF JUSTICE ROBERTS: -- thank you,  
24 counsel.

25 Justice Thomas.

1 JUSTICE THOMAS: Thank you, Mr. Chief  
2 Justice.

3 Mr. Keisler, the Chief Justice has  
4 covered most of the ground I was interested in,  
5 but I am interested in this. For you to  
6 prevail, would your reading have to be the more  
7 normal reading of "extension" or simply one of  
8 -- one possible reading of -- of the word  
9 "extension"?

10 MR. KEISLER: I think I would perhaps  
11 put it in a third way, Justice Thomas, which is  
12 we think it is the best reading of the word in  
13 the context of this particular statute, both the  
14 other text, like the words "at any time," and  
15 the statutory purposes I alluded to anyway --  
16 earlier.

17 Even if there was some tie breaker  
18 needed, we would then say that, as I just  
19 indicated, we think Chevron deference should be  
20 accorded to the earlier 2014 rulemaking. But we  
21 don't rely on that because we think we are  
22 urging the best reading of the statute.

23 JUSTICE THOMAS: This seems a little  
24 bit odd to think of an extension for something  
25 that has already terminated, you know, it's odd,

1 if I were to lose -- if my electricity is turned  
2 off because I failed to pay a bill and then I  
3 paid it or is that -- or I get a reprieve, is  
4 that an extension or is that a grace period? It  
5 just seems rather odd to read it that way.

6 MR. KEISLER: I -- I think this is a  
7 word, Justice Thomas, that's highly sensitive to  
8 context, and I think there are certainly some  
9 contexts like the one you just mentioned in  
10 which one would wouldn't think of what we're  
11 talking about as an extension.

12 But, here, in the context of  
13 government benefits that lapse and then resume,  
14 Congress has specifically used the word  
15 "extension" to describe a resumption after a  
16 lapse. It did so twice because this has been  
17 happening recently in light of the pandemic,  
18 where Congress has resurrected benefit programs  
19 that had previously lapsed, in one case, more  
20 than six years ago.

21 And in each of those cases that we  
22 described in our brief, Congress labeled the  
23 resumption of a program that had been lapsed and  
24 unavailable, in one case, for a period of years,  
25 as an extension of that program.

1           So we think the context to focus on  
2 here is the one in which Congress is acting on  
3 benefit programs that have lapsed, and, there,  
4 Congress has said benefits resumed after a lapse  
5 can be an extension.

6           In addition, as I indicated, where it  
7 has wanted to limit the word "extension" to be  
8 only continuous, it has felt the need to add  
9 words like "consecutive" or "successive,"  
10 consecutive extensions or extensions for  
11 successive periods.

12           And under Respondents' view, all of  
13 the many statutes that talk about extensions for  
14 successive or consecutive periods, the words are  
15 all surplusage.

16           JUSTICE THOMAS: And along that line,  
17 how much weight do you put on the -- the phrase  
18 "may at any time"?

19           MR. KEISLER: I think it's a very  
20 important phrase, Your Honor. That is the  
21 broadest possible temporal language. And it is  
22 inconsistent, we think, with any understanding  
23 of subparagraph (B) that treats it as  
24 transitional or temporary or designed to sunset.

25           Subparagraph (A) is captioned

1 temporary. Subparagraph (A) is filled with time  
2 limits and deadlines, but Congress then broke  
3 this petition process out into a separate  
4 subparagraph (B), lacking the word temporary,  
5 lacking all those temporal words, and including  
6 the broadest possible temporal language "at any  
7 time."

8           And we think what that signifies, Your  
9 Honor, is that these two subparagraphs are  
10 dealing with two different periods, subparagraph  
11 (A), with the initial periods of the program in  
12 which initial broad relief was applied to  
13 everybody, and subparagraph (B), reserving the  
14 right to give relief to individuals with  
15 hardship as the demands of the statute ratchet  
16 up.

17           JUSTICE THOMAS: Thank you.

18           CHIEF JUSTICE ROBERTS: Justice  
19 Breyer.

20           JUSTICE BREYER: Good morning. The --  
21 the other argument that was -- I believe it's in  
22 the lower court and that the Respondents make is  
23 Congress had a good reason for making this a  
24 single connected exemption. They wanted to  
25 phase out the exemptions over time and

1 gradually, if this exemption would end, as it  
2 would, or become narrow under their  
3 interpretation, it would, there would be fewer  
4 and fewer companies that were exempt, and that  
5 would mean more and more would have to figure  
6 out some way of making do with the program.

7 And that's what they wanted. What's  
8 your response?

9 MR. KEISLER: Well, those are the two  
10 competing narratives of what is going on here,  
11 Justice Breyer. We have said the provision is  
12 meant as a safety valve for when hardship occurs  
13 as the demands of the program ratchet up.

14 Our friends on the other side say it  
15 was supposed to be a funnel, one which actually  
16 would funnel some small refineries out of the  
17 market to the extent that they couldn't comply.

18 And we think there are several reasons  
19 why the safety valve and not the funnel metaphor  
20 is right here.

21 First of all, as I mentioned a moment  
22 ago, this is a statute in which the burdens  
23 escalate over time and the petition is supposed  
24 to be based on hardship. It seems implausible  
25 to think that Congress would assume that an

1 early ability for a year to comply would mean  
2 there would be no need in the future.

3           Second, the purposes of the statute  
4 are all served by our interpretation because  
5 Congress wanted both to ensure that the volume  
6 requirements of blended fuel are met and that  
7 small refineries are protected. And EPA now has  
8 an approach in which it will slightly increase  
9 the applicable percentage to take account for  
10 the projected small refinery exemptions in the  
11 next year.

12           That means that every goal gets  
13 served. The small refineries get protected and  
14 the statutory volumes all get blended. But,  
15 conversely, if the Respondents' interpretation  
16 is adopted, it will force some small refineries  
17 out of the market, which is a kind of  
18 contraction of refining capacity that doesn't  
19 serve Congress's energy independence goals, but  
20 you wouldn't get a single drop of additional  
21 fuel blended.

22           And finally, the anomalies I referred  
23 to in my opening statement, similarly situated  
24 refineries, both facing identical hardship, get  
25 treated oppositely because one of them, several



1 years ago, when the statutory demands were  
2 lighter, is able -- was able to comply, or the  
3 refinery that is never able to comply without  
4 hardship gets exemptions indefinitely because  
5 they're continuous, but the refinery that  
6 occasionally can comply is driven out.

7 None of that, we think, commends  
8 Respondents' view of this statute. We think it  
9 is a safety valve and not a funnel.

10 JUSTICE BREYER: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice Alito.

12 JUSTICE ALITO: Mr. Keisler, you and  
13 the -- and Respondents have different accounts  
14 of the purpose of the Act. But it's always  
15 difficult to interpret an act in light of its  
16 purposes, so -- because acts serve multiple  
17 purposes. So let's put that aside and look at  
18 the text.

19 You're right, "extension" can mean two  
20 different things. It can mean what you think it  
21 means. It can mean what Respondents think it  
22 means. I don't know whether that's a wash, but  
23 both of those are possible.

24 The best textual hook I think you have  
25 is the "at any time" argument, but there are

1 some other accounts of the role that that's  
2 supposed to play and the role that it plays, and  
3 I'd appreciate it if you would address those.

4 One is that it meant to -- it meant to  
5 indicate that a party can -- a small refinery  
6 can seek an extension after the -- the finding  
7 that's made on November 30. Why isn't that a  
8 plausible explanation of its meaning?

9 MR. KEISLER: Well, I think that is  
10 certainly one scenario, Justice Alito, in which  
11 it would be applied, but it is a very narrow and  
12 specific focus and limitation for the broadest  
13 possible temporal language possible.

14 You know, the Tenth Circuit said that,  
15 well, it says you can file it at any time, but  
16 that doesn't mean it can be granted at any time.  
17 You know, we --

18 JUSTICE ALITO: I know. That's not --  
19 let's put that one aside. But what about the --  
20 the November 30 deadline? So it's -- it's  
21 narrow, but it's a possible explanation?

22 MR. KEISLER: Well, I don't think it's  
23 a full and sufficient explanation, though,  
24 because, under the court of appeals' view, the  
25 ability to file a petition that can be granted

1 ceases once a small refinery has had one good  
2 year. That's not at any time.

3 So it's not simply that Respondents  
4 have a view that attributes only a very narrow  
5 purpose to the broadest possible language. It  
6 also cuts out some obvious applications of that  
7 language when Congress has said these petitions  
8 can be filed at any time based on hardship.

9 JUSTICE ALITO: Let me come back to  
10 the -- the question you were talking about with  
11 the -- with the Chief Justice, and that is  
12 whether a -- a small refinery that did not get  
13 an exemption under (A) could ask for a hardship  
14 exemption under (B).

15 How is that possible? Because the  
16 first part of (B) says a small refinery may at  
17 any time petition the administrator for an  
18 extension of the exemption under subparagraph  
19 (A). So why doesn't that mean that the refinery  
20 must have had one under (A) in order to ask for  
21 one under (B)?

22 MR. KEISLER: I think that is one  
23 reading, Justice Alito, but not the only  
24 necessary reading. If it were that reading, all  
25 the refineries here would still get the

1 extension because they all had the initial  
2 exemption.

3 But, with respect to the specific  
4 question, if one reads "extension" as make  
5 available, the way we talk about extensions of  
6 credit or extensions of other government  
7 benefits, then you wouldn't need to have had an  
8 exemption under subparagraph (A) to get an  
9 extension of that exemption because, as I  
10 mentioned earlier, "extension" is often used  
11 when there's a preexisting benefit that is then  
12 being enlarged with the scope being provided to  
13 some new set or new setting.

14 And, here, what that phrase would mean  
15 is that the terms of the exemption in  
16 subparagraph (A), which is where it's defined as  
17 the requirements of paragraph (ii) shall not  
18 apply, the terms of the exemption in  
19 subparagraph (A) are being extended to the  
20 petitioning small refinery.

21 JUSTICE ALITO: What do you think is  
22 the -- suppose you're right that the -- the  
23 exemptions don't have to be continuous. What do  
24 you think is the standard that the EPA is to  
25 apply under (B)?

1                   I don't really see any standard. To  
2 what -- is this -- to what degree is this purely  
3 a matter of EPA discretion?

4                   MR. KEISLER: I think it is limited,  
5 Your Honor, by phrases like "disproportionate  
6 economic hardship." "Disproportionate," in  
7 particular, requires the EPA find -- to find  
8 that the small refiner in question is  
9 experiencing some type of disadvantage or  
10 hardship that is distinct from simply what  
11 anybody else in the market might be  
12 experiencing.

13                   And the reason Congress established  
14 these separate provisions is that it understood  
15 that small refineries have several inherent and  
16 structural disadvantages that set them apart and  
17 that can, in certain circumstances, give rise to  
18 a level of hardship from compliance here that  
19 far exceeds those of their larger competitors.

20                   JUSTICE ALITO: Thank you.

21                   CHIEF JUSTICE ROBERTS: Justice  
22 Sotomayor.

23                   JUSTICE SOTOMAYOR: Counsel, just for  
24 me to be sure or clear, I thought the circuit  
25 below disagreed with your interpretation of what

1 "economic hardship" means. I thought the  
2 circuit below thought that it meant you had to  
3 have a particular hardship relating to blending  
4 the fuels or buying the credits. Am I wrong  
5 about that?

6 MR. KEISLER: No, you're right,  
7 Justice Sotomayor. The -- the lower courts felt  
8 that the EPA had not applied a strict enough  
9 causation standard because it took into account  
10 both the fact that the market was experiencing a  
11 difficult year, combined with the individual  
12 circumstances of the small refinery and the  
13 costs it had to bear in complying --

14 JUSTICE SOTOMAYOR: So your --

15 MR. KEISLER: -- with the statute.

16 JUSTICE SOTOMAYOR: -- so your answer  
17 to Justice Alito basically means that there's  
18 still a fight -- there's still a fight --  
19 there's still a dispute going on below?

20 MR. KEISLER: Yes, Your Honor.  
21 There's going to have to be a remand even if we  
22 prevail here so that the other issues raised by  
23 the Tenth Circuit can be addressed by EPA. But,  
24 if the Tenth Circuit is affirmed, there will be  
25 no remand because we'll just be statutorily

1 foreclosed from relief.

2 JUSTICE SOTOMAYOR: Now, secondly, you  
3 keep speaking about how Congress has acted in  
4 other statutes, other relief statutes that it's  
5 given at different times. But let's look at  
6 this particular one.

7 Is there any use of the word  
8 "extension" anywhere in this statute --  
9 elsewhere in this statute that doesn't have a  
10 temporal continuity meaning?

11 MR. KEISLER: Yes, Justice Sotomayor.

12 JUSTICE SOTOMAYOR: What --

13 MR. KEISLER: I think --

14 JUSTICE SOTOMAYOR: -- what other  
15 section besides the one at issue?

16 MR. KEISLER: Section (o)(7)(E)(iii),  
17 which we address in Footnote 7 of our reply  
18 brief. That's the situation in which, if  
19 there's a feedstock disruption, EPA can waive  
20 certain requirements for up to 60 days.

21 And then (e)(7)(O)(iii) says that in  
22 the event that disruption is continuing beyond  
23 the expiration of that period, it can be  
24 extended for up to another additional 60 days.  
25 EPA certainly doesn't have to make the

1 determination that it is continuing beyond the  
2 initial 60-day period after it's expired, but it  
3 certainly can, and if it did, the extension  
4 would be non-continuous.

5           The other uses of "extension" in this  
6 statute, I would acknowledge, Justice Sotomayor,  
7 are continuous, but they're continuous because  
8 of features about those provisions because they  
9 all involve extensions of an effective date when  
10 some requirement will first take effect. And,  
11 of course, if an effective date is extended, it  
12 has to be continuous because, otherwise, it  
13 wouldn't work.

14           JUSTICE SOTOMAYOR: Well, counsel, I  
15 guess my biggest problem is that you say, in  
16 context, we should read this differently, and  
17 you're talking about the two interpretations,  
18 the competing interpretations of what the  
19 purpose might be of this statute.

20           But doesn't the use of the word  
21 "temporary" in the provision at issue suggest  
22 the other side's reading more than yours?

23           MR. KEISLER: I don't think so, Your  
24 Honor, because, as -- as you just said,  
25 "temporary" is in the other provision, in



1 subparagraph (A). And subparagraph (B) not only  
2 lacks that word; it says the opposite. It says  
3 "at any time."

4 JUSTICE SOTOMAYOR: But --

5 MR. KEISLER: And I would just add --

6 JUSTICE SOTOMAYOR: -- but the problem  
7 is that (B) defines what (A) is -- defines (A),  
8 and (A) is where you get the extension at all.

9 MR. KEISLER: Yes, but I don't think  
10 that means that subparagraph (B) carries over  
11 with it every aspect of subparagraph (A). For  
12 example, the extensions are going to be of  
13 different duration. There are all sorts of  
14 different terms about when they will be provided  
15 and -- and what conditions will be appended to  
16 them.

17 So I -- I think we understand  
18 subparagraph (B) as linked to subparagraph (A)  
19 in some respects and de-linked in others. It's  
20 linked because it is talking about the same  
21 relief, the same defined exemption from the  
22 requirements of subparagraph (ii), but it is  
23 de-linked because it's not temporary. It's at  
24 any time.

25 JUSTICE SOTOMAYOR: One last question.

1 On your alternative reading, the one that you  
2 suggested to the Chief Justice, if we were to  
3 accept that "extension" is not -- doesn't  
4 require continuity, wouldn't that result in the  
5 -- and I think you acknowledge that small  
6 refineries that came into the scene after 2006  
7 could never receive an exemption, correct?

8 MR. KEISLER: Under that reading, yes,  
9 Your Honor.

10 JUSTICE SOTOMAYOR: So, under that  
11 reading, basically, it is a sunset reading of  
12 this provision?

13 MR. KEISLER: Well, I don't think it's  
14 a sunset because the provision would continue to  
15 be available to everyone who's there when the  
16 program started, but, yes, if you newly came  
17 into existence as a small refinery, you would be  
18 ineligible. And for what it's worth, EPA in  
19 2016 suggested one reason why that might be so.

20 It injected a continuity requirement  
21 but it did say that new entrants shouldn't be  
22 able to get an extension, and they said that was  
23 because a new entrant comes into the world  
24 knowing this program exists and -- and can have  
25 planned for it, rather than one who had it

1 foisted upon it.

2 JUSTICE SOTOMAYOR: Thank you,  
3 counsel.

4 CHIEF JUSTICE ROBERTS: Justice Kagan.

5 JUSTICE KAGAN: Good morning, Mr.  
6 Keisler.

7 In -- in thinking about the ordinary  
8 meaning of this word, extension, I guess I'm --  
9 I'm wondering if you would comment on -- on this  
10 hypothetical. Suppose that I rented an  
11 apartment five years ago and I rented it for a  
12 year, and then I decided to give it up and five  
13 years later I'm now really tired of where I'm  
14 living now and I want to move back and I call  
15 the landlord and say: I'd like an extension of  
16 my lease.

17 What -- what would the landlord say?

18 MR. KEISLER: I think the landlord  
19 would scratch her head and think that's a very  
20 strange context in which to be using the word  
21 "extension." I agree with that.

22 And that, I think, is like the  
23 government's examples of the hotel guests or the  
24 people parking their cars. I think those may  
25 have a different connotation in part because

1 they involve rights, the physical occupation and  
2 because you go away and you then come back and  
3 we think of that as discontinuous.

4 And that's why we think the much more  
5 apt context here is how Congress has used the  
6 word in the context of government benefits and  
7 programs that existed, lapsed, and resumed.

8 JUSTICE KAGAN: Well, Mr. Keisler, I  
9 mean, let's think about it in this particular  
10 context. So there's a small refinery and -- and  
11 let's say that its initial exemption ended in  
12 2011, and since then it's been able to meet its  
13 renewable fuel obligations and, indeed,  
14 continues to do so for -- for decades.

15 And then in the year, you know, 2040,  
16 30 years later, it runs into problems and it --  
17 it files a hardship petition. And you are  
18 saying in this context it's anymore an ordinary  
19 use of the word extension to say that after that  
20 30-year lapse, the small refinery gets its --  
21 its extension?

22 MR. KEISLER: We would, Your Honor.  
23 And while that's an extreme example, we think it  
24 is still more in keeping with the statutory  
25 purposes and text to permit the small refinery

1 in Your Honor's example to petition at any time.

2 That would be the --

3 JUSTICE KAGAN: I mean, I -- I  
4 guess -- I understand your argument about  
5 purpose, but I'm just trying to focus on the  
6 text here and -- and I -- I guess -- I don't  
7 know, explain the textual analysis to me.

8 MR. KEISLER: Well, I think it's a  
9 couple of things, Your Honor. First of all, the  
10 text says "at any time." And second of all,  
11 while the hypothetical is extreme and I think  
12 probably highly unlikely, it is, we think, no  
13 less extreme and much more contrary to the text  
14 and purpose to say that a refinery which had one  
15 good year in 2013, when the requirements of the  
16 program were so much more modest, somehow is  
17 foreclosed in 2016 when it faces real hardship  
18 from --

19 JUSTICE KAGAN: Well, I understand  
20 your purpose argument but I wouldn't think that  
21 that's a problem with the text. I mean, 2013,  
22 now it's 2016, that's not an extension. It's a  
23 resumption or a renewal or a something else, but  
24 it doesn't seem really like an extension.

25 MR. KEISLER: Well, I think it is an

1 extension, Your Honor, in the same way that  
2 Congress has used extensions in the other  
3 contexts I've mentioned. And I think that is  
4 fortified here by the fact that this extension  
5 can be sought at any time and that the relief is  
6 described in paragraph (B)(iii) as simply a  
7 hardship exemption without even using the word  
8 extension at all, which whatever else --

9 JUSTICE KAGAN: Well, thinking about  
10 that "at any time" language, Mr. Keisler, and --  
11 and Justice Alito talked about this too, and,  
12 you know, of course, that seems very general  
13 language, but if you look at this provision,  
14 it's -- it's, you know, essentially says look,  
15 you can get your extension by way of this study  
16 or then even if you're not identified in this  
17 study, you can petition for an extension at any  
18 time and -- and you -- you can do that even  
19 after the EPA determines the upcoming year's  
20 obligations, and you can do it even after a  
21 compliance year, so even after the year goes  
22 through and -- and you haven't met it and you're  
23 kind of asking for a backwards extension.

24 So that's a lot of "at any time" to  
25 give meaning to that -- to that phrase without

1     distorting the word of extension, without  
2     distorting the meaning of the word extension,  
3     isn't it?

4             MR. KEISLER: Well, I think it is some  
5     applications of at any time, but it would also  
6     be the case that there would be some instances  
7     in which the refinery couldn't petition at any  
8     time, in particular, any time after it had one  
9     year in which it could comply without hardship.

10            So I think Your Honor's interpretation  
11     permits them to do it at some times but not at  
12     any times. And I suppose I would just quarrel  
13     with the premise of the question that  
14     interpreting at any time in its natural way  
15     requires a distortion of the meaning of the word  
16     "extension."

17            Extension is a word of many meanings  
18     and it is frequently used in statutes the way we  
19     are recommending here.

20            JUSTICE KAGAN: And you said  
21     frequently, but I -- I think your brief only  
22     really has these two COVID examples in it. I  
23     mean, if you had written this brief last year,  
24     you would have had no examples.

25            MR. KEISLER: Well, I think the

1 pandemic is what's given rise to the need for  
2 Congress to resume programs that had it  
3 previously let lapse, but it's not just those  
4 two examples because we also think it's telling  
5 the negative examples we've described in which  
6 when Congress has wanted to define extension so  
7 as to impose a continuity requirement, it's used  
8 additional words like successive or consecutive,  
9 which under Respondents' reading are all  
10 surplusage.

11 JUSTICE KAGAN: Thank you, Mr.  
12 Keisler.

13 CHIEF JUSTICE ROBERTS: Justice  
14 Gorsuch.

15 JUSTICE GORSUCH: Good morning, Mr.  
16 Keisler.

17 You acknowledge in your briefs that  
18 extensions under (A)(ii)(II) are likely to be  
19 continuous during that first period of time,  
20 during the first five-year period, but you --  
21 you suggest that there -- it is at least  
22 possible that they might not be, that there  
23 could be discontinuity there too, which would  
24 strengthen your argument that there could be  
25 discontinuity under (B).



1           I -- I just want to explore that  
2           argument a little bit further.  It's footnote 6  
3           of your reply brief.  How do we know that the  
4           definition of small refineries would be applied  
5           and measured for each calendar year during that  
6           first five-year period rather than only once  
7           when the initial exemption was required?

8           MR. KEISLER:  Well, the question  
9           didn't come up, Justice Gorsuch, so I suppose we  
10          can't know for certain but the way the statute  
11          defines small refinery, it says that you have to  
12          meet the 75,000 barrel daily throughput for a  
13          calendar year.  That at least suggests that it  
14          was talking about an individual year.

15          So a refinery which started out as a  
16          small refinery and grew beyond that definition,  
17          we think, wouldn't be a small refinery in 2010  
18          and wouldn't have been entitled to the blanket  
19          exemption for that year.

20          JUSTICE GORSUCH:  Do we know for a  
21          fact whether there -- that ever happened,  
22          whether that the -- small refineries, some  
23          qualified initially and then didn't qualify  
24          later or vice versa during that first five-year  
25          period?

1 MR. KEISLER: I don't know whether  
2 that happened during the first five-year period.  
3 I do know that refineries have grown and shrunk  
4 in general beyond and within that definition  
5 during the broader life of the program.

6 JUSTICE GORSUCH: And has EPA treated  
7 them as small refineries during some periods and  
8 not others?

9 MR. KEISLER: Well, yes, because their  
10 current regulation, the one that was adopted in  
11 their 2014 eligibility rule, specifically says  
12 that the relevant year when a small refinery is  
13 applying is the year for which it's seeking the  
14 exemption and the immediately prior year. So it  
15 wouldn't matter under that regulation whether  
16 you were a larger refiner in earlier years.

17 JUSTICE GORSUCH: Has EPA disavowed  
18 that aspect of its regulation?

19 MR. KEISLER: Not that I know of, Your  
20 Honor.

21 JUSTICE GORSUCH: Okay. Thank you.

22 CHIEF JUSTICE ROBERTS: Justice  
23 Kavanaugh.

24 JUSTICE KAVANAUGH: Thank you, Chief  
25 Justice. Good morning, Mr. Keisler.

1           I want to explore with you the  
2    relevance as others have mentioned of the "at  
3    any time" language and just get your sense of  
4    how that works here.

5           I guess what you're saying is the word  
6    "extension" under your temporal extension  
7    argument could be read in one of two ways. It  
8    could be read to require continuous. It could  
9    be read to require -- to not require continuous  
10   to get the temporal extension.

11           And that we have to look at other  
12   clues in the text of the statute before we get  
13   to the purposes, and I'll get to that, but  
14   before we get to the purposes, we look at other  
15   clues in the text. And "at any time" is your  
16   hook.

17           Justice Kagan and others have pointed  
18   out that you don't necessarily have to read it  
19   that way, and I just want to get your kind of  
20   full understanding of how at any -- any time  
21   works here.

22           And are there any other textual clues  
23   that would tell us whether to read extension as  
24   continuous or not requiring continuous?

25           MR. KEISLER: Yes. I -- I thank, Your

1 Honor. I think "at any time" is best read as  
2 the most expansive possible temporal language,  
3 which is meant to ensure that as the demands of  
4 the program escalate, the safety valve will be  
5 there such that a small refinery that newly  
6 experiences hardship can obtain relief at any  
7 time.

8 And as I said, the -- the contrary  
9 view really doesn't give "at any time" the broad  
10 meaning the text demands because it says that  
11 once you've had one good year, you're out. And  
12 that's not "at any time."

13 And that's why we say that the statute  
14 is designed for two different periods,  
15 subparagraph (A) for the temporary initial  
16 period and subparagraph (B) for when  
17 individualized relief is necessary thereafter.

18 As to other textual clues, we think  
19 there are several. First of all, there is the  
20 contrast in the language between subparagraph  
21 (A) and subparagraph (B), one that has --  
22 subparagraph (A) that has "temporary" and all  
23 these time limits and deadlines, and  
24 subparagraph (B), which has no temporal language  
25 other than the most expansive possible "at any

1 time."

2           And, second, there is the subparagraph  
3 (iii) reference to a hardship exemption. This  
4 talismanic word "extension" is suddenly  
5 eliminated when Congress restates the same  
6 petition and the same relief, which at a minimum  
7 says Respondents are giving much more weight to  
8 it than Congress did.

9           And, finally, other textual aspects of  
10 this statute -- this is a statute which  
11 textually commands that the burdens will  
12 intensify year after year after year, and  
13 textually says that relief is to be given based  
14 on hardship.

15           And it does not seem a sensible  
16 reconciliation of all of these provisions to say  
17 that that text and the underlying purpose it  
18 indicates would be served by kicking out a small  
19 refinery from eligibility for exemption because  
20 in one early year of the program it was able to  
21 comply without hardship.

22           JUSTICE KAVANAUGH: And I understand  
23 your argument today to be focusing much more on  
24 the second argument in your brief, the temporal  
25 extension, than the first argument in your

1 brief, which I think is probably wise. I  
2 understand why you did it in your brief, but is  
3 that correct, do you think that's -- that second  
4 argument's actually a stronger argument for you?

5 MR. KEISLER: Well, I'm cognizant of  
6 the fact that the Chief Justice implied the  
7 opposite in his question, but I -- I certainly  
8 think that the second argument avoids some of  
9 the trickier aspects of the statutory  
10 construction analysis because "at least" means  
11 this isn't an example in which the Court has to  
12 decide whether the word "extension," which we  
13 admit is used temporally in other provisions of  
14 the statute, is used in a different sense here.

15 JUSTICE KAVANAUGH: Then I want to  
16 just focus on how the separation-of-powers angle  
17 fits in with the real-world effects of how this  
18 program works.

19 Under the other side's reading,  
20 Congress has eliminated the possibility of an  
21 exemption if a small refinery ever in a  
22 particular year didn't get it. Under your view,  
23 it's not automatic that you get the exemption,  
24 right? It's up to EPA; is that correct?

25 MR. KEISLER: That's correct.

1 Subject, of course, to judicial review under the  
2 APA.

3 JUSTICE KAVANAUGH: Okay. And then  
4 how does it -- and I understand your further  
5 point to be if -- if a small refinery is having  
6 significant economic hardship in a particular  
7 year, the question is, did Congress want -- this  
8 is more of a purpose argument -- but did  
9 Congress want EPA to be able to give an  
10 exemption in that year or did Congress want the  
11 small refineries to go out of business? Is that  
12 a fair way of putting your argument there?

13 MR. KEISLER: Yes, Your Honor.

14 JUSTICE KAVANAUGH: Okay. What --  
15 last question. EPA doesn't usually set its  
16 renewable volume obligations on time. I had a  
17 lot of experience with that in my past judicial  
18 post.

19 When -- does that affect anything  
20 here?

21 MR. KEISLER: I -- I think only in the  
22 sense that it gives further credence for the  
23 reason that Congress would want these to be  
24 sought at any time, because not only does EPA  
25 frequently miss deadlines, it has sometimes been

1 reversed for applying too strict a standard.

2 And that means that if a small  
3 refinery, say, in 2015 or 2016 didn't apply  
4 because EPA was applying too strict a standard  
5 in -- in understanding disproportionate economic  
6 hardship, and then it got reversed by a court,  
7 but all of those small refineries who didn't  
8 apply or were denied wrongly would then be out  
9 of the program as well.

10 So it gives extraordinary weight to  
11 the artifacts of what can be quite random  
12 decisions by EPA.

13 JUSTICE KAVANAUGH: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice --  
15 Justice Barrett.

16 JUSTICE BARRETT: Mr. Keisler, do you  
17 think that a refinery's request for an extension  
18 has to have anything to do with the reasons why  
19 it received a prior exemption? In other words,  
20 even if there's not a required continuity of  
21 time, that there would be some sort of  
22 continuity of reason for the exemption?

23 MR. KEISLER: Well, I think certainly  
24 any application that it made would have to be  
25 factually consistent with representations it



1 made before. And it would be painting a picture  
2 over time of its economic circumstances. So in  
3 that sense, there would need to be consistency  
4 over time. But the actual application would  
5 focus on what the circumstances of the refinery  
6 are for the year for which it's seeking an  
7 exemption, we think.

8 JUSTICE BARRETT: But if there are new  
9 circumstances, why wouldn't it be more natural  
10 to say that the -- that the refinery is seeking  
11 a new exemption?

12 MR. KEISLER: Well, if -- if -- if --  
13 if one were to take that view, then that would  
14 be the way paragraph (B)(iii) describes it, as  
15 simply a petition for a hardship exemption. But  
16 it is also within the meanings of "extension"  
17 that we have described, an extension of the  
18 exemption under subparagraph (A) because it is a  
19 lengthening of the overall period for which that  
20 exemption was in effect and it is also extending  
21 in the "make available" sense that exemption  
22 from (A) into this different setting of a new  
23 hardship petition.

24 JUSTICE BARRETT: Justice Kagan gave  
25 you an example in which she posited seeking an

1 exemption in the year 2030, you know, that this  
2 could -- this "at any time" language could be  
3 stretched pretty far. But, you know, under (B)  
4 it relates back to this in (A), the 2008 study  
5 that the EPA is supposed to conduct to determine  
6 whether compliance would create a  
7 disproportionate economic hardship on small  
8 refineries.

9           If there's no continuity of time  
10 requirement, it seems that the temporal  
11 connection between that 2008 study and what  
12 might happen in 2015, 2020, 2030 gets pretty  
13 severed so that there's no connection. Can you  
14 say what role the 2008 study would play in your  
15 view?

16           MR. KEISLER: Yes, Justice Barrett.  
17 The 2008 study wasn't only about picking the 13  
18 small refineries that were going to get the  
19 additional two-year extension. More broadly, it  
20 laid out a whole framework for understanding  
21 what the economics of the industry were, what  
22 the factors were that DOE at least would  
23 consider in deciding what to recommend, and it  
24 developed a whole scoring matrix based on  
25 capital requirements and financial condition and

1 operating margins and things like that. That's  
2 what EPA and DOE look to from that study to  
3 determine exemptions going forward. And that  
4 would still be applicable in 2030 or 2040.

5 And I would just add, if you did have  
6 a -- an application filed in 2030 or 2040 for  
7 the year 2015, we do think "at any time" would  
8 mean that EPA couldn't just dismiss it as time  
9 barred, but that doesn't mean EPA couldn't take  
10 into account the fact that it took 20 years to  
11 file that application in thinking about whether  
12 the representations were credible and whether  
13 the evidence was sufficient.

14 JUSTICE BARRETT: Let me shift gears  
15 and see if there's another provision in the  
16 statute that might help you. Section  
17 7545(o)(7)(A) allows the EPA to waive the RFP  
18 requirements upon a finding they would severely  
19 harm the economy of a state or region.

20 I could imagine a small refinery, you  
21 know, if it -- if it were struggling or if it  
22 were going to be forced out of business, that  
23 that might harm the economy of a region. Is  
24 that a provision that might help you?

25 MR. KEISLER: Well, we think it's

1 directed to a slightly different circumstance  
2 where there needs to be a broader reduction in  
3 the applicable requirement that applies to the  
4 industry as a whole when there would be harm to  
5 a region or -- or a state or the whole country.

6 And I think it does help us some  
7 because it shows that Congress wanted to permit  
8 EPA to be sensitive to these market conditions.  
9 But the key thing is that the small refinery  
10 provisions are the only ones that are geared to  
11 an individual company and its circumstances, so  
12 the broader authorities don't deal with that  
13 problem.

14 And the reality is that you can  
15 administer a program more forcefully overall if  
16 you have the ability to exempt the smallest and  
17 most marginal players, rather than letting the  
18 concern about driving them out of the market  
19 drive the whole program.

20 JUSTICE BARRETT: Thank you,  
21 Mr. Keisler.

22 CHIEF JUSTICE ROBERTS: A minute to  
23 wrap up, Mr. Keisler.

24 MR. KEISLER: Thank you, Mr. Chief  
25 Justice.

1                   I'd just like to add that Respondents'  
2                   interpretation is especially implausible given  
3                   the structure it would impose. My friends say  
4                   that these provisions establish only a limited  
5                   transitional period. But they've identified no  
6                   other statute with a transition period remotely  
7                   like what they propose here.

8                   There's no defined end date. There's  
9                   no defined number of years. It instead ends on  
10                  different customized dates for each small  
11                  refinery, depending on when that refinery first  
12                  happens to be able to comply even if it can do  
13                  so only for one year.

14                  That's what gives rise to all the  
15                  anomalies of similarly situated refineries being  
16                  treated differently. And it's especially  
17                  implausible that the one and only statute which  
18                  would structure a transition period in this way  
19                  would be the one in which the demands are  
20                  designed to increase substantially over time and  
21                  which authorizes small refineries to seek relief  
22                  at any time based on hardship.

23                  CHIEF JUSTICE ROBERTS: Thank you,  
24                  counsel.

25                  Mr. Michel.

1 ORAL ARGUMENT OF CHRISTOPHER G. MICHEL

2 ON BEHALF OF THE FEDERAL RESPONDENT

3 MR. MICHEL: Mr. Chief Justice, and

4 may it please the Court:

5 Under the key provision in this case,  
6 a small refinery may seek an extension of the  
7 exemption under subparagraph (A). The meaning  
8 of that language is straightforward. If a small  
9 refinery has an exemption under subparagraph  
10 (A), it can obtain an extension of that  
11 exemption from EPA.

12 But if a small refinery no longer has  
13 the exemption, it cannot obtain an extension.  
14 EPA cannot grant something that does not exist.  
15 That is the ordinary, common sense meaning of  
16 the statutory text.

17 It gives the word "extension" the same  
18 meaning in adjacent interconnected clauses, and  
19 it reflects the statute's objective to boost  
20 production of clean renewable fuel while  
21 providing transition time for small refineries  
22 to comply.

23 Although the government endorsed  
24 Petitioner's alternative readings below, EPA now  
25 agrees that the Tenth Circuit correctly rejected

1 them. Petitioners first propose that extension  
2 and the key provision means grant, but the  
3 statutory context forecloses that reading. The  
4 subject of the extension at issue, the exemption  
5 under subparagraph (A), cannot be granted anew.  
6 It can only be lengthened in time.

7           Petitioner's alternatively contend  
8 that extension has a temporal meaning but allow  
9 the extension of an expired exemption. That  
10 defies the ordinary meaning of "extension." In  
11 common parlance, it would be awkward at best to  
12 seek an extension of something that has lapsed,  
13 especially if it were described as temporary.

14           Simply put, if Congress wanted to  
15 adopt the generally available exemption  
16 Petitioners advocate, it would not have enacted  
17 the scheme it did here. That scheme does not  
18 doom small refineries to failure. The vast  
19 majority of small refineries, including  
20 Petitioners, have successfully complied with the  
21 RFS in many prior years. The statute creates  
22 flexibility to facilitate ongoing compliance and  
23 other tools exist to address other challenges  
24 but the court of appeals correctly construed the  
25 provision at issue here and its decision should

1 be affirmed.

2 CHIEF JUSTICE ROBERTS: Mr. Michel,  
3 this is a hypothetical-rich case. Everyone's  
4 different scenarios where extend or extension is  
5 used in different ways, you know, if you miss a  
6 deadline for a term paper, the normal language  
7 for you to go into the Professor and ask for an  
8 extension, you wouldn't go in and ask for a new  
9 deadline.

10 Given all those hypotheticals, both  
11 along those lines and the other way, you're not  
12 arguing that this term is plain or unambiguous,  
13 right? The terms you used in your opening was  
14 straightforward and ordinary, but it's --  
15 it's -- it's not plain or unambiguous, is it?

16 MR. MICHEL: Mr. Chief Justice, we're  
17 not arguing that it's unambiguous. But we do  
18 think this is clearly the -- the more ordinary  
19 use of the term in common parlance and we think  
20 that, you know, the Court's decisions have said  
21 it will apply the ordinary meaning of a statute  
22 unless there's a good reason not to, and we  
23 think there's no good reason not to here.

24 CHIEF JUSTICE ROBERTS: Your -- your  
25 friend's interpretation on the other side is one



1 that would be upheld, right, if Chevron  
2 deference applied?

3 MR. MICHEL: If Chevron applied, I  
4 think that would be correct although I think  
5 there are -- are a lot of reasons why Chevron  
6 doesn't apply starting with the fact that the  
7 rule my friend cites does not actually contain  
8 any interpretation of -- of the question  
9 presented here.

10 He -- he's relying at most on an  
11 implicit assumption in the preamble to the rule  
12 that leads to a position EPA no longer has and I  
13 don't think there's any case in which the Court  
14 has granted Chevron deference to something like  
15 that.

16 CHIEF JUSTICE ROBERTS: And you're not  
17 arguing for Chevron deference going your way  
18 either, right?

19 MR. MICHEL: We are not, Mr. Chief  
20 Justice.

21 CHIEF JUSTICE ROBERTS: So that leaves  
22 us with the obligation to look at all the  
23 available evidence of congressional intent?

24 MR. MICHEL: I -- I think that's  
25 right. And I -- I would just start with what we

1 think is the ordinary meaning of the term. I  
2 also think it's -- it's highly significant that  
3 that's how Congress used the term "extend" in  
4 subparagraph (A), clause ii. I -- I think my  
5 friend admits that that term is used there in a  
6 way that requires both temporal existence and  
7 continuity.

8           And this is about as close a case as  
9 you can imagine for consistent meaning given  
10 that (A)(ii) and (B)(i) have the same title,  
11 address the same subject to the same entity, set  
12 the same standard and expressly cross-reference  
13 each other.

14           CHIEF JUSTICE ROBERTS: I want to get  
15 back to a point Justice Kavanaugh made that the  
16 debate here is about whether or not the small  
17 refinery can get in the door, in other words, it  
18 doesn't automatically get an extension, it just  
19 authorizes EPA to grant an extension.

20           And why wouldn't that be something  
21 that suggests a broad meaning of the  
22 availability of an extension?

23           MR. MICHEL: So a -- a couple of  
24 reasons, Mr. Chief Justice. I -- just looking  
25 at the -- at the structure of the statute,

1 Congress of course labeled this a temporary  
2 exemption. It -- it provided for increasingly  
3 narrow mechanisms of extension, if you look at  
4 (A)(ii) and then (B)(i), you know, you can  
5 actually see the funneling effect. It goes from  
6 two years to -- you know, to an unstated period,  
7 which EPA has -- has construed to be one year.

8 And if you look at the other waiver  
9 provisions in the statute, they are -- they're  
10 also relatively narrow. So I think --

11 CHIEF JUSTICE ROBERTS: Thank you,  
12 counsel. Justice Thomas.

13 JUSTICE THOMAS: Thank you, Mr. Chief  
14 Justice.

15 Mr. Michel, just a couple of brief  
16 questions. The Secretary -- let's say it -- it  
17 -- going back to a point that Justice Kavanaugh  
18 made that EPA could often or was often late in  
19 -- in completing its work or -- and here, I'm  
20 particularly interested in the study that it was  
21 required to have done by the end of 2011 or the  
22 beginning of 2011.

23 What if it were late and the temporary  
24 exemptions expired? And then it implemented the  
25 rule, let's say, a -- it -- it provided for the

1 extensions a month later.

2           Would those be considered extensions  
3 or would we -- or renewal? And -- and how would  
4 you deal with those?

5           MR. MICHEL: Justice Thomas, yeah,  
6 that's -- I do want to stress the statute -- the  
7 study was completed in time and so all of these  
8 extensions under (A)(ii) were, in fact,  
9 continuous as -- as a practical matter.

10           I -- I think your question really  
11 highlights that Congress expected them to be  
12 continuous as well, because the study was due at  
13 the end of 2008 and the initial exemption  
14 extended through the end of 2010.

15           I -- I have to confess, I'm not sure  
16 I -- I've thought about what would have happened  
17 in the hypothetical world if -- if EPA had not  
18 or if DOE had not gotten that study in on time  
19 and the initial exemptions had lapsed.

20           I do think that would not be the  
21 ordinary meaning of -- of extension and then the  
22 question would be whether the -- the context of  
23 the statute so clearly compels the availability  
24 of extensions that you'd have to -- to look  
25 otherwise, but -- but I don't think that that's

1 presented here.

2 JUSTICE THOMAS: In your definitions  
3 that you provide for "extend" in your -- in your  
4 brief, they seem to assume words like  
5 "continuance" or "continuation," which seem to  
6 suggest that at some point there was a  
7 termination or an interruption and then a  
8 resumption.

9 Do you have any that preclude  
10 continuity -- that -- that assume continuity?

11 MR. MICHEL: Well, Justice Thomas, I  
12 think that there's a definition on page 66(a) of  
13 the -- the court of appeals opinion that does  
14 include the word "continuity." But, you know,  
15 I'm not sure the dictionary is a complete  
16 solution here.

17 I -- what we're relying on really is  
18 more what the Tenth Circuit called "dictionary  
19 definitions, plus common sense." And I -- I  
20 think Justice Kagan's example was a good one.  
21 There are many others, you know, I think if you  
22 were at a hotel -- at a hotel on vacation and  
23 they said you can extend your stay for a  
24 discounted rate and you said well, great, we'll  
25 come back in three years, I think they would say

1 that's not what we mean by an extension. And  
2 I -- I think that's by far the more natural  
3 understanding of the term in common parlance.

4 JUSTICE THOMAS: So do you think -- do  
5 you agree with Petitioner that it's  
6 context-specific or context is very important?

7 MR. MICHEL: Absolutely, Justice  
8 Thomas. And that's why I think (A)(ii) is so  
9 important here. I mean, that is by far the most  
10 closely related provision in the statute. And  
11 it requires both a temporal extension and  
12 continuity.

13 JUSTICE THOMAS: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice  
15 Breyer.

16 JUSTICE BREYER: Good morning. I  
17 mean, you talk about common sense. This is a  
18 marketable rights program, isn't it?

19 MR. MICHEL: I -- I --

20 JUSTICE BREYER: I think it is.  
21 And is it -- they sell the rights to pollute  
22 more or to, you know, use less ethanol in the  
23 marketplace. As I read it, it's a classical  
24 such program.

25 A characteristic of such program

1 compared to a tax is with the tax, you know the  
2 price but you don't know the amount. Marketable  
3 rights, you know the amounts but you don't know  
4 the price. I think anybody would have --  
5 knowledgeable would have thought that from what  
6 I've read here.

7           And so no one would know if we go out  
8 two or three years which small refineries will  
9 find hardship and which won't and it'll change  
10 from year to year, two years to two years, and  
11 it would be, to me, a very peculiar statute  
12 which gave rights in such a way that when it  
13 changes, as it will change all the time, in and  
14 out, in and out, in and out, and they don't know  
15 who they're giving it and they don't know when  
16 they'll qualify and they might qualify at time A  
17 and time B, and so from the point of view of a  
18 marketable rights program, your interpretation  
19 seems to turn it into a kind of chaos.

20           Now, what do you say?

21           MR. MICHEL: Well, Justice Breyer,  
22 I -- I don't think there's chaos here. There  
23 was of course complete clarity that the blanket  
24 exemption was available for the first five  
25 years.

1 JUSTICE BREYER: That wouldn't help.  
2 It wouldn't help, you know, because six years  
3 out the price of getting the marketable right  
4 goes up 30 percent. And now a whole new set of  
5 refineries qualify or it goes down 50 percent  
6 and then those -- the ones who have been getting  
7 it are out because they're not in hardship  
8 anymore.

9 I mean, that's normally the way such a  
10 program works. Maybe it didn't work that way  
11 here. But you're the one who would know, is why  
12 I bring it up.

13 MR. MICHEL: Right. So, Justice  
14 Breyer, a couple of points. I think, you know,  
15 if Congress wanted to create a freely available  
16 exemption that would serve the purposes you've  
17 just described, it would have done what it did  
18 in subsection (o)(7). That was the section that  
19 Justice Barrett mentioned to my friend at the  
20 end of his argument. That allows for a  
21 freestanding waiver of the volume requirements.

22 And Congress instead took a much more  
23 roundabout path here by creating the initial  
24 blanket exemption and providing for --

25 JUSTICE BREYER: Why is that



1 roundabout? As you read it -- I understand how  
2 you read it -- it seems to me paragraph (A)(i)  
3 could be read as follows: Temporary exemption,  
4 the requirements of paragraph (2) shall not  
5 apply to small refineries -- that's the  
6 exemption -- until calendar year 2011. That's  
7 the temporary. Okay?

8           And now we go down to the next one,  
9 and it says the -- the -- where there's economic  
10 hardship, the -- the -- what will happen is  
11 requirements in paragraph -- well, there's a  
12 study, and then it says that the -- the  
13 exemption under clause (i), two more years. The  
14 exemption was paragraph (2) didn't apply. And  
15 then it says later the exemption of paragraph  
16 (A) will apply where there's disproportionate  
17 hardship.

18           I mean, I don't have a problem reading  
19 it that way. You could read it many ways, but  
20 that seems reasonable?

21           MR. MICHEL: So, Justice Breyer, I  
22 think the big problem with that is that you're  
23 cutting out "until calendar year 2011."

24           JUSTICE BREYER: Sure, that's the  
25 temporary.

1 MR. MICHEL: Well, but --

2 JUSTICE BREYER: The sentence  
3 describes the temporary exemption.

4 MR. MICHEL: I think --

5 JUSTICE BREYER: The exemption is what  
6 they say. You don't have to use -- you're  
7 exempt.

8 MR. MICHEL: I think the problem with  
9 that reading, though, is that in (B)(i), it  
10 directly references back to the exemption under  
11 subparagraph (A). And there's simply no  
12 language in subparagraph (A) that can be freely  
13 granted. That, if Congress wanted to do that,  
14 it would have done what it did in subsection  
15 (o)(7), where it said exactly what you just  
16 said, which is a refinery can petition for a  
17 waiver of the volume requirements.

18 CHIEF JUSTICE ROBERTS: Justice --

19 MR. MICHEL: With no time requirement.

20 CHIEF JUSTICE ROBERTS: Justice Alito.

21 JUSTICE ALITO: My concern here is  
22 exactly what you've been discussing with Justice  
23 Breyer or at least it's along the same lines.

24 Is it true that the price of RINs  
25 fluctuates quite a bit?

1 MR. MICHEL: It is, Justice Alito.

2 JUSTICE ALITO: All right. Well, tell  
3 me why the scheme then that you're proposing is  
4 one Congress would think is sensible? If a  
5 small refiner is able to comply for a number of  
6 years but then is unable to comply because of  
7 the fluctuation of the price, why -- and -- but  
8 would be able to comply again after that year,  
9 why would that -- why would Congress want that  
10 small refinery to be forced out of business?

11 MR. MICHEL: So, Justice Alito, I do  
12 want to make clear that we don't think they'll  
13 be forced out of business, and I -- I think  
14 that's an important point because that would  
15 really raise the stakes beyond where they  
16 actually are. I also think it's important to  
17 note that EPA's long-standing position is that a  
18 refinery can recover the cost of compliance  
19 through this RIN program.

20 I think -- but even if you -- you  
21 didn't accept either one of those, at the end of  
22 the day, this is a statute that's aimed at  
23 transforming the fuel supply, and ultimately it  
24 is necessary to bring all the small refineries  
25 into compliance. That's after all, I think,

1 what Congress meant by a temporary exemption  
2 that can be extended only under certain  
3 circumstances.

4 JUSTICE ALITO: So you think this is a  
5 sunset provision?

6 MR. MICHEL: I think it's in some ways  
7 a -- a particularly generous sunset provision in  
8 that the five years is the only clear sunset  
9 after 2011, but then small refineries that can  
10 show they need it for longer can keep it for  
11 longer.

12 The ultimate result is, I think,  
13 something of a sunset, but that's exactly what  
14 you would expect from a temporary exemption.

15 JUSTICE ALITO: Well, if it's a sunset  
16 provision, isn't it a rather strange type of  
17 sunset provision? I've never seen a sunset  
18 provision like this.

19 MR. MICHEL: Well, I -- I -- I don't  
20 think it's a sunset provision in those terms,  
21 but there are other, you know, areas of the law  
22 where someone can continue to receive exemptions  
23 or -- or extensions of a particular status.  
24 Visas, for example. You could come into the  
25 country on a visa and continue to extend it, and

1 you might say that that's a sort of sunset  
2 program in the sense that once you no longer  
3 continue to obtain the extensions, you're  
4 sunsetted, and it will happen at different times  
5 for different people.

6 It's -- I don't think that's a  
7 particularly unusual concept.

8 JUSTICE ALITO: What do you think is  
9 the standard that the EPA applies under (B)?

10 MR. MICHEL: So it's disproportionate  
11 economic hardship.

12 JUSTICE ALITO: So what about -- what  
13 are these other economic factors?

14 MR. MICHEL: So that, I think that  
15 just indicates that the EPA can look beyond the  
16 four corners of the DOE study. And I think in  
17 the sealed appendix, there's a pretty good look  
18 at what EPA looks at. It's a wide variety of --  
19 of financial information.

20 But -- but, ultimately, it's geared  
21 toward determining whether the small refinery  
22 has disproportioned economic hardship.

23 JUSTICE ALITO: How do you account for  
24 the fact that the number of extensions or  
25 exemptions has varied quite a bit from year to

1 year?

2 MR. MICHEL: So, Justice Alito, there  
3 -- quite candidly, as we mentioned in the brief,  
4 there -- there were a number of statements by  
5 individual members of Congress or committees of  
6 Congress that -- that in pretty clear terms,  
7 they wanted more extensions of the exemption.  
8 And EPA, I think, complied with that.

9 And it took this litigation, which was  
10 the first litigation presenting this question,  
11 for the Tenth Circuit to come in and -- and read  
12 the statute according to its text and -- and  
13 persuade the agency that it actually couldn't do  
14 what it had been asked to do so many times.

15 CHIEF JUSTICE ROBERTS: Justice  
16 Sotomayor.

17 JUSTICE SOTOMAYOR: Counsel, I'd like  
18 to go back to something you said to Justice  
19 Alito. You said that this is not going to close  
20 -- not going to cause small refineries to close.  
21 Please explain why.

22 MR. MICHEL: Sure, Justice Sotomayor.  
23 I think if you look at the history of the RFS  
24 program, the vast majority of small refineries  
25 have complied for -- for many years, including

1     Petitioners in this case. And that includes  
2     years in which they have sought hardship relief  
3     under this provision and had it denied. EPA  
4     denied about 18 petitions between 2013 and 2015,  
5     and as far as we know, only one small refinery  
6     went out of business after that.

7             It's also notable that other  
8     refineries that don't fall underneath the 75,000  
9     barrel per day threshold that's in the statutory  
10    definition for small refineries have complied  
11    all the way back to 2006. And that's true even  
12    of refineries that have 80,000, 90,000 -- you  
13    know, throughput that's not all that different.  
14    And it doesn't really present qualitatively  
15    different economics than -- than the refineries  
16    face here.

17            And -- but, finally, there is  
18    flexibility built into the RFS program. As  
19    we've mentioned, there are waiver authorities.  
20    Justice Barrett cited one. There's also an  
21    important provision in (o)(5)(D) that allows a  
22    small refinery to carry over a deficit; in other  
23    words, falling short of its volume requirements  
24    for one year, so if there's a particularly hard  
25    year, they can rely on that.

1                   I'd also note the Energy Policy Act  
2                   that adopted this, the RFS had other provisions  
3                   that helped refineries, including small  
4                   refineries, in getting special access to oil  
5                   from federal lands. And, of course, we are  
6                   sensitive to the COVID-related hardships that  
7                   small refineries are suffering. But the federal  
8                   government has -- has expended a lot of COVID  
9                   relief that can help them in their capacity as  
10                  businesses and, maybe more importantly,  
11                  stimulate the economy to boost demand for -- for  
12                  fuel, which will help them going forward.

13                  JUSTICE SOTOMAYOR: Thank you,  
14                  counsel.

15                  CHIEF JUSTICE ROBERTS: Justice Kagan.

16                  JUSTICE KAGAN: Mr. Michel, in  
17                  thinking of your conversation with Justice  
18                  Breyer, I mean, it strikes me that there are two  
19                  possible ways to conceive of the congressional  
20                  purpose here. And one is Mr. Keisler's way,  
21                  which is that it was -- is supposed to be a  
22                  safety valve, it's supposed to allow small  
23                  refineries that are having difficulty in any  
24                  given year, it might be this year, it might be  
25                  ten years from now, to have a way out.



1                   And the alternative story is the one  
2                   that you just suggested, which is that this is  
3                   really conduct forcing. It's supposed to be  
4                   that refineries change their methods of  
5                   proceeding and get into compliance at some  
6                   point.

7                   So how do we choose between those two  
8                   different ways of understanding what Congress's  
9                   purpose is?

10                  MR. MICHEL: Sure, Justice Kagan. I  
11                  -- I think we do have the better understanding  
12                  of the purpose, but to start with the structure,  
13                  I would look at, for example, if you read  
14                  (A)(i), (A)(ii), and (B)(i) together, you really  
15                  can see this funneling effect. So (A) allows or  
16                  creates an exemption for five years. (B) --  
17                  (A)(ii) creates a mandatory exemption for two  
18                  years. And then (B)(i) allows the exemption for  
19                  an unstated period, but EPA has made it one  
20                  year.

21                  (A) applies to all small refineries,  
22                  (A)(i), (A)(ii) applies to just the category of  
23                  refineries identified by the DOE study. And  
24                  (B)(i) is case by case.

25                  So I think if you read the statute

1 that way, it -- it sort of exudes the funneling  
2 effect that's -- that's consistent with the  
3 underlying purpose, which, you know, was to  
4 change the -- the fuel supply.

5 I think that the D.C. Circuit's  
6 opinion in the Americans for Clean Energy case  
7 makes that clear. I think the -- the -- the  
8 legislative and -- and executive background  
9 makes it clear the statute was enacted at a time  
10 when the United States was dependent on foreign  
11 oil and Congress and the President thought it  
12 was important to -- to reduce that dependence  
13 for national security, economic, and  
14 environmental reasons.

15 JUSTICE KAGAN: Thank you, Mr. Michel.

16 CHIEF JUSTICE ROBERTS: Justice  
17 Gorsuch.

18 JUSTICE GORSUCH: Good morning, Mr.  
19 Michel. I'd -- I'd like to address with you the  
20 point I -- I discussed with Mr. Keisler about  
21 footnote 6 in his reply brief and whether  
22 there's a continuity requirement in (A) which  
23 might shed some light on whether we think  
24 there's a continuity requirement in (B).

25 Is he correct that it would be

1 possible -- would have been possible for a small  
2 refinery to receive an initial two-year  
3 exemption or extension -- exemptions in 2008,  
4 fall out of -- lose that exemption in 2010 but  
5 then regain it in 2011?

6 MR. MICHEL: He -- he's not correct  
7 as -- as a factual matter, Justice Gorsuch, and  
8 that's for a reason I think you may have  
9 suggested in your earlier question. EPA's 2007  
10 regulation, the initial one implementing this  
11 program, defined the relevant calendar year as  
12 2004.

13 And then the 2010 regulations defined  
14 the relevant calendar year as 2006. That  
15 provision is actually -- a vestige is still in  
16 the -- in the regulations in the 31(a) of the  
17 appendix to our brief. So because they were  
18 defined by fixed years, there was no falling in  
19 and out of -- of the exemption in the way that  
20 -- that --

21 JUSTICE GORSUCH: Why wouldn't that --  
22 why wouldn't that have been possible, given that  
23 we'd be looking at different years in '04 and  
24 '06?

25 MR. MICHEL: Well -- well, I mean, as

1 a -- as a practical matter, that -- that  
2 certainly didn't happen. I -- I --

3 JUSTICE GORSUCH: No, I understand. I  
4 understand factually it didn't happen but  
5 conceptually could it have happened?

6 MR. MICHEL: Yeah. I think -- I think  
7 it could have happened because if -- if EPA  
8 had -- particularly if EPA had interpreted the  
9 statute differently, but as a factual matter --

10 JUSTICE GORSUCH: No, no, just  
11 interpreting it the way they did, the fact that  
12 we're looking at different years, at least --  
13 doesn't that at least open the possibility that  
14 there might be people falling in and out of a  
15 small refinery definition, even under the period  
16 covered by (A) and, therefore, you might have --  
17 at least conceptually it was possible for there  
18 to be some discontinuity?

19 MR. MICHEL: It -- it is conceptually  
20 possible, although I think it's -- that's  
21 probative that EPA adopted -- ultimately adopted  
22 regulations that didn't allow that to happen.

23 JUSTICE GORSUCH: It didn't happen, I  
24 got it. Okay.

25 MR. MICHEL: It didn't happen.

1 JUSTICE GORSUCH: All right. And just  
2 to return to a couple of questions that the  
3 Chief Justice asked, and that I'm curious about.  
4 You -- if I understood you correctly, you --  
5 you're arguing that the ordinary meaning of the  
6 structure and the purpose here support your  
7 position but you're not arguing the text is  
8 unambiguous?

9 MR. MICHEL: That's right, Justice  
10 Gorsuch.

11 JUSTICE GORSUCH: Okay. And so in  
12 the -- in the circumstances like that, we -- we  
13 might in -- in another world have applied  
14 Chevron, but you're asking us not to do so here,  
15 right?

16 MR. MICHEL: Right, because I think  
17 that there's nothing to defer to in that there's  
18 no agency interpretation of the question  
19 presented that -- that you could grant Chevron  
20 to. And of course as one of your recent  
21 opinions I think pointed out, it would be  
22 atypical to grant Chevron deference to an agency  
23 when it no longer holds that position.

24 JUSTICE GORSUCH: So -- so part of the  
25 reason why you think it would be inappropriate

1 is because it -- it's just a -- a preamble but  
2 you also indicate, even if it were applicable,  
3 you -- you -- you -- you would disavow Chevron  
4 deference in this case because you've indicated  
5 in a press release, you don't intend to continue  
6 to enforce the -- the 2014 regulation?

7 MR. MICHEL: Both of those things, and  
8 I would also add, it's not so much even that --  
9 that it's a preamble, it's that it's also at --  
10 at best an implication in the preamble that  
11 doesn't --

12 JUSTICE GORSUCH: Okay, but -- but  
13 even if it were -- even if it were not the in  
14 the preamble, even if it were absolutely clear,  
15 you still would ask us not to apply Chevron?

16 MR. MICHEL: That would be our -- that  
17 would be our position, although here I think  
18 it's a lot easier because it's not in the rule  
19 and it's not even clear in the preamble.

20 JUSTICE GORSUCH: And part of the  
21 reason why you don't want us to apply it is  
22 because it would be a mistake to supply  
23 deference when the agency has changed its  
24 position?

25 MR. MICHEL: I -- I think that's

1 right. As -- as the Court observed in Epic  
2 Systems, you know, one of the one traditional  
3 justifications for Chevron is deference to  
4 executive officials, you know, and -- and  
5 requiring accountability and it -- it would be a  
6 strange understanding of accountability to defer  
7 to an executive interpretation that's not the  
8 one the executive has now.

9 CHIEF JUSTICE ROBERTS: Justice  
10 Kavanaugh.

11 JUSTICE GORSUCH: Thank you, Mr.  
12 Michel.

13 JUSTICE KAVANAUGH: Thank you, Chief  
14 Justice. Good morning, Mr. Michel.

15 Mr. Keisler's second argument in his  
16 brief, which is his lead argument today, the  
17 argument that the extension, the word  
18 "extension" is temporal but does not have to be  
19 continuous, just to set up how I'm thinking  
20 about this and then get your response, you --  
21 you -- you admit it's not an unambiguous word.  
22 I think Congress uses extension sometimes even  
23 when something's lapsed, we have the examples  
24 COVID and other examples.

25 You make a big deal about ordinary

1 usage, but I'll give you three instances in my  
2 life where ordinary usage goes the other way  
3 from what you -- what you say. So sometimes one  
4 that you're teaching and you have a 5:00 o'clock  
5 p.m. due date for a paper, you know, after the  
6 due date, you will get an e-mail entitled  
7 extension request, you grant a paper extension  
8 afterwards.

9 Or when a -- you use a sports contract  
10 example in your brief but oftentimes the  
11 contract ends at the end of the season, in the  
12 off season the player signs a new contract.  
13 That will be described by most people as player  
14 extends for two more years.

15 Or if you let your print newspaper  
16 subscription lapse for a time and then you start  
17 it up again, you'll tell your family member or  
18 friend, oh, I extended the paper subscription.

19 So I -- I think ordinary usage also  
20 like congressional usage in my experience, at  
21 least, doesn't tell us exactly. So how do we  
22 break this?

23 And the two things he emphasizes are  
24 at any time and that that's -- there's no sunset  
25 date. So I want to get your responses to that.



1                   And then also on the purpose and  
2                   context, if we get to that, to help break  
3                   what -- I don't want to say tie, but to figure  
4                   out what Congress was thinking about with the  
5                   word or what it was doing with the word  
6                   "extension," your position is that Congress  
7                   wanted small refineries to have no outlet at  
8                   all, to essentially go out of business whereas  
9                   the other side's position is simply that EPA  
10                  would have authority, as a matter of separation  
11                  of powers, authority to grant an exemption, if a  
12                  small refinery had -- had a -- had a problem and  
13                  it's really seems implausible to think Congress  
14                  wanted refineries in that circumstance to go out  
15                  of business.

16                  So if I can get your response on the  
17                  at any time, no sunset date and the  
18                  implausibility of Congress wanting small  
19                  refineries to go out of business rather than EPA  
20                  having authority.

21                  MR. MICHEL: Thanks, Justice  
22                  Kavanaugh. And I -- I think I can maybe fold in  
23                  a little bit of your first question too or your  
24                  comment.

25                  You know, I think "at any time" means

1 exactly what it says, which is that a small  
2 refinery can ask for an extension of the  
3 exemption at any time but that doesn't define  
4 what an extension of the exemption is.

5           So in Justice Kagan's example, I think  
6 if that renter originally had a lease that said  
7 you can extend your lease at any time, I don't  
8 think it would work to come back five years  
9 later and ask for an extension. I think, as my  
10 friend said, the landlord would still scratch  
11 his or her head.

12           So I think -- although I see your  
13 point that --

14           JUSTICE KAVANAUGH: How about ten days  
15 later?

16           MR. MICHEL: So, I -- I -- so I didn't  
17 intend any --

18           JUSTICE KAVANAUGH: I don't think we  
19 should base our decision here on an absurd --  
20 not absurd but extreme hypotheticals or -- or  
21 they're not absurd, they're extreme though, but  
22 like a few days later you would call that an  
23 extension?

24           MR. MICHEL: I -- I -- I think you  
25 might but I think that would be because you were

1 running it back in a sort of nunc pro tunc sense  
2 to the prior.

3 JUSTICE KAVANAUGH: Exactly, exactly.

4 MR. MICHEL: Sure. And -- but I -- I  
5 want to make very clear that's not what the  
6 small refineries are asking for here. They had  
7 exemptions through 2011 or 2013 respectively.

8 JUSTICE KAVANAUGH: Right.

9 MR. MICHEL: They're asking now for an  
10 extension into 2016 or 2017. So it really is  
11 Justice Kagan's hypothetical and not the nunc  
12 pro tunc extension.

13 On the purpose and context, I -- I  
14 think if you thought they were going to go out  
15 of business, this would be a tougher case. They  
16 haven't gone out of business in the past when  
17 many small refineries have complied, but of  
18 course the -- the purpose of this program was to  
19 drive change in the -- in the fuel market.

20 JUSTICE KAVANAUGH: Drive change to  
21 the point of driving small refineries out of  
22 business? I don't see that anywhere in the --  
23 in the text or -- or history.

24 CHIEF JUSTICE ROBERTS: Justice  
25 Barrett.

1 JUSTICE BARRETT: Thank you. Mr.  
2 Michel, I want to make sure I have a handle on  
3 what you mean by "ambiguous." You said a couple  
4 times that the word "extension" is ambiguous and  
5 -- and I would have thought that by that you  
6 mean it does have several definitions which  
7 we've gone over during argument and in the  
8 briefs, if you look in a dictionary, but that in  
9 the context of this statute, it's clear which of  
10 those definitions -- or reasonably clear that  
11 there's a better indication of which of those  
12 definitions is the right one.

13 Am I understanding your argument  
14 correctly?

15 MR. MICHEL: Yeah, I think that's  
16 right, Justice Barrett. I -- I don't mean to  
17 resist. If -- if the Court wants to say that  
18 our -- our reading is unambiguously correct, I'm  
19 not here to tell you not to say that. I'm just  
20 saying, I -- I don't think you have to go that  
21 far if you don't want to.

22 JUSTICE BARRETT: Well, not  
23 necessarily unambiguously correct, because, you  
24 know, we're here arguing back and forth about  
25 what it might mean. But I don't think you mean

1 to say that we could not glean which way in  
2 which Congress was using the word "extension"  
3 when we look at the context, correct?

4 MR. MICHEL: Absolutely. I agree,  
5 Justice Barrett.

6 JUSTICE BARRETT: Okay. And as for  
7 Congress not plausibly intending to send the  
8 small refineries out of business, is it possible  
9 that Congress just didn't anticipate that they  
10 wouldn't be able to comply, that it just grossly  
11 underestimated how easy it would be for small  
12 refineries to meet the standards?

13 MR. MICHEL: I actually think they  
14 might. If I understand your question correctly,  
15 they might have underestimated how easy it would  
16 be, as -- as we explained in -- in the brief.  
17 It turns out that because of this RIN trading  
18 system, small refineries are able to recover the  
19 full costs of their compliance because the  
20 marginal cost of RFS compliance is -- is priced  
21 into the market price for refined fuels.

22 Now, I'm not saying that Congress  
23 necessarily would have known that at the time,  
24 but as -- as it's turned out, there's very  
25 little risk of going out of business because of

1 the way the program has -- has --

2 JUSTICE BARRETT: Well, but they say  
3 that they're then at the mercy of the RIN  
4 market, and it can be very extensive. But  
5 putting that aside, let's just posit that, you  
6 know, what Justice Kavanaugh was saying is  
7 right, that your reading would drive some small  
8 refineries out of the market.

9 Which way should that cut? I mean,  
10 because if we think that Congress might not have  
11 anticipated that at the time, what are we to  
12 make of that?

13 MR. MICHEL: So I -- I think, you  
14 know, Congress, of course, included a -- a  
15 number of provisions that added flexibility that  
16 would keep small refineries from going out of  
17 business, but I -- I do want to answer your  
18 question directly.

19 I suppose, at the end of the day, if  
20 15 years later there were one or two small  
21 refineries that couldn't comply because they  
22 couldn't find a way after 15 years, I think that  
23 Congress would have accepted that outcome  
24 because it was trying to change the -- the fuel  
25 supply.

1                   But I -- I want to stress, I don't  
2 think that's what's going to happen, in part  
3 because of the other safeguards that Congress  
4 wrote into the program.

5                   JUSTICE BARRETT: Thank you,  
6 Mr. Michel.

7                   CHIEF JUSTICE ROBERTS: A minute to  
8 wrap up, Mr. Michel.

9                   MR. MICHEL: Thank you, Mr. Chief  
10 Justice.

11                   The key statutory provision here has  
12 an ordinary commonsense meaning, to obtain an  
13 extension of the exemption under subparagraph  
14 (A), a small refinery must have an exemption  
15 under subparagraph (A). Petitioners' contrary  
16 reading is counterintuitive at best.

17                   This Court typically applies the  
18 ordinary meaning of statutory language unless  
19 there's a good reason not to, and here there's  
20 not. Allowing extensions only for small  
21 refineries that maintain an exemption fits with  
22 the words and structure Congress adopted, not  
23 alternatives it could have chosen instead.

24                   The ordinary meaning reflects the  
25 statutory goals to drive the market toward

1 renewable fuels while giving small refineries a  
2 significant but limited benefit. And requiring  
3 continued compliance, including with the  
4 flexibility that Congress wrote into the RFS,  
5 will promote its objectives without causing the  
6 harm Petitioners fear.

7 The decision below should be affirmed.

8 CHIEF JUSTICE ROBERTS: Thank you,  
9 counsel.

10 Mr. Morrison. Mr. Morrison?

11 ORAL ARGUMENT OF MATTHEW W. MORRISON  
12 ON BEHALF OF THE PRIVATE RESPONDENTS

13 MR. MORRISON: Mr. Chief Justice, and  
14 may it please the Court:

15 "Extension" may have other possible  
16 meanings in different contexts, but its ordinary  
17 meaning, to lengthen or prolong, is the only  
18 plausible meaning in the context of this  
19 statutory provision. And Petitioners have  
20 offered no compelling reason to depart from that  
21 ordinary meaning.

22 EPA's authority is therefore limited  
23 to prolonging the duration of the exemption  
24 under subparagraph (A), not creating new  
25 exemptions episodically. EPA's unauthorized



1 carveouts have resulted in billions of dollars  
2 of lost revenue to biofuels producers,  
3 devastating the rural economies anchored by the  
4 renewable fuels industry.

5 Petitioners' suggestion that there  
6 should be a permanent safety valve to excuse  
7 them from their compliance obligations is belied  
8 by the text and structure of the statute, and is  
9 antithetical to Congress's goal of increasing  
10 the volume of renewable fuel in the nation's  
11 transportation system.

12 CHIEF JUSTICE ROBERTS: Counsel, can  
13 EPA grant an extension of the time to file for  
14 an extension?

15 MR. MORRISON: Your Honor, yes, EPA  
16 could -- could grant an extension of the time --  
17 it could file -- it does allow a petitioner to  
18 file a petition at any time. And that is very  
19 broadly worded in the statute.

20 CHIEF JUSTICE ROBERTS: Well, I mean,  
21 let's say that the -- the period is due to  
22 expire on, you know, January 3rd, and on January  
23 4th the representative of the refinery comes  
24 into EPA and said: Here's my application for an  
25 extension. Sorry I'm late. Everybody had

1 COVID.

2 Is EPA going to give him an extension  
3 so that, for example, the period would or  
4 wouldn't be continuous?

5 MR. MORRISON: Your Honor, what --  
6 what -- the continuity we need is between the  
7 exemptions or the extensions of exemptions. The  
8 capacious language "at any time" would, I  
9 believe, allow EPA to entertain a petition after  
10 December 31st.

11 It would -- it would in a nunc pro  
12 tunc manner revert back and allow continuity in  
13 the prior exemption.

14 CHIEF JUSTICE ROBERTS: Well, I don't  
15 know why that gives the other side all they  
16 need. I mean, right? I mean, what -- you could  
17 say they can get an extension if they ask for it  
18 half -- you know, half a year later, right?

19 MR. MORRISON: That's correct, Your  
20 Honor. But the --

21 CHIEF JUSTICE ROBERTS: So why  
22 couldn't they -- why couldn't they ask for the  
23 extension a year later?

24 MR. MORRISON: They could ask for an  
25 extension --

1 CHIEF JUSTICE ROBERTS: I'm sorry, I'm  
2 -- I'm being confusing. An extension of the  
3 time to apply for an extension.

4 MR. MORRISON: They -- they -- Your  
5 Honor, with the phrase "at any time," they  
6 really don't need an extension for the  
7 submitting the petition. We take that language  
8 at its face value that Congress meant to speak  
9 very broadly.

10 The critical thing is that for a  
11 refinery to be eligible for an extension in a  
12 given compliance year, that refinery has to be  
13 exempt for the year preceding the compliance  
14 year.

15 CHIEF JUSTICE ROBERTS: Thank you,  
16 counsel.

17 MR. MORRISON: And only then --

18 CHIEF JUSTICE ROBERTS: Justice  
19 Thomas.

20 JUSTICE THOMAS: Thank you, Mr. Chief  
21 Justice.

22 Counsel, just to satisfy my curiosity,  
23 what's your interest in Petitioner not receiving  
24 this extension?

25 MR. MORRISON: Well, Your Honor, I --

1 I don't have a -- a personal interest in the  
2 Petitioner not receiving the exemption other  
3 than --

4 JUSTICE THOMAS: No, I don't mean --  
5 not you personally but your clients.

6 MR. MORRISON: Your Honor, it's  
7 because it was granted after a lapse in the  
8 exemption. There is only one --

9 JUSTICE THOMAS: No, I understand  
10 that. But how does it affect -- how does it  
11 affect your clients?

12 MR. MORRISON: Your Honor, where there  
13 are exemptions given from compliance, that  
14 affects the demand for their products. It  
15 affects the demand for ethanol, which in turn  
16 affects the price of RINs, the price of the fuel  
17 that they sell.

18 There have been almost 4 -- 4 billion  
19 gallons over the last few years that have been  
20 lost to small refinery exemptions. That has had  
21 a devastating effect on the renewal fuel sector.

22 JUSTICE THOMAS: So your interest is  
23 that you're -- you are not selling enough  
24 ethanol; is that what I'm hearing?

25 MR. MORRISON: Your Honor, it is that

1 the -- the ethanol that would otherwise be  
2 demanded to meet the congressional levels would  
3 no longer be produced and provided by the  
4 ethanol companies. That's correct.

5 And Congress's objective in -- in  
6 achieving those and in making sure under (o)(3)  
7 that those levels are ensured to be meant by the  
8 agency, it's -- it's critical that the agency  
9 provide those volumes to make sure the statutory  
10 levels are met.

11 JUSTICE THOMAS: But your interest is  
12 actually in securing the market for your  
13 product?

14 MR. MORRISON: Your Honor, it -- it's  
15 in making sure that, yes, we are going to be  
16 providing ethanol, blending into the nation's  
17 transportation level -- system, at the levels  
18 Congress contemplated in (o)(2) of the statute.

19 JUSTICE THOMAS: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice  
21 Breyer.

22 JUSTICE BREYER: Same question about  
23 marketable rights. I mean, when you read about  
24 the first two extensions -- first extension, it  
25 doesn't say 2011 and then two more years. It

1 says 2011 and at least two more years. They  
2 could have given 50 more years, as far as that  
3 wording is concerned. And I guess they wouldn't  
4 want to do that because things change all the  
5 time. You don't know what the price of the RIN  
6 will be. No one knows. Sometimes it's up;  
7 sometimes it's down.

8 Now, I've just given you an excellent  
9 reason why you would lose, because they want  
10 small refineries to not have to do this. And  
11 who is a small refinery with disproportionate  
12 hardship varies tremendously, possibly, across  
13 the years.

14 So what do you point to, to show I'm  
15 wrong? What do you point to in the legislative  
16 history? What do you point to in the context in  
17 which this was enacted that says no, they're not  
18 worried about the fluctuating prices and  
19 changes; they're worried only on phasing this  
20 out? Your point, what's your strongest  
21 evidence?

22 And I do look at the legislative  
23 history, if you have some there.

24 MR. MORRISON: Your Honor, all  
25 refineries had 15 years to adjust to the levels

1 that ultimately peak in 2022. And they had  
2 climbed gradually, giving them all the time to  
3 build the capacity. And that is explained in  
4 Senate Report Number 10974 F(6).

5           Secondly, small refineries had a  
6 five-year blanket exemption plus an additional  
7 possible two years to invest or adjust.

8           And, thirdly, I would say that the RFS  
9 compliance costs, as the government points out,  
10 turned out to be recoverable anyway, which would  
11 adjust for the fluctuations. If it did become  
12 more expensive in a given year, those compliance  
13 costs would still be recoverable in the costs of  
14 the products sold.

15           And then finally I would point to the  
16 equities of the situation that in 2015 only  
17 seven out of 137 refineries were under the  
18 exemption. So about 95 percent of the  
19 refineries in the country had complied, were  
20 meeting their -- or making their proportional  
21 contribution to the RFS demands. These --

22           CHIEF JUSTICE ROBERTS: Justice --  
23 Justice Alito. Justice Alito.

24           Justice Sotomayor.

25           JUSTICE SOTOMAYOR: Counsel --

1 JUSTICE ALITO: I'm sorry, I --

2 JUSTICE SOTOMAYOR: I want you to --  
3 I'm sorry, Sam, go ahead.

4 JUSTICE ALITO: Let's say there are  
5 two refineries. Refinery 1 gets an exemption in  
6 year one and in year two, refinery number 2  
7 complies in year one but needs an exemption in  
8 year two. And you would say that the second  
9 refinery can't get that exemption.

10 Why is that a sensible scheme?

11 MR. MORRISON: Well, Your Honor, I --  
12 I guess that -- that hypothetical rests on the  
13 false premise that given small refineries  
14 suffering a disproportionate economic hardship  
15 might not seek an exemption when it could have,  
16 but the truth is that all small refineries have  
17 every incentive in the world to apply for an  
18 exemption in a timely fashion, because  
19 otherwise, they'd have to comply.

20 Moreover, once a refinery has  
21 developed a mechanism for compliance, it can  
22 actually -- as I just mentioned, it can actually  
23 recover those compliance costs so there is no  
24 disadvantage from one to the other.

25 They also have compliance



1 flexibilities in the nature of deficit carryover  
2 too if they need so.

3 JUSTICE ALITO: All right, thank you.

4 CHIEF JUSTICE ROBERTS: Justice  
5 Sotomayor.

6 JUSTICE SOTOMAYOR: Counsel, both you  
7 and I think the government have said that, as  
8 the system has turned out, Congress may not have  
9 known that the costs were recoverable.

10 Can you explain that? I mean, what --  
11 what is odd about this statute is that there are  
12 all sorts of jump-off points away from the  
13 statute. The government mentioned a bunch of  
14 them. Justice Barrett mentioned one in  
15 particular, the regional effect.

16 But there are all sorts of other outs  
17 that the EPA can implement, but why would  
18 Congress not have anticipated the cost recovery?

19 MR. MORRISON: Your Honor, I -- I  
20 believe in 2005 and 2007, Congress did not have  
21 the information that it later gleaned and that  
22 EPA provided in analyses that it did on the  
23 impact of RFS compliance costs to refineries,  
24 small and large.

25 The most comprehensive study came

1 in -- in -- in the 2015 EPA report by Burkholder  
2 and there were other similar reports by Nittle  
3 and others that basically found that RFS  
4 compliance costs were recoverable in the cost of  
5 products sold small and large. That information  
6 was not available to Congress in 20 -- 2005 and  
7 2007.

8           And I think that's part of the reason  
9 why you don't see -- you -- you actually have  
10 this exemption on the books. It's also true  
11 that the Department of Energy when it first came  
12 out with the -- the study in 2008, it's initial  
13 reaction was that the further extension was not  
14 necessary because it began to see what  
15 Burkholder saw in later years, that the costs  
16 were recoverable.

17           So I think that's right, Justice  
18 Sotomayor. If -- if it were the case that  
19 Congress could have seen back in '05 and '07  
20 what it learned in later years, we might not  
21 have any exemption on the record.

22           JUSTICE SOTOMAYOR: Thank you,  
23 counsel.

24           CHIEF JUSTICE ROBERTS: Justice  
25 Sotomayor.

1 Oh, I'm sorry, Justice Kagan.

2 JUSTICE KAGAN: Mr. Morrison, I want  
3 to go back to your conversation with the Chief  
4 Justice about what "at any time" means. You  
5 said it was quite capacious, but of course you  
6 don't think it goes so far as to give Mr.  
7 Keisler what he wants.

8 So could you explain to me what that  
9 term means? What -- what does it include and  
10 where does it stop?

11 MR. MORRISON: Yes, Justice Kagan.  
12 "At any time" speaks only to the simple  
13 procedural question of when a small refinery can  
14 submit its petition. It says nothing about the  
15 substantive requirements for getting an  
16 exemption extended.

17 Congress added that language "at any  
18 time" simply to clarify that small refineries  
19 can submit petitions outside of the time-limited  
20 provisions in (A)(i) and (A)(ii). For example,  
21 small refineries can and did submit petitions in  
22 2011 and 2012 when the Department of Energy did  
23 include them in its study.

24 And I believe this distinction between  
25 the procedural question as we view "at any time"

1 and the substantive discussion about what's  
2 required for an exemption extension is clear  
3 from four things in that language. First is the  
4 ordinary meaning of "may at any time petition."  
5 Secondly is the nearest reasonable reference  
6 canon of statutory construction, which places  
7 "at any time" next to "petition."

8 Third is the undisputedly continuous  
9 nature of the adjacent provision in (A)(ii).  
10 And lastly the overall purposes of the RFS,  
11 which would be undermined by an open-ended and  
12 intermittent exemption.

13 JUSTICE KAGAN: Thank you, Mr.  
14 Morrison.

15 CHIEF JUSTICE ROBERTS: Justice  
16 Gorsuch.

17 JUSTICE GORSUCH: I have no questions  
18 at this time. Thank you.

19 CHIEF JUSTICE ROBERTS: Justice  
20 Kavanaugh.

21 JUSTICE KAVANAUGH: Thank you, Mr.  
22 Chief Justice.

23 Mr. Keisler said if you win this case  
24 the -- it won't add a drop to the volume of  
25 renewable fuel into the market. Do you agree?

1 MR. MORRISON: No, Justice Kavanaugh.

2 We would not agree.

3 We've submitted evidence with our  
4 briefs that indicate that small refinery  
5 exemptions have caused a substantial drop in the  
6 price of ethanol, roughly 2.3 billion in losses  
7 due to reduced revenues during the recent  
8 period, about 162 million gallons. That's in  
9 the Richmond declaration attached to our Tenth  
10 Circuit brief.

11 I would also point you, Justice  
12 Kavanaugh, to the State's amicus filing here,  
13 which details the economic harm that has been  
14 and will be continued upon the -- the biofuels  
15 industry if these exemptions continue.

16 JUSTICE KAVANAUGH: Right, the  
17 economic harm as distinct from the volume into  
18 the market, I'll let Mr. Keisler respond to that  
19 if there is a response on rebuttal.

20 Another question picking up on Justice  
21 Breyer's questions, it seems like we have a  
22 choice whether to interpret this as giving the  
23 agency flexibility to give the exemption or kind  
24 of a prohibition on granting the exemption.

25 You know, why -- why, when faced with

1 this kind of provision that doesn't have the  
2 kind of sunset language that you would often  
3 see, wouldn't we interpret this scheme, to the  
4 extent there's ambiguity, to give the agency  
5 flexibility whether to grant exemptions given  
6 the hardships that could result?

7 MR. MORRISON: Justice Kavanaugh, I  
8 believe we -- we -- we do begin with the  
9 ordinary and common meaning of "extension."  
10 And -- and although there may be other  
11 definitions possible, the ordinary and common  
12 meaning is simply, it remains to prolong or  
13 enlarge.

14 I think there are three contextual  
15 clues that bring us to the fact that this was  
16 meant to be a temporary exemption extension.  
17 The first is simple language in (B)(i), which  
18 limits EPA's authority under to extending the  
19 exemption in (A)(i) which Congress said would be  
20 temporary and time limited.

21 The second is, in the same way  
22 Congress used extension in the rest of  
23 Section 211, all throughout the Clean Air Act  
24 when it uses "extension," it does prolong  
25 continuously the duration of something

1 preexisting.

2           And I do believe, lastly, that if  
3 continuity is clear in the words Congress did  
4 not choose, that if it had chosen "reinstate,"  
5 "restart," "renew," or taken the most simple  
6 path of just saying that someone could petition  
7 for an exemption, that would lend toward a  
8 non-continuous --

9           JUSTICE KAVANAUGH: Thank you.

10          MR. MORRISON: -- interpretation.

11          JUSTICE KAVANAUGH: Thank you.

12          CHIEF JUSTICE ROBERTS: Justice --  
13 Justice Barrett.

14          JUSTICE BARRETT: Mr. Morrison, I have  
15 a question about the word temporary. So it's  
16 part of your argument that in context, there's a  
17 continuity requirement to the word exemption,  
18 but so long as they are continuous, can these  
19 exemptions go on into perpetuity?

20          MR. MORRISON: Your Honor,  
21 theoretically, if -- if -- it is possible that a  
22 small refinery could submit a meritorious  
23 petition each year that shows it -- it had a  
24 disproportionate economic hardship, as long as,  
25 again, it -- it was eligible to receive that

1 exemption that year because it had an exemption  
2 extension in the preceding compliance year.

3 We think that there's still going to  
4 be a funneling effect that would remove that  
5 possibility of something indefinite, though.  
6 The -- the harm would have to be  
7 disproportionate. And, again, what we're doing  
8 is still extending an exemption that Congress  
9 itself said would be time-limited and temporary.

10 JUSTICE BARRETT: Well, if it's not  
11 really temporary, however, in the sense that --  
12 you know, you're -- you're saying that for  
13 practical reasons maybe they would phase out,  
14 but as you read the text, as I understand your  
15 argument in any event, as you read the text,  
16 there's nothing in the text that stops a small  
17 refinery from continually getting the exemption  
18 year after year.

19 So it seems to me if "temporary"  
20 doesn't really mean temporary, then maybe it  
21 doesn't cast as much light as you say on what  
22 "exemption" means either.

23 MR. MORRISON: Your Honor, I think  
24 that's part of the reason why "temporary" was  
25 not in the header for (B)(i) and it was in the



1 header for (A), because extensions under (B)(i)  
2 could go on for a period of year -- years. Even  
3 though (B)(i) references back to the initial  
4 temporary exemption, and the disproportionate  
5 and economic hardship would create a funneling  
6 effect, you're correct that there's no specific  
7 limit on the number of continuous extensions  
8 that a small refinery may obtain under (B).

9 CHIEF JUSTICE ROBERTS: A minute to  
10 wrap up, Mr. Morrison.

11 MR. MORRISON: Petitioners have given  
12 this Court no compelling reason to depart from  
13 the ordinary meaning of the word "extension" and  
14 it should not do so here. The context in which  
15 this word is used in the statute confirms that  
16 this ordinary meaning is also the only  
17 appropriate and plausible meaning.  
18 Consequently, any extension of the temporary,  
19 time-limited exemption for a new compliance year  
20 must be preceded by an exemption in the prior  
21 compliance years.

22 The statute's purpose of enhancing  
23 energy security through the increased production  
24 of biofuels further precludes Petitioners'  
25 assertion that a compliance exemption Congress

1 provided only on a temporary basis could somehow  
2 become permanent.

3 We therefore ask that you affirm the  
4 Tenth Circuit's decision on this issue.

5 CHIEF JUSTICE ROBERTS: Thank you,  
6 counsel.

7 Rebuttal, Mr. Keisler.

8 REBUTTAL ARGUMENT OF PETER D. KEISLER  
9 ON BEHALF OF THE PETITIONERS

10 MR. KEISLER: Thank you, Mr. Chief  
11 Justice.

12 Both of my friends assert, as if it  
13 were a matter of fact, that we can simply  
14 recover the costs of this program by raising our  
15 prices. We can't. In the applications we  
16 submitted to the EPA, we said that our margins  
17 in many cases were zero or negative once the  
18 costs of this program were taken into account,  
19 and this cost is the single largest operating  
20 cost we have.

21 But we're not -- we don't want the  
22 Court to decide as a factual matter whether we  
23 can pass through those costs or not. We're just  
24 asking the EPA to look at that evidence as part  
25 of our submission. But, of course, they won't

1 if, for this entirely irrelevant issue of  
2 continuity, they don't get to consider our  
3 applications at all. And the issue of  
4 continuity doesn't depend on whether we're right  
5 or they're right about whether or not these  
6 costs can be passed through.

7 Now, my friend from the government  
8 began by saying that this won't doom small  
9 refineries to go out of business. But the key  
10 point is that if he's wrong about that, and if  
11 it did, he's saying that EPA's hands are tied  
12 and that Congress meant EPA's hands to be tied  
13 and never meant it to be able to grant relief  
14 even in that circumstance. Instead, it meant  
15 that we would be funneled out of the market.

16 These are the realities that we  
17 explained in our applications. Many small  
18 refineries, as Congress recognized, cannot  
19 afford the blending infrastructure, and so they  
20 have to rely on the marketable rights, the  
21 credits, and the RINs. And -- and -- and as  
22 everyone has acknowledged, the prices for those  
23 are wildly volatile, and Department of Energy  
24 found having to pay those costs will constitute  
25 disproportionate economic hardship when those

1 costs exceed the cost of blending, as they  
2 generally do.

3 The price of these credits can jump up  
4 and down as much as four or five times or more  
5 in a single year. So if they plummet one year  
6 and we can comply, we are then completely  
7 foreclosed from relief in every future year,  
8 even if they go up ten times.

9 And also, if somebody somehow gave us  
10 the blending infrastructure for free at our  
11 facility, that would not solve the issues we  
12 have because the issues are structural. And  
13 Congress did understand and anticipate that,  
14 Justice Barrett. That's why they wrote this  
15 whole separate subsection about small  
16 refineries.

17 Many of these refineries are located  
18 in geographically remote areas. They depend on  
19 pipelines to reach their markets, and pipelines  
20 don't take blended fuel because it's corrosive  
21 to pipelines. They don't own retail gas  
22 stations like their larger competitors. They  
23 can't compel the gas stations to take their  
24 blended fuel, and the gas stations often don't.

25 And they have to sell a larger

1 proportion than the rest of the industry of  
2 diesel because they're in remote areas, and  
3 diesel doesn't take blending to the same degree  
4 as the others.

5           So they are all sorts of reasons why  
6 Congress understood that small refineries needed  
7 this different provision. And that's why they  
8 authorized them to seek relief at any time based  
9 on hardship.

10           CHIEF JUSTICE ROBERTS: Thank you,  
11 counsel.

12           The case is submitted.

13           (Whereupon, at 11:40 a.m., the case  
14 was submitted.)

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## Official - Subject to Final Review

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