No. 25-6714

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EVA LIGHTHISER; et al.,
Plaintiffs-Appellants,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; et al.,
Defendants-Appellees,

STATE OF MONTANA; et al.,
Defendants/Intervenors-Appellees.

On Appeal from the United States District Court
for the District of Montana – Butte Division
No. 2:25-cv-00054-DLC
Hon. Dana L. Christensen

AMICUS BRIEF OF THE BREAKTHROUGH INSTITUTE IN SUPPORT OF DEFENDANTS-APPELLEES/AFFIRMANCE

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DISCLOSURE STATEMENT

The Breakthrough Institute is a 501(c)(3) nonprofit organization. Its Form 34 has been submitted simultaneously with this brief pursuant to FRAP 26.1-1(a)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Rules

Other Authorities

IDENTITY AND INTERESTS OF AMICUS CURIAE AND SOURCE OF AUTHORITY TO FILE[1]

The Breakthrough Institute (Breakthrough) is a global environmental research center founded in 2008. It focuses on identifying and promoting technological solutions to environmental and human development challenges. Breakthrough's work emphasizes empirically grounded climate science, technological innovation, and democratic governance as the foundations of effective climate policy. Breakthrough has published extensively on energy transitions and decarbonization, climate risk, extreme weather trends, and the scientific and legal limits of attributing discrete harms to anthropogenic climate change, including critiques of the misuse of attribution science in litigation and regulatory contexts.[2]

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[1] No party's counsel authored this brief in whole or in part or contributed money intended to fund preparing or submitting the brief; no person other than amicus curiae, its members, or its counsel, contributed money intended to fund preparing or submitting the brief. Fed. R. App. 29(a)(4)(E).

[2] *See, e.g.*, Patrick Brown, *Do Climate Attribution Studies Tell the Full Story?*, The Breakthrough Inst. (Jan. 7, 2025), https://thebreakthrough.org/journal/no-20-spring-2024/do-climate-attribution-studies-tell-the-full-story; Patrick Brown, *What the Science Can't Say About Climate Change*, The Breakthrough Inst. (Apr. 17, 2023), https://thebreakthrough.org/journal/climate-change-banned-words/science-climate-change; Patrick Brown, *Effective Climate*

Breakthrough has a strong interest in ensuring courts rely on robust, mainstream climate science and energy analysis, and well-established principles of causation and redressability. It has an equally strong interest in ensuring that novel scientific claims are not overstated or used in ways that undermine both judicial legitimacy and public trust in climate research.

Breakthrough agrees with appellees and the district court that appellants' claims are not redressable. It submits this brief to emphasize that the claims are subject to dismissal for the additional reasons that they are barred by the political question doctrine, and because appellants cannot establish causation based on their asserted single-event attribution theory, which is contrary to science and cannot show the type of causal chain required here.

Counsel for the parties and intervenors have consented to this filing.

Communication on Extremes Should Not Sacrifice Clarity in the Name of Persuasion, The Breakthrough Inst. (Aug. 22, 2022), https://thebreakthrough.org/blog/effective-climate-communication-on-extremes-should-not-sacrifice-clarity-in-the-name-of-persuasion.

INTRODUCTION AND SUMMARY OF ARGUMENT

Through this litigation, appellants attempt to use the judiciary to force national policy changes related to the government's treatment of greenhouse gas (GHG) emissions. They cite the U.S. Constitution as the basis for their claims, but whether and to what extent the federal government should prioritize the reduction of GHG emissions over other national interests is a policy choice charged to Congress and the Executive Branch, not courts. Courts lack jurisdiction to review such decisions, regardless of their effect or wisdom.

The incompatibility of appellants' issues with a judicial remedy is further reflected in the attribution theories appellants use to suggest causation and redressability. Those theories were crafted for the purpose of satisfying a legal test and conflate probabilistic modeling with causation; they are incompatible with actual scientific proof. The causal relationship between the challenged executive orders and appellants' alleged injuries is far too attenuated and speculative to demonstrate a traceable causal link. The district court's acceptance of such information as sufficient to show causation invites an erosion of trust in scientific institutions and renders the legal standard virtually

meaningless, establishing a basis to find standing to sue any time a national policy implicates energy or climate concerns. Nonetheless, even accepting appellants' conjectural claims as sufficient, the amount of emissions appellants attribute to the challenged executive orders is too miniscule to support locally quantifiable environmental impacts.

Because the claims presented are nonjusticiable and appellants lack standing, this Court should affirm dismissal. If appellants disagree with the President's national priorities, their remedy lies with the electorate, not the judiciary.

ARGUMENT

The political nature of appellants' claims is a consistent thread that runs through and confounds every legal question presented in this appeal. The questions appellants ask the judiciary to decide demand precisely the types of judgments, predictions, and policy choices separation-of-powers principles aim to protect through the requirements of Article III standing.

Breakthrough agrees with the arguments government appellees and intervenors make and offers this amicus brief to emphasize the non-justiciability of the President's energy and climate priorities and

the fact that, contrary to the district court's conclusion, the challenged executive orders are far too attenuated from appellants' alleged injuries to be reliably traced to them. Using the judiciary to decide such policy-driven and technically complex questions offends core separation-of-powers principles and risks undermining the advancement of climate science and research.

I. Climate policy is a nonjusticiable political question.

Appellants' allegations, while styled as constitutional claims, are, at heart, political questions that do not turn on legal standards. Instead, they turn on policy determinations about how, whether, and to what extent the federal government should prioritize GHG emissions over other national priorities. Courts lack jurisdiction to decide such questions.

The political question doctrine "'is primarily a function of the separation of powers' . . . [and] reflects the foundational precept, central to our form of government, that federal courts decide only matters of law, with the elected branches setting the policies of our nation." *Def. for Child. Int'l-Palestine v. Biden*, 107 F.4th 926, 930 (9th Cir. 2024) (quoting *Baker v. Carr*, 369 U.S. 186, 210 (1962)). Indeed, "[o]ne of the

most obvious limitations" of a court's jurisdiction is "that judicial action must be governed by *standard*, by *rule*. Laws promulgated by the Legislative Branch can be inconsistent, illogical, and ad hoc; law pronounced by the courts must be principled, rational, and based upon reasoned distinctions." *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004). When a political question is inextricable from a case, the doctrine "prevents a plaintiff's claims from proceeding to the merits." *Jaber v. United States*, 861 F.3d 241, 245 (D.C. Cir. 2017) (citing *Baker*, 369 U.S. at 211). This is true regardless of how the claims are framed. *Def. for Child. Int'l-Palestine*, 107 F.4th at 932 (citing *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010) (en banc)).

Appellants tie their constitutional injuries to "every additional ton of GHG pollution" and any related incremental increase in global heat the executive orders cause. 6-ER-1221, 1225. But to adjudicate such claims, courts would first have to make inherently political judgments about topics including, among other things, whether, how, and to what extent GHG emissions should be regulated; how best to calculate and attribute GHG emissions; how best to attribute GHG emissions to specific events; whether and to what extent the government should

prioritize the reduction of GHG emissions over other national interests; and whether and to what extent non-emitting technologies can, will, or should replace fossil fuels.

The regulation of GHG emissions necessarily implicates "energy production, economic growth, foreign policy, and national security." *City of New York v. Chevron Corp.*, 993 F.3d 81, 93 (2d Cir. 2021). Such questions are "exclusively entrusted to the political branches . . . [and] immune from judicial inquiry or interference." *Haig v. Agee,* 453 U.S. 280, 292 (1981); *Def. for Child. Int'l-Palestine*, 107 F.4th at 932 ("the political question doctrine bars our review of claims that, *regardless of how they are styled*, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion.") (quoting *El-Shifa Pharm. Indus. Co.*, 607 F.3d at 842); *Schneider v. Kissinger*, 412 F.3d 190, 197 (D.C. Cir. 2005).

Deciding appellants' claims requires "an initial policy determination of a kind clearly for nonjudicial discretion," and there are no "judicially discoverable and manageable standards" to apply to the questions appellants raise. *Baker*, 369 U.S. at 217. Answering such

questions would also require courts to impermissibly "move beyond areas of judicial expertise." *Wang v. Masaitis*, 416 F.3d 992, 995 (9th Cir. 2005) (articulating factors); *see also Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 428 (2011) (explaining that federal judges "lack the scientific, economic, and technological resources" to cope with the technically complex issues presented by the regulation of GHG emissions).

As the federal government notes in their answering brief, these judicial limitations are more likely triggered when a plaintiff requests injunctive relief against executive orders, as is the case here. ECF 62.1 at 35 (quoting *Trump v. CASA, Inc.*, 606 U.S. 831, 835 (2025)). That is "because the framing of injunctive relief may require the courts to engage in the type of operational decision-making beyond their competence and constitutionally committed to other branches[.]" *Koohi v. United States*, 976 F.2d 1328, 1332 (9th Cir. 1992).

Appellants' own evidence underscores how ill-suited their claims are for judicial resolution. For example, one of their purported experts, Mark Jacobson, opines (based on disputed metrics) that "[t]he United States no longer needs fossil fuels for its energy purposes and has not

for some time."[3] 4-ER-793. In other words, Mr. Jacobson disagrees with the President's prioritization of coal over low-carbon alternatives. In addition to being a mere policy preference, Mr. Jacobson's opinion rests on controversial, heavily disputed metrics, the applicability of which turn on discretionary policy judgments Congress delegated to the Executive Branch and that lie far beyond the expertise of the judiciary.

For instance, appellants' experts rely on measures such as the levelized cost of electricity—a long debated metric—to make sweeping claims about the viability of low-carbon alternatives to fossil fuels, even though such metrics do not account for system-wide costs of the electric power system. *See, e.g.*, 4-ER-778–79. Similarly, although the cost of solar, wind, and batteries has plummeted over the last twenty years, the nation's energy system cannot run entirely or even mostly on these technologies, and certainly not within the next 20 to 30 years. Making predictions about the speed and feasibility of a transition away from

[3] Mark Jacobson's analysis has been criticized in peer-reviewed literature for relying on modeling errors and unrealistic assumptions. *See, e.g.*, Christopher T.M. Clack, et al., *Evaluation of a Proposal for Reliable Low-Cost Grid Power with 100% Wind, Water, And Solar*, 114 Proc. Nat'l Acad. Scies. 6722 (2017), https://www.pnas.org/doi/epdf/10.1073/pnas.1610381114.

fossil fuels rests on contested assumptions that rely on value-laden judgments and predictions. Constitutional rights cannot be made to turn on such calculations and projections, which fall outside the judiciary's institutional competence and authority. Allowing appellants' claims to proceed, in addition to intruding on the Executive's discretionary function, would lend weight to questionable attributions and analyses and, in doing so, risk undermining the integrity of energy and climate-science research and institutions.

Whether and to what extent agencies should regulate GHG emissions in response to global climate change is not a legal question; it is instead precisely the type of political question the framers assigned to elected lawmakers. Appellants might disagree with the President's priorities or the way in which he is (or is not) addressing some of this planet's most pressing problems. But how to prioritize GHG emissions and climate change amongst other national priorities is precisely the type of discretionary determination that "can never be examinable by the courts." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 166 (1803). "[W]hatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no

power to control that discretion." *Id*. at 166; *see also Def. for Child. Int'l-Palestine*, 107 F.4th at 930) (quoting *Marbury*, 5 U.S. (1 Cranch) at 170); *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012); *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986); *Baker v. Carr*, 369 U.S. at 217.

To find that the President's energy priorities violate appellants' rights simply because they encourage agencies to make decisions that might prioritize other considerations over the production of GHG emissions would necessarily require courts to exert judicial control over executive discretion. But it is not up to courts to decide whether the President's policies make sense or will achieve their stated objectives. Executive discretion does not turn on the wisdom of the Executive.

The President concluded that approaches to climate change and energy shortages adopted by prior administrations were ill-advised and replaced them with new policies and priorities he thinks are better. Such decisions are "delicate, complex, and involve large elements of prophecy. . . . They are decisions of a kind for which the Judiciary has neither aptitude, facilities, nor responsibility[.]" *Chicago & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948). Courts may not

second-guess the President's policy choices. The structure on which this nation's government was constructed depends on the maintenance of such boundaries, despite the wisdom or popularity of the policies they protect.

II. Appellants' alleged injuries are not fairly traceable to the challenged executive orders.

To show causation for purposes of standing, appellants claim their alleged injuries will result from every "additional ton" of GHG emissions the executive orders indirectly "unleash," and any related incremental global heat resulting from those emissions. 6-ER-1221, 1225. To succeed on this claim, appellants need to show that the "additional ton" of GHG emissions they describe and any related increase in global heat are "fairly traceable" to the challenged executive orders and "not the result of misconduct of some third party not before the court." *Wash. Env't Council v. Bellon ("Bellon")*, 732 F.3d 1131, 1141 (9th Cir. 2013) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

The district court concluded appellants had provided "concrete evidence that the Challenged EOs themselves will increase greenhouse gas emissions and, in turn, worsen the climate-related injuries alleged

here." 1-ER-21. But there is no such thing as "concrete" evidence capable of attributing harm from climate change to any specific executive order. Instead, appellants relied on a single-event attribution theory that conflates probabilistic modeling with causal proof.

Appellants' causation theory fails to account for the inherently multifactorial nature of climate risk and collapses complex causal chains into untenable simplifications. The challenged executive orders do not require the emission of greenhouse gases and cannot be fairly traced to appellants' injuries.

A. The causal chain between the alleged GHG emissions and the executive orders is too attenuated to establish traceability.

The district court assigned responsibility for global climate harm to specific executive policy decisions, notwithstanding a multitude of intervening actors and independent causal factors. As this Court has recognized, "there is a natural disjunction between . . . localized injuries and the greenhouse effect. Greenhouse gases, once emitted from a specific source, quickly mix and disperse in the global atmosphere and have a long atmospheric lifetime." *Bellon*, 732 F.3d at 1143. "Moreover, there are numerous independent sources of GHG emissions, both within

and outside the United States, which together contribute to the greenhouse effect." *Id.*

Here, the causal link is especially attenuated because the executive orders do not require the emission of greenhouse gases or even regulate such emissions; they merely announce policy priorities. Indeed, according to a Congressional Research Service report published in 2025, the last time President Trump issued executive orders aimed at promoting coal as an energy source, those orders "did not reverse coal power plant retirements, increase employment in the coal sector, or increase coal production." Lexie Ryan, Cong. Rsch. Serv., R48587, U.S. Coal Industry Trends 14 (2025).[4] That is because "[c]oal consumption, production, employment, and exports are largely driven by industry decisions based on market conditions, rather than executive or legislative direction. Likewise, increases in coal production on federal lands largely depend on interest from coal developers." *Id.* The coal industry had been declining for decades and continued to do so, despite having received President Trump's executive blessing.

[4] The report is available on the Congressional Research Service website, https://www.congress.gov/crs_external_products/R/PDF/R48587/R48587.1.pdf

The challenged orders set policy, but they do not ultimately approve, control, or regulate GHG emissions. When such agency actions occur, appellants are free to challenge them. *See, e.g.*, *Am. Pub. Health Ass'n, v. EPA*, No. 26-1037 (D.C. Cir. filed Feb. 18, 2026) (petition for review of rule rescinding endangerment finding); *see also* ECF 62.1 at 49 n.3 (listing cases). What they may not do is use this litigation to achieve a programmatic national change in energy policy. *See, e.g., Lujan v. Defs. of Wildlife*, 504 U.S. at 568 (explaining that the "programmatic approach" to litigation "has obvious practical advantages, but also obvious difficulties insofar as proof of causation or redressability is concerned. . . . [Such cases are] rarely if ever appropriate for federal-court adjudication") (cleaned up).

Although the district court correctly noted that standing does not require appellants to prove the executive orders are the sole source of their injury, *see Bellon*, 732 F.3d at 1142, it is *not* true that appellants have standing to challenge any indirect source, regardless of its attenuation from their alleged injury. A causal chain is too weak when it depends on "numerous third parties whose independent decisions collectively have a significant effect on plaintiff's injuries." *Id.* (citing

Native Vill. of Kivalina v. ExxonMobil Corp., 696 F.3d 849, 867 (9th Cir. 2012) (Pro, J., concurring)); *Maya v. Centex Corp.*, 658 F.3d 1060, 1070 (9th Cir. 2011).

When many links exist in a causal chain and "a plaintiff alleges that government action caused injury by influencing the conduct of third parties . . . 'more particular facts are needed to show standing.'" *Mendia v. Garcia*, 768 F.3d 1009, 1013 (9th Cir. 2014) (quoting *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 849 (9th Cir. 2002)). Appellants may not rely "on 'speculation' or 'guesswork'" to establish indirect causation. *Id*. Yet that is precisely what appellants have done here.

Appellants do not challenge individual regulatory action (or inaction), as the plaintiffs did in *Bellon*. Instead, they challenge specific executive orders that do not themselves regulate GHG emissions but instead set energy policies and priorities. In this context, the standing analysis must be "especially rigorous" because adjudicating the merits would force a court to decide whether executive action is unconstitutional. *Raines v. Byrd,* 521 U.S. 811, 819–20 (1997); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013).

Far from the heightened standard required, the district court's assumption that the challenged executive orders will automatically cause measurable increases of GHG emissions that will, in turn, warm the planet to a degree that harms the individual plaintiffs in this lawsuit renders the causation requirement largely meaningless. Such a conclusion impermissibly depends on speculation and guesswork, not scientific or analytic rigor. If adopted, it will allow any living person to bring lawsuits challenging any executive policy that even remotely implicates energy, the use of natural resources, or climate. Such a result is inconsistent with the legal standards and requirements this Court has articulated.

In addition to being legally untenable, the district court's crediting of appellants' single-attribution science serves as an endorsement of over-simplified unreliable analyses and undermines ongoing scientific efforts to meaningfully address impacts from climate change. Although appellants argue it is possible to provide a direct link from the executive orders to their specific injuries, the complex nature of climate change and the current state of science is to the contrary.

This Court recognized the difficulty of attributing individualized harm from GHG emissions in *Bellon*. Like plaintiffs in that case, appellants' causal chain "consists of a series of links strung together by conclusory, generalized statements of 'contribution,' without any plausible scientific or other evidentiary basis that the" executive orders "are the source of their injuries." *Bellon*, 732 F.3d at 1142. This Court recognized that proving legal causation based on GHG emissions would likely be "a particularly challenging task," based on its complex nature and long atmospheric lifetime, and that "there is limited scientific capability in assessing, detecting, or measuring the relationship between a certain GHG emission source and localized climate impacts in a given region." *Id.* at 1143; *see also id.* ("[G]lobal warming has been occurring for hundreds of years and is the result of a vast multitude of emitters worldwide whose emissions mix quickly, stay in the atmosphere for centuries, and, as a result, are undifferentiated in the global atmosphere.") (quoting *Native Vill. of Kivalina*, 696 F.3d at 868).

That remains the case. The "evidence" on which appellants rely fails to show the necessary causal chain and any suggestion to the contrary is based on unreliable speculation, not settled science. For

example, appellants rely on a single expert, Jesse Jenkins, to establish that the executive orders will cause them actual or imminent climate injury. 5-ER-984. Jenkins used the Rapid Energy Policy Evaluation and Analysis Toolkit (REPEAT) to conclude that the executive orders will increase emissions by 510 million metric tons of CO_2-equivalent per year by 2035. 5-ER-987. But REPEAT does not establish the necessary causal chain. Its projections rest on speculative assumptions not compelled by the executive orders, including an assumption that all Environmental Protection Agency GHG regulations and Department of Energy efficiency standards will be repealed or left unenforced, and that all unspent funding from the Inflation Reduction Act and the Infrastructure Investment and Jobs Act will be frozen. 5-ER-986–87.

Jenkins acknowledges that REPEAT omits key information that would materially affect emissions outcomes. He concedes that the model "does not capture endogenous changes in coal, natural gas, or petroleum product prices as a function of changes in demand," nor does it account for the resulting rise in total energy expenditures that would likely accompany increased fossil-fuel consumption. 5-ER-988. Jenkins further admits that REPEAT "does not quantify the global emissions

impact associated with . . . fossil fuels that are principally exported from the US. Nor does our analysis quantify impacts of immediate federal actions on additional GHG emissions or harm to Plaintiffs from the localized pollution that comes from development, production, transport, and combustion of coal, oil, and gas." 5-ER-992–93. These limitations underscore that REPEAT offers, at most, a projection under incomplete assumptions, not reliable, let alone "concrete" evidence that the executive orders will likely cause appellants' alleged injuries.

Nor do appellants' remaining experts establish the necessary causal chain. Unlike Jenkins, they do not attempt to trace the executive orders to particularized injuries. Instead, they offer generalized assertions that increased fossil-fuel use contributes to global warming, which in turn will worsen climate-related harms. *See, e.g.*, 4-ER-746 ("[I]f temperatures continue to rise, which is what will happen if Defendants further 'unleash' fossil fuels, these youth Plaintiffs, and other children, will experience worsening health injuries."); 4-ER-834 ("Increases in temperatures caused by 'unleashing' more fossil fuels will cause further harm and risk of harm to the Plaintiffs . . . . Each additional ton of GHG pollution Defendants 'unleash' will contribute to

more warming and exacerbate Plaintiffs' heat-related injuries."); 4-ER-842 ("Adverse impacts and related losses and damages to Montana escalate with every increment of global warming. These adverse impacts and losses will grow significantly if Defendants continue their actions to 'unleash' fossil fuels."); 5-ER-1070 ("In signing EO 14155, 14156, and 14261, President Trump is dramatically intensifying the climate crisis . . . ."); 5-ER-1081 ("Unleashing the use of more fossil fuels . . . would result in worsening the already dangerous planetary conditions that threaten Plaintiffs' lives."); 5-ER-1085 ("It is incontrovertible that, if CO_2 emissions remain as they are today or increase as the U.S. Presidential administration's Executive Orders state they will do, the atmospheric CO_2 concentration will continue to climb, with ever worsening harms to these young Plaintiffs.").

It is just as difficult to attribute any specific amount of global "heat" to the executive orders. Other decarbonization efforts such as the use of low-carbon technologies; expanding solar, wind, nuclear, and geothermal storage; electric vehicles; electrified public transit; hydrogen, carbon capture and removal technologies; and agricultural innovations will also reduce emissions across sectors over time and

would likely counteract some amount of increased GHG emissions that might occur elsewhere.

As explained in a 2025 article published by the American Meteorological Society considering whether it is possible to attribute specific global weather events to climate change originating in human activity, "the effects of internal climate variability on [global mean surface temperature] and the uncertain relationship between [global mean surface temperature] and regional extremes may lead to inaccurate attribution conclusions[.]" Peter Sherman, Peter Huybers, and Eli Tziperman, *On the Attribution of Weather Events to Climate Change Using Empirically Fit Extreme Value Distributions*, 38 J. Climate 2799 (2025), https://doi.org/10.1175/JCLI-D-23-0542.1. Courts should not reject claims of standing based on such evidence "reluctantly," but with conviction.

Single-event attribution is not a neutral or settled scientific tool, but an advocacy-driven framework designed to advance specific legal outcomes. Relying on it to show legal causation is problematic because doing so lends credibility to untrustworthy theories while meaningful responses to climate change require nuance, peer-reviewed evidence,

and a careful balancing of competing national interests. Single-event attribution theories simply cannot accurately establish a fairly traceable link between the challenged executive orders and specific impacts from global climate change.

B. Even accepting appellants' flawed attribution claims, the alleged impact is too miniscule to be a "meaningful contribution" to global warming.

Even accepting appellants' flawed attribution theory, they misleadingly conflate the public-health risks of criteria air pollutants, such as particulate matter and ozone, with the long-term climactic effects of greenhouse gases. *See, e.g.*, 6-ER-1268 ("Fossil fuel burning from vehicles, power plants, and industrial sources, emits a complex mixture of air pollutants including . . . fine particulate matter . . . and ozone precursors. These pollutants disproportionately affect children. Fossil fuel-driven air pollution is a major contributor to adverse pediatric health outcomes, and reducing such emissions is critical to protecting children's health and development."); 6-ER-1267 (listing symptoms for which children are at increased risk due to exposure to wildfire smoke and particular matter); 6-ER-1271 ("A small increase in

PM2.5 pollution from wildfires is associated with higher emergency department visits . . . .").

The immediate health risks criteria pollutants pose are regulated under the Clean Air Act and related statutes. Appellants' lawsuit is simply an attempt to litigate these risks through novel constitutional theories nominally premised on protecting a "livable climate." By appellants' own account, however, the alleged increase in carbon emissions that might occur due to actions taken under the executive orders is a trivial contribution to aggregate climate risk—less than one percent of cumulative anthropogenic emissions.

In *Bellon*, plaintiffs failed to establish causation based on GHG emissions from oil refineries constituting only 5.9 percent of GHG emissions in Washington. *Bellon*, 732 F.3d at 1145–46. This Court explained that the alleged climate injuries must be linked to *global* GHG concentrations and concluded that the refineries' emissions were not a "meaningful contribution" at the global scale. *Id.* at 1146. This Court further noted that it had previously found that "aviation activities accounting for .03% of U.S.-based greenhouse gas emissions do 'not translate into locally-quantifiable environmental impacts given

the global nature of climate change.'" *Id.* at 1143 (quoting *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1140 (9th Cir. 2011)).

By contrast, in *Massachusetts v. EPA*, GHG emissions from the U.S. motor vehicle industry were a "meaningful contribution" to GHG concentrations because they accounted for 6 percent of global carbon dioxide emissions. 549 U.S. 497, 524–25 (2007). Similarly, in *Juliana v. United States*, "a host of federal policies . . . spanning 'over 50 years'" and accounting for about 25 percent of the world's use of fossil fuels was found to be a "substantial factor" in plaintiffs' alleged climate injuries. 947 F.3d 1159, 1169 (2020).

Here, as in *Bellon*, appellants challenge a small number of discrete federal actions that, by appellants' own estimate, will increase global GHG emissions by less than one percent. 6-ER-1264; ECF 62.1 at 27–28. Even accepting appellants' projections, the emissions caused by the challenged executive orders are small in the context of historic, global GHG emissions. Less than one percent is too miniscule to prove individualized impacts based on global climate change. It is neither a "meaningful contribution" to global GHG concentrations nor a "substantial factor" in producing localized climate injuries.

CONCLUSION

For reasons stated herein, this Court should affirm dismissal for lack of jurisdiction.

Respectfully submitted,

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Dated: March 3, 2026

CERTIFICATE OF COMPLIANCE
Form 8

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