No. _____

In the Supreme Court of the United States

EXXONMOBIL CORPORATION; EXXONMOBIL CHEMICAL COMPANY; EXXONMOBIL REFINING & SUPPLY COMPANY,

Petitioners,

v.

ENVIRONMENT TEXAS CITIZEN LOBBY, INCORPORATED; SIERRA CLUB,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

RUSSELL S. POST
BECK REDDEN LLP
1221 McKinney
Suite 4500
Houston, TX 77010

GREGORY G. GARRE
Counsel of Record
ROMAN MARTINEZ
JORDAN R. GOLDBERG
CHRISTINA R. GAY
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Counsel for Petitioners

QUESTIONS PRESENTED

The fractured, en banc Fifth Circuit decision below affirmed liability in one of the largest Clean Air Act (CAA) citizen-suit cases of all time, authorizing millions of dollars in civil penalties against petitioners. But for the vast majority of those penalties, plaintiffs—respondents here—never traced their alleged injuries to an actual legal violation by ExxonMobil—as distinct from the thousands of pounds of lawful emissions that ExxonMobil daily produced or emissions from other companies. And plaintiffs and their members will never see a penny of those penalties, which are payable only to the U.S. Treasury. The upshot is that ExxonMobil has been ordered to pay civil penalties that plaintiffs will never receive, for harms that were never traced to any legal violations by ExxonMobil—a result that Judge Jones, in dissent, aptly described as "disastrous for future litigants." App.97a. The questions presented are:

1. Whether, as the Fifth Circuit has held, a plaintiff in a CAA citizen suit may satisfy Article III's traceability requirement merely by showing that she suffered the "*kinds* of injuries" that defendants' conduct "*could* have" caused.

2. Whether this Court should overrule its holding, in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000), that the availability of civil penalties paid to the government can satisfy Article III's redressability requirement for private, citizen-suit plaintiffs.

RULE 29.6 STATEMENT

Petitioner Exxon Mobil Corporation certifies that it is a publicly traded corporation with no corporate parent. No publicly held corporation owns 10% or more of Exxon Mobil Corporation's stock.

Petitioners ExxonMobil Chemical Company and ExxonMobil Refining & Supply Company were at one point wholly owned divisions of Exxon Mobil Corporation, but have since been moved into ExxonMobil Product Solutions Company, which is itself a wholly owned division of Exxon Mobil Corporation.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Environment Texas Citizens Lobby, Inc. et al. v. ExxonMobil Corp. et al., No. 17-20545 (5th Cir.). Final en banc judgment entered December 11, 2024; prior panel judgments entered August 30, 2022 and July 29, 2020.

Environment Texas Citizens Lobby, Inc. et al. v. ExxonMobil Corp. et al., No. 15-20030 (5th Cir.). Judgment entered May 27, 2016.

Environment Texas Citizens Lobby, Inc. et al. v. ExxonMobil Corp. et al., No. 10-cv-4969 (S.D. Tex.). Judgment entered March 2, 2021; prior judgments entered April 26, 2017 and December 17, 2014.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

Page

APPENDIX

TABLE OF CONTENTS—Continued

Page

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

FEDERAL STATUTES AND REGULATIONS

TABLE OF AUTHORITIES—Continued

Page(s)

STATE REGULATIONS

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page(s)

PETITION FOR A WRIT OF CERTIORARI

Petitioners Exxon Mobil Corp., ExxonMobil Chemical Co., and ExxonMobil Refining & Supply Co. (together, ExxonMobil) respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS AND ORDERS BELOW

The en banc opinion of the court of appeals is reported at 123 F.4th 309 (5th Cir. 2024) (App.1a-200a). The decision of the district court affirmed below is reported at 524 F. Supp. 3d 547 (S.D. Tex. 2021) (App.201a-55a).

The panel decisions in this case are reported at 47 F.4th 408 (5th Cir. 2022) (App.256a-89a); 968 F.3d 357 (5th Cir. 2020) (App.290a-326a); and 824 F.3d 507 (5th Cir. 2016) (App.423a-72a). One of the prior district court decisions in this case is unreported and available at 2017 WL 2331679 (S.D. Tex. Apr. 26, 2017) (App.327a-422a); the other prior district court decision is reported at 66 F. Supp. 3d 875 (S.D. Tex. 2014) (App.473a-546a). The Fifth Circuit's order granting rehearing en banc is unreported but available at App.547a-48a.

JURISDICTION

The en banc court of appeals entered judgment on December 11, 2024. App.1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the petition appendix. App.549a-54a.

INTRODUCTION

Article III and its touchstone standing requirements are crucial to "ensuring that the Federal Judiciary respects 'the proper—and properly limited—role of the courts in a democratic society.'" *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 337 (2006). This case presents two important and recurring questions concerning the requirements for establishing Article III standing in environmental citizen-suit actions seeking civil penalties. Those questions divided the en banc Fifth Circuit below in the most extreme fashion possible and, as the Fifth Circuit dissenters warned, produced a result that will be "disastrous for future litigants" if left unreviewed by this Court. App.97a (Jones, J., dissenting).

The first question concerns the traceability requirement for establishing Article III standing. This Court has recently reaffirmed the "central[ity]" of that requirement. *FDA v. Alliance for Hippocratic Med.*, 602 U.S. 367, 383 (2024). And to satisfy traceability, the Court has been clear that plaintiffs must prove their injuries were "likely caused" by defendants' legal violations. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). But when it comes to environmental citizen suits under the Clean Air Act (CAA), several circuits—including the Fifth Circuit—have adopted a novel standard that grossly departs from this Court's precedents: A plaintiff may establish standing simply by showing that her injuries are the "*kinds* of injuries" that defendants' conduct "*could* have" caused. App.208a (emphasis added). As Judge Oldham emphasized in a series of dissents at the panel stage below—and seven other dissenters stressed at the en banc stage—that standard has no foundation in Article III and

effectively grants environmental plaintiffs "standing in gross." *Id.* at 282a; *see id.* at 158a-59a. It also has led to chaos and uncertainty among the courts that have adopted this misguided framework. The Court should grant review to make clear that ordinary Article III principles—including the requirement of showing that a plaintiff's injuries were "likely caused" by the defendant—apply to environmental suits.

The second question concerns the redressability requirement. In *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, this Court held that Article III redressability can be satisfied in a citizen suit for environmental harm by civil penalties paid to the U.S. Treasury. 528 U.S. 167, 185-86 (2000). *Laidlaw* relied on the deterrent effects that such penalties *may* have on defendants, even when penalties do not directly benefit a plaintiff. *Id.* But as Justice Scalia (joined by Justice Thomas) explained in dissent in *Laidlaw*—and Judge Ho echoed below—this "preposterous" theory of general deterrence is "speculative as a matter of law," and inconsistent with basic standing principles. *Id.* at 202, 205; App.77a-80a. No *stare decisis* factors support retaining this anomalous precedent, and *Laidlaw* has only grown more aberrant in the wake of intervening precedents. As Judge Oldham observed below, this case presents a "particularly good vehicle" to reconsider it. App.289a n.3. The Court should do so and overrule *Laidlaw*.

This case—one of the largest CAA actions in history—underscores the need for this Court's review of those questions. Through 15 years of proceedings, plaintiffs have extracted nearly $15 million in penalties from petitioners (collectively, ExxonMobil), based on thousands of "emissions events" at a facility

in Texas. Yet through all of that, plaintiffs' members have traced their actual injuries to only five "emissions events" attributable to ExxonMobil, resulting in about 40 CAA violations, such as unsightly flares or foul odors arising from certain emissions. And even the district court that ordered these penalties held that the alleged injuries on which the penalties award was based "could have been caused by Exxon's authorized emissions or other companies' emissions." *Id.* at 537a. Nor will plaintiffs ever see a penny of the penalties at issue; under the CAA, all of those penalties will go to the U.S. Treasury. The upshot is that ExxonMobil is being ordered to pay penalties for claimed injuries that no one has traced to ExxonMobil, and which will benefit only the U.S. Treasury—not the plaintiffs.

The Fifth Circuit granted rehearing en banc to review that paradoxical result and bring its standing precedent in line with this Court's. But then the full court radically divided on the questions presented and produced only a per curiam decision affirming the decision below, along with six separate opinions grappling with the issues. Of the seventeen judges on the en banc panel, only one—Chief Judge Elrod, whose footnoted concurrence proved decisive—actually agreed with affirming the Fifth Circuit's relaxed standing standard. *Id.* at 2a n.**. Yet that flawed standard remains the law of the Fifth Circuit. Nothing is normal about the way the Fifth Circuit's en banc process broke down in this case. But the smoldering rubble that this case left behind below underscores the need for this Court's intervention.

The petition should be granted.

STATEMENT OF THE CASE

A. Factual Background

1. Baytown Complex And Authorized Emissions At The Complex

ExxonMobil operates a major industrial complex in Baytown, Texas that is one of the largest and most technologically advanced refining and petrochemical complexes in the world. App.475a-76a. But its complex is not alone. "The nearby area … is populated with numerous other refineries, petrochemical plants, and industrial facilities." *Id.* at 476a.

The Baytown complex is governed by over 120,000 conditions in permits issued under Title V of the Clean Air Act (CAA), which are jointly enforced by the Texas Commission on Environmental Quality (TCEQ) and U.S. Environmental Protection Agency (EPA). *Id.* at 476a-77a. These permits set hourly and yearly emissions limits on two dozen different pollutants from a huge number of specific emissions sources at the complex, as well as things like flares. *Id.* at 106a-07a (Jones, J., dissenting). Together, these permits "allow[ed] Exxon[Mobil] to emit" thousands of pounds in *approved* emissions *per hour* during the relevant period. *Id.* at 107a.

The Baytown refinery's permit included conditions prohibiting *any* "upset emissions," defined as an "unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions." *Id.* Under these conditions, any "upset emission" constituted a permit violation even if it fell within both an hourly and yearly emission limit. *Id.* For example, a single momentary gas leak, lasting only a few seconds anywhere in the 10,000 miles of

pipe at the Baytown complex, could qualify as a violation.

2. ExxonMobil Emits Far Less Than Authorized And Invests Heavily In Compliance Measures

ExxonMobil never came close to exceeding the annual emissions limits in its permits at the Baytown complex. In fact, during the relevant time, its total emissions—taking all authorized *and* unauthorized emissions together—were consistently between around 30% and 40% of that amount. *Id.* at 110a. And ExxonMobil's total *unauthorized* emissions were no more than 2% of the complex's total authorized emissions for each year (and often lower). *Id.*

Even so, ExxonMobil continued improving its compliance and maintenance efforts throughout the period at issue—and long before plaintiffs sued. For instance, between 2005 and 2013 alone, ExxonMobil spent more than $1 billion on environmental improvements at the Baytown complex, and over $5.2 billion on maintenance more broadly. *Id.* at 109a-10a. These measures paid off: During the period at issue, unauthorized emissions at the complex plummeted by 95%, "[l]ikely due to Exxon's substantial efforts"—and not as a result of this lawsuit. *Id.* at 527a.

3. Texas Authorities Enforce The Title V Permits Based On ExxonMobil's Self-Reporting

As the district court found below (and EPA and the TCEQ agree), "it is not possible to operate any facility—especially one as complex as [Baytown]—in a manner that eliminates all" unauthorized emissions events. *See id.* at 344a, 488a, 527a.

Government enforcement accounts for this reality. The TCEQ—with approval of EPA—regulates permit compliance through a comprehensive set of rules, which largely depend on self-reporting. 42 U.S.C. §§ 7407(a), 7410; 30 Tex. Admin. Code §§ 101.201-.233. Those rules distinguish "reportable emissions events" from "recordable emissions events." Each involve "unauthorized emissions," but "[]recordable emissions event[s]" are less serious and less potentially harmful than "[r]eportable emissions event[s]." 30 Tex. Admin. Code § 101.1(72), (88); *see id.* § 101.201(a)-(b). Regulated entities must self-report all "reportable" events to the TCEQ, but must only document "recordable" events. App.478a. Recordable events can include nominal emissions violations like a "'fire' in a cigarette-butt can that lasted less than one minute." *Id.* at 108a (Jones, J., dissenting). The TCEQ investigates all reported events and decides if enforcement is warranted.

This case involves 241 reportable emissions events and 3,735 recordable events that took place between 2005 and 2013—all based on ExxonMobil's own self-reporting and self-recording of those events. *Id.* at 399a. The TCEQ investigated all 241 reportable events and assessed penalties of $1,146,132; Harris County also assessed $277,500 in penalties for some of the same events, for a total of $1,423,632 in penalties for past permit violations. *Id.* at 480a, 535a.

In addition, in February 2012, ExxonMobil and the TCEQ agreed on an enforcement order regarding the complex (the Agreed Order). *Id.* at 484a-86a. The Agreed Order resolved enforcement for certain past reportable events; established stipulated penalties for any future reportable events; required specified

emissions reductions; and mandated implementation of four environmental improvement projects. *Id.*

B. Procedural Background

Dissatisfied with the TCEQ's enforcement decisions, in 2010 plaintiffs Environment Texas Citizens Lobby, Inc. (ETCL) and the Sierra Club launched this action under the CAA's "citizen suit" provision. 42 U.S.C. § 7604. That statute allows "any person" to sue anyone who (1) has repeatedly "violated" any CAA emission standard, including the terms of any Title V permits, or (2) is currently "in violation" of any such standard at the time of suit. *Id.* § 7604(a)(1), (f)(4).

In such a suit, a district court may either order compliance with emissions standards through an injunction, or "apply any appropriate civil penalties." *Id.* § 7604(a)(3). Penalties are available "for each day of violation" caused by an emissions event. *Id.* § 7413(e)(2). If an emissions event releases multiple pollutants, each with its own emissions limit, each standard that is violated counts as a separate "day of violation" for each day it persists. App.111a & n.9. For the period at issue, CAA civil penalties reached a maximum of $37,500 per violation day. 42 U.S.C. § 7413(e)(2); 40 C.F.R. § 19.4. But those civil penalties are not payable to the citizen plaintiff; instead, they are deposited in a "special fund" in the U.S. Treasury. 42 U.S.C. § 7604(g)(1).

1. Initial Proceedings

a. In 2010, plaintiffs sued ExxonMobil seeking over a billion dollars in civil penalties. App.474a & n.3. They sought civil penalties for every reportable and recordable emissions event that occurred at the Baytown complex between October 2005 and September 2013, seeking the maximum penalty for

each of the 16,386 "days of violation" reported or recorded by ExxonMobil. *See id.* at 429a, 526a, 530a. In seeking to show standing, plaintiffs relied on the testimony of four of their members with a connection to Baytown, who claimed they had smelled odors; seen flares, smoke, and haze; experienced respiratory issues and anxiety; or refrained from certain activities as a result of these events. *Id.* at 490a-502a.

In 2014, after a thirteen-day bench trial, the district court denied all relief, concluding that ExxonMobil engaged in only a handful of "actionable" CAA violations and that, even if all the violations had been "actionable," neither civil penalties nor equitable relief was warranted. *Id.* at 540a-46a.

The district court held that, under binding Fifth Circuit precedent, plaintiffs had established standing to sue for more than sixteen thousand violation days—even though plaintiffs had only traced any of their injuries to five emissions events by ExxonMobil that violated a CAA emissions standard or limitation, representing only 44 violation days. *Id.* at 497a-502a. The court reasoned that, because plaintiffs had *some* injuries that were traceable to *some* emissions events, "the traceability requirement [wa]s satisfied" for *all* violations at issue. *Id.* at 499a-501a. In addition, based on the notion that penalties *can* "deter future violations," the court held that the redressability requirement was satisfied across the board—with no further analysis—under *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 185 (2000). *Id.* at 501a-02a.

But the district court awarded no relief. In so holding, the court noted ExxonMobil's significant compliance efforts, major emissions reductions, and the impossibility of avoiding all violations at the

Baytown complex. *Id.* at 524a-41a. And it found that ExxonMobil's violations were not very "serious," explaining that there was *no* "credible evidence that any of the [many thousands of emissions events challenged by plaintiffs] were of a duration and concentration to—even potentially—adversely affect human health or the environment." *Id.* at 534a-40a. And the court further found that, as for the "nuisance-type impacts" like smelling odors, suffering respiratory issues, and hearing disruptive noises, "these impacts could have been caused by Exxon's *authorized* emissions or *other* companies' emissions." *Id.* As the court explained, many "emissions and flares are authorized by permit and the nearby area in which the Complex operates is populated with numerous other refineries, petrochemical plants, and industrial facilities." *Id.* at 537a-38a.

Plaintiffs appealed, and the Fifth Circuit vacated and remanded. *Id.* at 423a-72a. The Fifth Circuit held that the district court erred in finding only a handful of "actionable" violations, *id.* at 431a-49a, and abused its discretion in assessing some of the penalty factors, *id.* at 449a-70a.

2. *ETCL II*

On remand, the district court (again) found that plaintiffs had standing for all violations at issue—many thousands—even though plaintiffs had only traced their injuries to five emissions events by ExxonMobil that violated a CAA emissions standard or limitation, representing only 44 violation days. *Id.* at 354a-59a. The court then deemed all 16,386 violation days claimed by plaintiffs actionable, imposing a $19.95 million civil penalty. *Id.* at 295a.

ExxonMobil appealed, and, in a divided decision, the Fifth Circuit vacated and remanded. *Id.* at 290a-326a. This time, the Fifth Circuit focused on Article III standing. The court unanimously agreed with ExxonMobil that, because "[CAA] penalties are tied to violations," plaintiffs "must prove standing for each violation they alleged." *Id.* at 297a-98a. And because "[t]he district court [merely] outlined in general terms how Exxon's violations had injured Plaintiffs' members," but "did not assess traceability as to each violation," the court vacated and remanded for the district court to assess traceability for each "violation" for which plaintiffs sought a penalty. *Id.* at 307a.

But the majority then introduced the central mistake leading to the chaos in this case. Relying on the Fifth Circuit's prior decision in *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.* (*Cedar Point*), 73 F.3d 546, 557 (5th Cir.), *cert. denied*, 519 U.S. 811 (1996), the majority made clear that, on remand, the district court should not follow ordinary traceability rules. App.305a-11a. Instead, under the special environmental standing rules the Fifth Circuit adopted in *Cedar Point*, the court held it was enough for plaintiffs to show that "the defendant's violations were of a type that 'causes or contributes to the kinds of injuries alleged by the plaintiffs.'" *Id.* at 305a-06a (quoting *Cedar Point*, 73 F.3d at 557).

Following *Cedar Point,* the majority thus instructed that, on remand, plaintiffs must make two showings. First, plaintiffs must show "that each violation in support of their claims 'causes or contributes to the *kinds* of injuries' they allege"; and second, they must show "that the violation *could* have affected their members." *Id.* at 307a (quoting *Cedar Point*, 73 F.3d at 557, 558 n.24) (emphasis added).

Judge Oldham dissented from the majority's traceability ruling. *Id.* at 318a-26a. He observed that *Cedar Point* contravenes this Court's standing precedents and produced incongruous results. *Id.* Indeed, he explained that simply proving violations "could have" caused the "'kinds of injuries'" alleged "eliminates traceability altogether." *Id.* at 320a. For instance, under the Fifth Circuit's test, "[i]t's enough to say that someone has asthma; pollutant X can cause asthma; therefore, pollutant X caused someone's asthma." *Id.* But that approach eliminates any causation requirement and "cannot be squared with Article III …." *Id.* at 326a.

Foreshadowing the case's path, he observed that, "[a]t some point, our en banc court should bring our precedent in line with the Constitution." *Id.*

3. *ETCL III*

Back in district court, in 2021 the court followed the Fifth Circuit's instructions and found traceability for 3,651 violation days—even though (1) plaintiffs had only "correlated" injuries arising from five emissions events—totaling 44 violation days—to ExxonMobil's conduct; and (2) the district court again recognized that plaintiffs' injuries "could have been caused by Exxon's authorized emissions or other companies' emissions." *Id.* at 249a-51a & n.121. Given the reduced number of violations, the court reduced the penalty to $14.25 million. *Id.* at 254a-55a.

ExxonMobil appealed, and the same divided panel affirmed—adhering to the "framework" established in *ETCL II*. *Id.* at 256a-89a. Judge Oldham dissented again, arguing that a proper application of this Court's Article III precedents would limit plaintiffs' standing to five emissions events that violated a CAA

emissions standard or limitation, representing 44—not 3,651—violation days. *Id.* at 278a-89a. He warned that "[t]he implications of the majority's approach are alarming," including because it "all but erases the distinction between private citizens and the government agencies that otherwise enforce the [CAA]." *Id.* at 289a. Judge Oldham also highlighted another "problem lurking" in the case: redressability. *Id.* at 288a n.3. And he noted that "this case appears to be a particularly good vehicle to consider the contours of *Laidlaw*'s redressability holding." *Id.*

4. *ETCL IV* (En Banc)

The full Fifth Circuit then ordered rehearing en banc, vacated the second and third panel opinions, and, in a deeply fractured judgment with numerous separate opinions, affirmed the district court's 2021 decision by the narrowest possible margin in a *per curiam* decision. *Id.* at 1a-200a.

a. Judge Davis, joined by six other judges, concurred but did not embrace the *Cedar Point* framework. Instead, he would have gone further and affirmed the district court's 2017 judgment finding traceability established for *all* 16,386 violation days. *Id.* at 3a. As he saw it, CAA penalties are not "retrospective" and tied to specific past violations or emissions events; instead, they "prospective[ly]" allow plaintiffs to trace their injuries to ExxonMobil's *future* conduct, giving them standing to pursue civil penalties for all past violations, regardless whether those violations actually injured plaintiffs. *Id.* at 12a-47a. Judge Davis thus found *Cedar Point*'s lax traceability rules *more than sufficient* to satisfy Article III's traceability requirement, and so voted to affirm the district court's finding of traceability for 3,651 violation days. *See id.* at 3a, 47a-65a.

b. Judge Jones, joined by seven other judges (including Judge Oldham), dissented. *Id.* at 97a-159a. She argued that Judge Davis's theory of "prospective standing" was "a meaningless mischaracterization" of the Court's Article III precedents, which "effectively condones 'standing in gross' in environmental cases," and "exceeds the proper limits of federal courts' jurisdiction"—in violation of Article III. *Id.* at 102a-03a, 152a.

Taking aim at *Cedar Point*, too, Judge Jones argued that the only traceability rule consistent with Article III requires plaintiffs to "demonstrate by a preponderance of the evidence that each violation for which they seek a civil penalty was a cause-in-fact of their injuries." *Id.* at 103a. This does not require "an exact, contemporaneous correlation between Plaintiffs' injuries and specific violations"—but it would require "proof of a 'traceable' connection between Plaintiffs' specific injuries at specific periods of time and repeated, ongoing violations of permit terms or conditions for each pollutant that is relevant to the injuries." *Id.* at 129a. *Cedar Point*, on the other hand, provides a "constitutionally dubious framework," is a "poor factual fit for CAA cases," has produced "irrational results" in this case and others, and "arguably eliminates traceability altogether." *Id.* at 140a-41a. The majority's application of that standard here, she noted, not only "violates the requirements of Article III," *id.* at 148a, but is "disastrous for future litigants," *id.* at 97a.

c. Judge Richman, who joined Judge Jones's dissent, separately dissented, echoing Judge Jones's traceability concerns. *See id.* at 160a-73a.

d. Judge Oldham, who had previously dissented, separately dissented again. *Id.* at 174a-200a. He

explained that "Judge Davis's concurrence would exacerbate the constitutional tension in citizen suits," *id.* at 183a, and also addressed problems with the en banc process, *see id.* at 174a-200a.

e. Judge Ho issued a separate opinion arguing, on procedural grounds, that the court should dismiss the order granting rehearing en banc as improvidently granted. *Id.* at 77a-96a. But on the merits, Judge Ho criticized the "curious conclusion," in *Laidlaw*, that civil penalties payable to the U.S. Treasury can ever establish redressability—echoing Justice Scalia's "powerful[]" dissent in that case. *Id.* at 77a-78a. Judge Ho also highlighted the "[m]any" other circuit judges—including Judges Luttig, Niemeyer, and Hamilton—who have criticized *Laidlaw*, even as they apply it as binding precedent. *Id.* at 79a.

f. With seven judges of the en banc Fifth Circuit (led by Judge Davis) embracing the novel "prospective theory" of standing but still voting to affirm, eight judges (led by Judge Jones) rejecting both that theory and *Cedar Point*, and Judge Ho voting to dismiss the en banc proceedings and affirm, the tally stood at 8-8. The decisive vote came from Chief Judge Elrod, who—in a footnoted, cryptic separate concurrence—wrote that *ETCL II* and *III* (and the district court) "got it right" under *Cedar Point*, so should be affirmed. *Id.* at 2a n.**.

After the dust settled, the bottom line was this: Fifteen judges on the en banc court declined to embrace the *Cedar Point* traceability standard. Yet, with Chief Judge Elrod's concurrence and Judge Ho's vote to dismiss, that is exactly the rule that the en banc court "affirm[ed]" below. *Id.* at 2a.

REASONS FOR GRANTING THE WRIT

This case implicates two important questions of Article III standing that repeatedly arise in environmental citizen-suit cases. Those questions sharply divided the full Fifth Circuit below, and have plagued other circuits as well. The Fifth Circuit's relaxed rule for establishing traceability in environmental cases sanctions "standing in gross" and is profoundly wrong under this Court's precedents. Likewise, Justices of this Court and others have rightly expressed concerns about this Court's redressability ruling in *Laidlaw,* which the Fifth Circuit also applied below. This case presents an ideal vehicle to address, and resolve, both of those important questions and eliminate a run-away standing regime that Judge Jones aptly called "disastrous." App.97a. Certiorari is warranted.

I. The Fifth Circuit's Lax Traceability Rule For Environmental Cases Warrants Review

The district court in this case thrice found that plaintiffs failed to introduce "credible evidence that any of the" violations at issue "were of a duration and concentration to—even potentially—adversely affect human health or the environment." App.536a-37a; *see id.* at 249a n.121 ("reiterat[ing]" this finding), 412a n.256 (same). And even as to the "nuisance-type" injuries plaintiffs' members claimed—like seeing flaring or hearing noises—the court held that plaintiffs had "correlate[d]" only *five* emissions events, representing 44 violation days, to any such injuries. *Id.* at 500a, 538a. Yet the district court nevertheless imposed—and the court of appeals affirmed—*millions* of dollars in penalties for *thousands* of CAA violation days, based on a finding

that plaintiffs' members' injuries were "fairly traceable" to those violation days. *Id.* at 229a, 251a; *id.* at 2a-3a (per curiam) (affirming).

That anomalous result was only possible because of a special, made-for-citizen-suits standing rule adopted by the Fifth Circuit, which dramatically departs from this Court's precedents and sanctions "standing in gross" in strikingly broad terms. Indeed, in this case, five actual emissions events magically produced standing to sue for *thousands* of other violations, without any showing that plaintiffs were likely injured by *any* of those violations. That is a textbook example of "standing in gross." And precisely because this newfound rule has no sound basis in Article III, courts have become deeply confused about its application and contours—as reflected in the profoundly fractured decisions below. The Court's review is urgently needed to make clear that Article III's traceability requirement applies to citizen suits just like any other lawsuit.

A. The Fifth Circuit's Traceability Rules For Environmental Citizen Suits Conflict With The Decisions Of This Court

1. Basic Article III principles require plaintiffs to prove that *each* of their injuries was *likely caused by* the defendants' alleged legal violation.

"[S]tanding is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (citing *Davis v. FEC*, 554 U.S. 724, 734 (2008)). There is thus no "commutative" theory of standing, under which standing to sue over one injury or claim confers a right to bring other related, yet distinct,

claims that may arise from a "common nucleus of operative fact." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 351-52 (2006). Otherwise, plaintiffs suffering from one single injury caused by a defendant could sue to "enforce general compliance with regulatory law," even as to violations that did not, in fact, harm them. *TransUnion*, 594 U.S. at 430 n.3.

As to traceability in particular, the Court has repeatedly held, and recently reaffirmed, that a plaintiff must show "that [his] injury was *likely caused by* the defendant." *Id.* (emphasis added); *Department of Com. v. New York*, 588 U.S. 752, 768 (2019) (traceability requires "*de facto* causality"); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (similar). And not only must the injury at issue be caused by the defendant's conduct in general—it must be traceable "to [its] '*allegedly unlawful* conduct.'" *California v. Texas*, 593 U.S. 659, 669 (2021) (emphasis added).

Together, these principles establish that a plaintiff seeking to prove traceability must show, for each injury they suffered, that a particular legal violation "likely caused" the harm over which they are suing. *TransUnion*, 594 U.S. at 423. Here, that meant that plaintiffs had to prove, with evidence, that *each* violation of a Title V emission standard likely caused them a concrete injury. *See* App.297a-301a.

2. The Fifth Circuit—following the lead of other circuits before it, *see infra* 21-23—has adopted an exception to these general principles, unique to the context of environmental citizen suits under the CAA and Clean Water Act (CWA)—which allows plaintiffs to sue for violations even when they cannot show that the violation caused any injuries they experienced.

In the Fifth Circuit, a citizen-suit plaintiff need *not* show that her injury was "likely caused" by any particular violation of the CAA. Instead, a plaintiff need only show "that the defendant's violations were *of a type* that 'causes or contributes to the *kinds of injuries* alleged.'" App.305a-06a (emphasis added) (quoting *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. (Cedar Point)*, 73 F.3d 546, 557 (5th Cir.), *cert. denied*, 519 U.S. 811 (1996)). Under this "*Cedar Point*" standard, the legal violation at issue need not *actually cause* the harm the plaintiff suffers; it must simply "contribute[] to" the same "*kind[]* of injury," as long as the violation "*could have* affected" the plaintiff. *Id.* at 305a-07a (emphases added).

That standard drove the outcome in this case. As the Fifth Circuit explained in *ETCL II*, *any* violation satisfied *Cedar Point*'s "kinds of injuries" standard "if it (1) created flaring, smoke, or haze; (2) released pollutants with chemical odors; or (3) released pollutants that cause respiratory or allergy-like symptoms"—because those were the "'kinds of injuries'" plaintiffs suffered. App.307a. And so long as any of those violations resulted in emissions that "could have reached beyond the Exxon complex," they *could have* affected a plaintiff. *Id.* at 308a (emphasis added). That is the rule the district court applied in its decision below that the en banc court ultimately "affirmed" in *ETCL IV*. *Id.* at 2a-3a.

3. As Judge Oldham explained, *Cedar Point* "contravenes *Lujan* and its progeny," and is "'incongruous with our usual understanding of the Article III standing requirements.'" *Id.* at 319a-20a.

Allowing suit for injuries that merely "'cause[] or contribute to the kinds of injuries at issue'" is the "most pernicious" aspect of the *Cedar Point*

framework; indeed, doing so "eliminates traceability altogether." *Id.* at 320a. As Judge Oldham explained, a court would "[n]ever say: [a] house burned down; arsonists burn down houses; therefore, an arsonist burned down [this] house." *Id.* Yet *Cedar Point* embraces that fallacy. *Id.* As Judge Jones explained, under *Cedar Point*, once a plaintiff who lives somewhere near an emitting facility shows a *single* harm resulting from a *single* violation, liability follows for essentially *all* CAA violations of a similar "kind[]," regardless whether those violations actually or likely affected the plaintiff at all. *Id.* at 128a, 140a.

This is the epitome of "standing in gross." Under the decision below, a plaintiff who *once* witnessed, and claimed to be afraid of, a "flaring" emission could sue over *every other* similar violation, regardless whether it affected the plaintiff. *Id.* at 145a-46a. This Court has long disapproved of such "[s]tanding … in gross." *Davis*, 554 U.S. at 734. But the full Fifth Circuit erroneously upheld that rule below.

B. The Decision Below Reflects Significant Confusion Among The Circuits

The Fifth Circuit is not alone in its confusion over Article III traceability. The decisions below represent much broader struggles, among the lower courts, to reconcile environmental citizen suits with the demands of Article III. Lacking guidance from this Court, those courts have cobbled together a muddled mess of tests, attempting to fit the square peg of citizen suits into the round hole of Article III standing. The result is a chaotic patchwork of *ipse dixit* rulings, conflicting standards, and nonsensical outcomes. Only this Court can provide the clarity

needed to restore order to Article III's traceability requirement in environmental citizen suits.

1. As Judge Oldham explained, "[t]he mess started in 1990" when the Third Circuit invented its own three-part traceability test for CWA citizen suits. App.318a (discussing *Public Interest Rsch. Grp. of N.J., Inc. v. Powell Duffryn Terminals Inc.*, 913 F.2d 64, 72 (3d Cir. 1990), *cert. denied*, 498 U.S. 1109 (1991)). Under this "*Powell Duffryn*" framework, citizen-suit plaintiffs do not need to answer the usual Article III "causation" question, and instead need only demonstrate that the defendant has (1) discharged pollutants in concentrations greater than allowed by its permit; (2) into a waterway in which the plaintiffs had an interest that *could be* adversely affected by that discharge; and (3) the pollutant causes or contributes to *the kinds of injuries* alleged. *Powell Duffryn*, 913 F.2d at 72. As Judge Oldham observed, it is far from clear "how the Third Circuit devised that standard because the court cited nothing at all to support it." App.319a. But so began the problem.

Nor is Judge Oldham the only skeptic of the *Powell Duffryn* framework. Despite concurring in the decision, Judge Aldisert candidly admitted his "serious[]" reservations that *Powell Duffryn*'s traceability holding would "survive careful Supreme Court review." 913 F.2d at 83. Yet, despite his "nagging doubt about standing," Judge Aldisert joined the majority opinion—"with the shakiest of jurisprudential confidence"—based on his misguided belief that this Court was inclined "to relax its stringent requirements of standing in environmental cases." *Id.* at 83-84. Reluctantly applying what he perceived to be an "evolving" principle favoring "expand[ed]" standing in environmental cases, Judge

Aldisert still stressed that, "[w]ere this not an environment case, [the plaintiff's showing] certainly would not be [enough to demonstrate standing]." *Id.* at 89.

2. The "mess" that started in *Powell Duffryn* has since spread throughout the country—and reached a breaking point in the deeply fractured decisions below. Precisely because this doctrine has no mooring in any solid Article III principles, it has unleashed chaos—spawning baseless standards, confusion, and absurd consequences in courts across the country.

The Fifth Circuit was the first to rely on *Powell Duffryn*'s "*ipse dixit*" in *Cedar Point*—oddly, without even analyzing this Court's canonical Article III decision in *Lujan*. App.319a (Oldham, J., concurring in part, dissenting in part, and concurring in the judgment). Even more perplexing, when adopting the *Powell Duffryn* framework in *Cedar Point*, the Fifth Circuit *expressly acknowledged* that a "literal reading of *Powell Duffryn* may produce results incongruous with our usual understanding of the Article III standing requirements." *Cedar Point*, 73 F.3d at 558 n.24. But the Fifth Circuit adopted the Third Circuit's test all the same—and has since expanded it, as in this case, to the CAA context.

And the virus has spread. As Judge Oldham explained, other courts have blindly expanded *Powell Duffryn*'s "'incongruous'" outcomes to new contexts, producing an "ever-growing mountain of *ipse dixits* and logical fallacies" anchored in the misguided *Powell Duffryn* and *Cedar Point* decisions. App.321a-22a; *see, e.g.*, *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161 (4th Cir. 2000) (relying on *Powell Duffryn* and *Cedar Point* in CWA case); *Utah Physicians for a Healthy Env't v.*

Diesel Power Gear, LLC, 21 F.4th 1229, 1244-46 (10th Cir. 2021) (same in CAA case).

Moreover, even these circuits cannot agree on how, and when, to apply the *Powell Duffryn* framework. As scholars have noted, the "dearth of guidance for circuit courts struggling to reconcile the Supreme Court's cases" on Article III standing with environmental citizen suits has led those courts to "take[] it upon themselves to define the elements of standing" in this context.[1] Unsurprisingly, those circuits "clearly disagree over the definition and application of those requirements."[2]

For instance, the circuits do not agree on what kind of causation is required. As Judge Oldham noted, some demand "but-for" causation, while others accept only causation-in-fact. *See* App.320a-21a. *Compare LaSpina v. SEIU Pa. State Council*, 985 F.3d 278, 284-85 (3d Cir. 2021) (requiring but-for causation), *and Fischer v. Governor of N.J.*, 842 F. App'x 741, 754-55 (3d Cir.) (Phipps, J., concurring in part and concurring in the judgment) (noting confusion and pointing to Judge Oldham's separate writings below), *cert. denied*, 142 S. Ct. 426 (2021),

---

[1] Amanda J. Masucci, *Stand By Me: The Fourth Circuit Raises Standing Requirements in* Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.: *Just As Long As You Stand, Stand By Me*, 12 Vill. Env't L.J. 171, 189 (2001).

[2] *Id.*; *see* Paige Lambert, *Citizen Suits for Mobile Sources: Enforcement Against Incidents of Emissions Cheating*, 32 Colo. Nat. Res., Energy & Env't L. Rev. 341, 356 (2021) ("Different circuits have adopted variations of a standard for traceability in the pollution context ...."); Note, *Causation in Environmental Law: Lessons from Toxic Torts*, 128 Harv. L. Rev. 2256, 2256 (2015) (explaining that "[t]he treatment of causation has been particularly inconsistent in environmental cases").

with App.279a-80a (rejecting but-for causation). *Cedar Point* does not require *either*.

The circuits also disagree on whether there is a "geographic … nexus" limitation on *Cedar Point* standing. *See Utah Physicians*, 21 F.4th at 1247. And they also disagree whether the *Powell Duffryn-Cedar Point* standard should apply at all in CAA cases. *Compare* App.140a (Jones, J., dissenting) (explaining why it was "irrational" to apply this standard to CAA cases), *with* App.3a, 208a (applying *Cedar Point* in CAA case), *and Utah Physicians*, 21 F.4th at 1244-45 (same). And the list goes on.

The lower courts' ongoing struggle with the *Powell Duffryn-Cedar Point* framework highlights that framework's lack of any principled legal basis. This confusion has persisted for decades, has led to various lax and undisciplined approaches to the standing analysis, and, as the train wreck below underscores, will not resolve itself without this Court's intervention.

In the end, the real problem is the courts' deviation from the normal standing requirement of showing that a violation *likely* harmed a plaintiff and their willingness to develop a relaxed standing rule for environmental citizen-suit cases. A decision holding that the normal standing requirement applies to environmental citizen-suit cases just like other cases would eliminate the problem at its core—and obviate the need to resolve any questions about how to apply the Fifth Circuit's *Cedar Point* rule. The Court should grant certiorari in this case and eliminate that unworkable and unfounded exception.

C. The Fifth Circuit's Traceability Rules Produce Anomalous Consequences

The result below starkly illustrates the deeply "illogical" consequences of the *Cedar Point* framework—and obvious Article III problems with *Cedar Point*. App.145a (Jones, J., dissenting).

The ruling below affirmed millions of dollars in penalties for injuries that plaintiffs did not, and likely could not, prove were caused—or even likely caused—by any of ExxonMobil's legal violations. In the proceedings below, plaintiffs were able to identify only *five* emissions events, totaling 44 violation days, for which they experienced a concrete injury. *Id.* at 150a (Jones, J. dissenting). Yet, applying the *Cedar Point* standard, the district court allowed plaintiffs to pursue penalties for roughly *3,600 additional violation days* that had no evidentiary connection to plaintiff's injuries, simply because they *could have* caused the *kinds* of injuries plaintiffs experienced. And this massively increased the penalties in play.

As Judge Jones explained, "it strains credulity to believe" that plaintiffs' members personally witnessed "*all* 1,801 instances of flaring and *all* 588 instances of smoke that occurred over an eight-year period"—and there was certainly no evidence to that effect. *Id.* at 145a. Yet plaintiffs were permitted to "presum[e]" injuries traceable to these violations, simply because they were the same "kinds of injuries" that plaintiffs did, at some point, experience. *Id.*; *see id.* at 145a-46a (explaining additional anomalous results produced by the decisions below).

At the same time, the decision below allowed civil penalties for claimed injuries that were potentially caused by entirely *legal* emissions. Plaintiffs claimed,

for example, that their injuries included smelling foul odors—but the Baytown complex "*could* legally emit" all kinds of pollutants with unpleasant smells, like "sulfur dioxide gas, which smells like rotten eggs." *Id.* at 146a (emphasis added). Plaintiffs never even tried to prove which of their "odoriferous injuries resulted from *unlawful* emissions." *Id.* at 147a (emphasis added); *see id.* at 151a n.37 (explaining that "[t]he vast majority of Exxon's emissions are legally authorized"). Yet the Fifth Circuit affirmed the district court's decision holding that plaintiffs had standing to pursue claims for hundreds of violations tied to these odoriferous injuries, lawful or not.

The extreme nature of this result is underscored by the fact that there were other facilities in the area. As the district court found, many of the "nuisance-type" injuries plaintiffs claimed also "could have been caused by … *other* companies' emissions." *Id.* at 537a; *see also id.* at 249a n.121. For the vast majority of their injuries, plaintiffs did not even show that *ExxonMobil* was the relevant source of the alleged harm or violation. As the Court explained in *Clapper v. Amnesty International USA*, if a plaintiff "can only speculate as to whether any (asserted) [harm]" can be traced to a particular legal violation rather than some other cause, "they cannot satisfy the 'fairly traceable' requirement." 568 U.S. 398, 413 (2013).

The anomalous consequences produced by the Fifth Circuit's rule underscore the need for review.

II. The Court Should Reconsider And Overrule *Laidlaw*'s Redressability Holding

The Court should also grant review to reconsider the "curious conclusion," reached in *Laidlaw*, that citizens have standing to seek civil penalties "even

though any civil penalties won by the plaintiffs aren't actually paid to the plaintiffs—they're paid to the United States Treasury." App.77a (statement of Ho, J.). As Justice Scalia (joined by Justice Thomas) explained in dissent in *Laidlaw*, that holding sharply conflicts with basic redressability principles under Article III. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc. v. Laidlaw Env't Servs. (TOC), Inc. (Laidlaw)*, 528 U.S 167, 204-05 (2000). Likewise, "[m]any circuit judges have criticized *Laidlaw*—while acknowledging [their] duty to follow it." App.79a (statement of Ho, J.). And, as Judge Oldham observed, this case presents a "particularly good vehicle to consider" whether that holding should remain the law. *Id.* at 289a n.3.

A. *Laidlaw* Was Wrongly Decided

1. Article III requires plaintiffs to show that their injuries are redressable. This redressability requirement "ensures that federal courts decide only 'the rights of individuals,' and … exercise 'their proper function in a limited and separated government.'" *TransUnion*, 594 U.S. at 423. "[T]he choice of how to prioritize and how aggressively to pursue legal actions against defendants who violate the law [usually] falls within the discretion of the Executive Branch, not within the purview of private plaintiffs (and their attorneys)." *Id.* at 429.

In *Steel Co. v. Citizens for a Better Environment*, the Court applied these basic principles to a civil-penalties scheme similar to the CAA's, in which a citizen-suit provision allowed private plaintiffs to sue for penalties "payable to the United States Treasury." 523 U.S. 83, 106 (1998). As the Court explained, these penalties "might be viewed as a sort of compensation

or redress to [the private plaintiff] if they were payable to [the plaintiff]. But they are not." *Id.* The plaintiff therefore did not seek "remediation of its own injury"; it instead sought "vindication of the rule of law—the 'undifferentiated public interest' in faithful execution of" the law. *Id.* "This does not suffice." *Id.*

2. But two years later, in *Laidlaw*, the Court did an abrupt "about-face." John D. Echeverria, *Critiquing* Laidlaw*: Congressional Power to Confer Standing and the Irrelevance of Mootness Doctrine to Civil Penalties*, 11 Duke Env't L. & Pol'y F. 287, 295 (2001). There, the Fourth Circuit had applied *Steel Co.*'s basic rule: Penalties payable solely to the U.S. Treasury "cannot redress any injury suffered by a citizen plaintiff." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 149 F.3d 303, 306 (4th Cir. 1998). But working a "sea change in constitutional standing principles," this Court reversed. *Gaston Copper*, 204 F.3d at 164-65 (Niemeyer, J., concurring in the judgment and in the concurring opinion of Judge Luttig); App 77a-79a (statement of Ho, J.).

Laidlaw did not purport to overrule *Steel Co.* Instead, it reasoned that *Steel Co.*'s redressability holding applied only when plaintiffs sought government-payable penalties relating to *past harm*. 528 U.S. at 187-88. In cases involving "ongoing unlawful conduct," the Court held that civil penalties *can* "deter future violations" by "encourag[ing] defendants to discontinue current violations and deter them from committing future ones." *Id.* at 185-86. Even when, as here, plaintiffs will not see a penny of direct relief, civil penalties payable to the government can *indirectly* provide "redress" when they indirectly reduce the odds of future injury.

3. As Justice Scalia's dissent in *Laidlaw* explained, the new rule that *Laidlaw* "cavalier[ly]" adopted is "preposterous[ly]" wrong, has no basis in Article III principles, and "has grave implications for democratic governance." *Id.* at 202, 204.

"[T]he traditional business of Anglo-American courts is relief specifically tailored to the plaintiff's injury"—"not *any* sort of relief that has some incidental benefit to the plaintiff." *Id.* at 204. The Court has therefore long held that general deterrence is insufficient to support Article III redressability when there is "no 'direct relationship' … between the alleged injury and the claim sought to be adjudicated." *Id.* at 203. For example, a plaintiff cannot sue to compel the prosecution of another person on the theory that such prosecution would have a "deterrent effect" that could reduce the likelihood of future harm to the plaintiff. *Linda R.S. v. Richard D.*, 410 U.S. 614, 618 (1973); *see United States v. Texas*, 599 U.S. 670, 692-93 (2023) (Gorsuch, J., concurring in the judgment) (a claim that could only indirectly provide relief would not satisfy Article III redressability). Nor could a "federal tort plaintiff fearing repetition of [an] injury … ask for tort damages to be paid … to *other victims as well*, on the theory that those damages would have at least some deterrent effect beneficial to him." *Laidlaw*, 528 U.S. at 204 (Scalia, J., dissenting).

So too for civil penalties. "Just as a 'generalized grievance' that affects the entire citizenry cannot satisfy the injury-in-fact requirement even though it aggrieves the plaintiff along with everyone else, so also a generalized remedy"—like a public penalty—"that deters all future unlawful activity against all persons cannot satisfy the remediation requirement." *Id.*; *see* App.78a-79a (statement of Ho., J.) ("agree[ing]"

with Justice Scalia's "powerful[] dissent in *Laidlaw*"). "Such deterrent effect is, so to speak, 'speculative as a matter of law.'" *Laidlaw*, 528 U.S. at 205 (Scalia, J., dissenting). *Laidlaw*'s contrary holding bucks these core Article III principles, wrongly putting authority to enforce general compliance with the law in private plaintiffs' hands even though they have no concrete stake in the outcome of these lawsuits.

Nor is Article III the only part of the Constitution offended by *Laidlaw*'s deputization of citizen-suit plaintiffs as roving legal enforcers. *Laidlaw* also poses a grave threat to Article II's vesting of federal executive power in the President, and the President alone—and also undermines the crucial role of States in federalist programs like the CAA's.

As Justice Scalia wrote, *Laidlaw*'s holding "turns over to private citizens the function of enforcing the law." *Id.* at 209. This "constitutionally bizarre" arrangement "deprive[s]" the Executive Branch "of [its] discretion to decide that a given violation should not be the object of suit at all, or that the enforcement decision should be postponed"—making each citizen-suit plaintiff a "self-appointed mini-EPA." *Id.* at 209-10. Doing so diminishes the role of the Executive Branch, to the benefit of private plaintiffs (and their attorneys), all while aggrandizing the power of the judiciary. *See, e.g.*, *TransUnion*, 594 U.S. at 429.

Laidlaw's redressability holding also diminishes the power of the States in cooperative-federalism regimes, like the CAA, which depend on enforcement by States working alongside the federal government. Here, for example, the TCEQ investigated all past reportable violations, and decided what was sufficient to resolve them. App.479a-86a. Yet plaintiffs have spent the last 15 years pursuing citizen-suit claims

under the CAA to impose their own view of what the law should require. That is a direct, and significant, transfer of power away from the States to both the plaintiffs' bar and the judiciary. Neither Article II nor Article III countenance that shift.

B. *Stare Decisis* Does Not Support Retaining *Laidlaw*

Laidlaw is, of course, current precedent entitled to considerations of *stare decisis*. *See, e.g.*, *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). But "*[s]tare decisis* is not an 'inexorable command.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407 (2024). That doctrine "is at its weakest"—as here—"when [the Court] interpret[s] the Constitution." *Knick v. Township of Scott*, 588 U.S. 180, 202-03 (2019). And here, each *stare decisis* factor weighs strongly against retaining *Laidlaw*'s misguided redressability holding.

First, *Laidlaw* was poorly reasoned. *Laidlaw*'s reasoning on redressability was "cavalier," to say the least. 528 U.S. at 202 (Scalia, J., dissenting). It simply asserted that because civil penalties "can" deter legal violations, they *may* lead a defendant not to violate the law in the future, and so carry the possibility of redressing future harms. *Id.* at 186 (majority opinion); *see* App.77a-79a (Ho, J., dissenting).

Second, *Laidlaw*'s rule is unworkable. *Laidlaw* conceded that the bounds of its holding were "not easy to ascertain," and gave no guidance on how "likely" deterrent effects have to be to support standing. 528 U.S. at 186-87. In response, lower courts have simply thrown up their hands and concluded that *all* civil penalties, by default, redress any ongoing or future harms. *See, e.g.*, App.311a-12a. This case illustrates just how little sense that rule makes. Below, the

district court found that there was no "continuing likelihood of recurrence" for any legal violations, that "there is no credible evidence that any of the [violations at issue] resulted from a recurring pattern or that improvements could have been made to prevent recurrence," and that it was "not possible" to avoid violations overall. *Id.* at 504a-05a & n.155, 527a-29a. It is a mystery what "deterrent" role civil penalties can play in such a factual scenario.

Third, *Laidlaw* is inconsistent with this Court's decisions before and after it was decided. *Laidlaw* was an "about-face" from *Steel Co.*, Echeverria, *supra*, at 295, and its foundations have only eroded as the Court has since emphasized the limits imposed by Article III's redressability requirement, *see, e.g.*, *Texas*, 599 U.S. at 689-704 (Gorsuch, J., concurring in the judgment) (emphasizing redressability requirement); *id.* at 709 (Barrett, J., concurring in the judgment) (same). Just as the injury a plaintiff faces must not be "too speculative," *TransUnion*, 594 U.S. at 437-38, so too must the likelihood of real redress be *actual*—not merely hypothetical.

Finally, the reliance interests here are minimal at most. Private parties generally do not organize their affairs around the availability of civil penalties they will not even receive. And Congress has only rarely adopted anomalous citizen-suit provisions like the CAA's; indeed, it has enacted *no* provisions of this kind since *Laidlaw* was decided.

Below, Judge Ho invited this Court to "grant certiorari" in this case and "reconsider[] *Laidlaw* in light of Justice Scalia's persuasive dissent." App.84a. Judge Oldham observed that this case is an ideal vehicle to reconsider *Laidlaw*. *Id.* at 288a-89a n.3. Both were right: This Court's review is needed.

III. The Questions Presented Are Important And Warrant Review In This Case

The obvious importance of the questions presented heightens the case for certiorari. And the inability of the Fifth Circuit to resolve these issues en banc underscores the need for this Court's intervention.

"The limitation of the judicial power to cases and controversies 'is crucial in maintaining the tripartite allocation of powers set forth in the Constitution.'" *Massachusetts v. EPA*, 549 U.S. 497, 547 (2007) (Roberts, C.J., dissenting); *see TransUnion,* 594 U.S. at 422-23. Every loosening of Article III standing expands judicial authority, often (as here) at the expense of the elected branches—in particular, the Executive Branch. And this expansion opens the door to baseless litigation allowing plaintiffs to invoke the judicial power to impose enormous penalties or judgments with potentially crippling effects.

Respecting Article III's limits is particularly important in citizen suits, given their inherent encroachment on executive authority. Citizen-suit provisions empower a virtually limitless army of potential private enforcers—some of whom operate as "professional citizen-suit plaintiffs"—who may be enticed by the prospect of lucrative settlements or litigation fees but are unchecked by the "democratic restraints" and accountability borne by public enforcement. App.139a n.32 (Jones, J., dissenting). They thus risk "usurp[ing] the Executive Branch's principal prosecutorial responsibility under Article II of the Constitution." *Id.*

Justices of this Court have questioned whether the citizen-suit mechanism violates Article II. *See Laidlaw*, 528 U.S. at 197 (Kennedy, J., concurring);

id. at 209 (Scalia, J., dissenting); *Department of Transp. v. Association of Am. R.R.s*, 575 U.S. 43, 62 (2015) (Alito, J., concurring); *In re Aiken County*, 725 F.3d 255, 264 n.9 (D.C. Cir. 2013) (Kavanaugh, J.). And they have specifically questioned *Laidlaw*'s "constitutionally bizarre" result. *Laidlaw*, 528 U.S. at 204, 210 (Scalia, J., dissenting).

The implications of expanding Article III standing in citizen suits are also massive for regulated companies. The CAA citizen suit has evolved from a limited resource meant to supplement government enforcement to something resembling a shakedown racket. Because citizen suits carry with them the potential for dramatic penalties, plus a one-sided fee-shifting provision, citizen-suit plaintiffs hold "massive bargaining power" no matter how unmeritorious their claims. *Id.* at 209-10.

The en banc Fifth Circuit's decisional breakdown highlights the need for this Court's intervention. The court's decision produced six separate opinions grappling with the standing issues presented, and ultimately left *Cedar Point's* profoundly flawed rule intact—even though only one judge of the seventeen en banc judges actually agreed with that rule. *Supra* 13-15. As Judge Oldham explained in his multiple dissents in this case and Judge Jones echoed in her en banc dissent, that rule runs roughshod over Article III's limits and this Court's precedents. The Fifth Circuit's inability to bring its standing law in line with the Constitution calls out for this Court's review.

The fact that this case arises from the Fifth Circuit also heightens the need for review. The Fifth Circuit and Gulf Coast is home to some of the nation's most important, heavily regulated petrochemical operations and other industrial facilities. Those facilities are

vital to the operation and success of the U.S. economy. Yet the Fifth Circuit's lax standing rules put a target on the back of the companies that operate them and expose them to expensive, unnecessarily intrusive and, as in this case, endless citizen-suit litigation—even when, as here, plaintiffs cannot prove that defendants' actions caused them any likely harm. That gross violation of Article III's limits and abuse of the courts should not be tolerated any longer.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RUSSELL S. POST
BECK REDDEN LLP
1221 McKinney
Suite 4500
Houston, TX 77010

GREGORY G. GARRE
Counsel of Record
ROMAN MARTINEZ
JORDAN R. GOLDBERG
CHRISTINA R. GAY
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

March 11, 2025