IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICES, *et al.*, *Plaintiffs*, v. DONALD TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Civil Action No.: 1:25-cv-3745-CRC Judge Christopher R. Cooper

BRIEF OF *AMICUS CURIAE* SENATOR SHELDON WHITEHOUSE IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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INTERESTS OF *AMICUS CURIAE*[1]

Senator Sheldon Whitehouse is the Ranking Member of the Senate Environment and Public Works Committee, the Senate committee with jurisdiction over the Clean Air Act, 42 U.S.C §§ 7401–7671q ("CAA"). Senator Whitehouse also serves as a senior member of the Senate Judiciary Committee and Ranking Member of the Federal Courts Subcommittee, which oversees federal court jurisdiction.

In the CAA, Congress sought to protect the public from some of the most dangerous air pollutants by establishing a detailed regulatory framework to limit emissions. Congress authorized the President to exempt a source from complying with those limits, but only if he makes specific findings that the technology required to implement the standard is not available and an exemption is in the national security interests of the nation. Relying on that exemption provision, which had never been applied in its 36 years of existence, the President summarily exempted an astonishing number of sources from compliance obligations established by multiple CAA rules. He did so without the slightest effort to make the required predicate findings, bypassing statutory safeguards and nullifying critical protections Congress established for the American people.

This case, which concerns exemptions to a rule setting emissions standards for certain hazardous air pollutants ("HAPs"), raises two questions. First, does the President have authority to disregard statutory limitations on the power given to him by Congress? Second, when the President blows by statutory constraints on his authority, are courts powerless to do anything about it? The answer to both questions is no. To rule otherwise would be to allow the President *carte*

[1] Pursuant to LCvR 7(o)(5) and Fed. R. App. P. 29(a)(4)(E), *amicus* certifies that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund this brief, and no person other than *amicus*, its members, and its counsel contributed money intended to fund this brief. Plaintiffs have consented to the filing of this brief; Defendants take no position.

blanche whenever Congress confers even narrowly cabined authority to the President. It is a bedrock principle that executive action under legislatively conferred authority is subject to check by the terms of the legislation that authorized it and that courts must do the checking.

Senator Whitehouse has a particularized interest in preserving the integrity of the CAA and the limits it places on the President's authority in Section 7412(i)(4). He submits this brief to explain that the President's *en masse* exemption is *ultra vires*, and that review of the President's action here is essential to preserve the separation of powers, respect Congress's legislative power, and guard against executive overreach.

BACKGROUND

I. The Clean Air Act Establishes a Comprehensive, Robust Scheme for Regulating Hazardous Air Pollutants.

Congress passed the CAA to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1). To that end, Congress directed the U.S. Environmental Protection Agency ("EPA") to set technology-based or health-based standards for different categories of air pollutants emitted from different sources. One category of air pollutants, "HAPs," are pollutants that are known or suspected to cause cancer or other serious health effects such as reproductive effects or birth defects, or adverse environmental effects. *Id.* § 7412(b)(2). Concerned with the especially serious health impacts of HAPs, the 1970 CAA directed EPA to effectively eliminate HAP emissions. *See e.g.*, Hearing Before the Subcomm. on Oversight & Investigations, H. Comm. on Energy & Com., 98th Cong. 16-17 (1983) (testimony of William D. Ruckelhaus, EPA Adm'r) (testifying that the 1970 version of section 7412 would require EPA to ban of any carcinogenic HAP chemicals).

Initially, EPA hesitated to regulate HAPs, even though the statute demanded it. *See id.* at 19 ("[T]he current statutory test is unworkable, [and] if interpreted literally . . . this test can lead to a certain paralysis in decisionmaking."). In the two decades between 1970 and 1990, EPA managed to regulate only *some* sources for *seven* HAPs—"a small fraction of the many substances associated . . . with cancer, birth defects, neurological damage, or other serious health impacts." H.R. Rep. No. 101-490 at 151, 315 (1990).

Frustrated by the agency's progress, Congress significantly amended the HAP program in 1990. *Id.* at 315 (noting that "only 7 of the hundreds of potentially hazardous air pollutants have been regulated . . . since . . . 1970" despite legislative intention that they "be stringently controlled"). Congress added an initial list of HAPs that EPA was required to regulate and incorporated timelines in the statute to hold EPA's feet to the fire. *See* 42 U.S.C. § 7412(b)(1). Congress also shifted to a two-step process for regulating these harmful pollutants. While stepping back from the 1970 Act's effective ban, Congress imposed tougher standards for HAPs than the CAA imposes for non-hazardous pollutants.

The Act requires EPA first to conduct a technology-based review to establish National Emissions Standards for Hazardous Air Pollutants ("NESHAPs"). This stringent review requires EPA to set minimum standards for *new* sources based on "the best controlled similar source" and, for already-built *existing* sources, "the best performing 12 percent of existing sources." *Id.* § 7412(d)(3). The Act then allows EPA to ratchet up those standards, considering costs, health effects, environmental effects, and energy requirements. *Id.* § 7412(d)(2). Congress further directed EPA to review and revise these technology-based standards as necessary every eight years to take into account new developments in "practices, processes, and control technologies." *Id.* § 7412(d)(6).

The Act then requires EPA to go further: to identify any residual health risks that have not been eliminated by the technology-based standards and set additional standards to "provide an ample margin of safety to protect public health" and prevent "an adverse environmental effect," after considering cost, safety, and other factors. *Id.* § 7412(f)(2)(A). Congress required EPA to take this second step within eight years of issuing the technology-based standards for any category of sources (unless Congress intervened in the interim, which it has not). *Id.* § 7412(f)(2)(A), (f)(2)(C).

Alongside this comprehensive Section 7412 revamp to spur EPA to action, Congress added a provision that granted conditional authority to the President to exempt a source from Section 7412 compliance obligations. *Id.* § 7412(i)(4); Clean Air Act Amendments of 1990, Pub. L. 101-549, § 301, 104 Stat. 2399, 2547. To unlock that exemption authority, Congress required the President to make two threshold determinations. First, he must determine that "the technology to implement such standard is not available." 42 U.S.C. § 7412(i)(4). Then, he must further determine that the exemption would be "in the national security interests of the United States." *Id.* After (and only after) he has made these determinations can the President decide in his discretion to issue an exemption. *Id.*

II. EPA Set HON Rule Standards in Accordance With the Statutory Scheme.

The Hazardous Organic NESHAP rule ("HON Rule") at issue in this litigation establishes emission standards for plants that make synthetic organic chemicals, polymers, and resins. New Source Performance Standards for the Synthetic Organic Chemical Manufacturing Industry and National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry, 89 Fed. Reg. 42,932 (May 16, 2024). The HON Rule builds upon standards dating back to the mid-1990s. *Id.* at 42,934.

EPA's own research has shown emissions from these plants have potentially deadly health impacts. In 2010, EPA published the agency's first cancer potency assessment for chloroprene, concluding that chloroprene is likely to be carcinogenic to humans. In 2016, EPA updated its assessment for ethylene oxide, HON Rule at 42,941 & n.12, concluding that ethylene oxide was significantly more toxic than previously known.[2] *Id.*

Based on these assessments, EPA determined that it was obligated to update its standards for sources that emitted these HAPs. It did so, along with an updated technology review, in the HON Rule. HON Rule at 42,934. The HON Rule strengthened several CAA regulations, applicable to a variety of chemical manufacturing facilities, tailoring the standards to the particular types of equipment and processes they used.

Compliance obligations thus differ across facilities; a particular facility's obligations depend on its specific operations, and on what technology, if any, would be needed to implement those requirements. The HON Rule also allows, if a different but equally effective technology exists, a "determination of equivalence" to use that technology instead. *Id.* at 43,081. EPA found that the HON Rule would reduce HAP emissions by 6,230 tons per year and reduce the number of local residents facing elevated cancer risks from HON emissions by 96 percent. Press Release, EPA, Biden-Harris Administration Finalizes Stronger Clean Air Standards for Chemical Plants, Lowering Cancer Risk and Advancing Environmental Justice (Apr. 9, 2024), https://perma.cc/C5PK-ZC3E.

[2] Because ethylene oxide can also damage DNA, children are likely to be more susceptible to its harmful effects. Our Current Understanding of Ethylene Oxide (EtO), EPA (Feb. 19, 2026), https://perma.cc/646S-EEKD.

III. In a Single Proclamation, The Trump Administration Exempted 50 Facilities from the HON Rule.

On March 12, 2025, what EPA described as the "greatest and most consequential day of deregulation in U.S. history," the EPA Administrator announced 31 actions designed to end or reconsider prior environmental regulations. Press Release, EPA, EPA Launches Biggest Deregulatory Action in U.S. History, (Mar. 12, 2025), https://perma.cc/Z6SX-L3F8. Simultaneously, EPA announced that it would reconsider multiple NESHAPs affecting a broad range of American industrial sectors, Press Release, EPA, Trump EPA Announces Reconsideration of Air Rules Regulating American Energy, Manufacturing, Chemical Sectors (NESHAPs) (Mar. 12, 2025), https://perma.cc/94ZF-ZKLL, and announced that the Administration was considering a two-year compliance exemption for affected facilities during the rulemaking process. *Id.*

That same month, President Trump proposed to shortcut the required process for reconsideration of agency rules, setting up an email inbox for regulated parties to request a presidential exemption under Section 7412(i)(4). Clean Air Act Section 112 Presidential Exemption Information, EPA (Apr. 14, 2025), https://perma.cc/WKL5-44FC. There, EPA listed regulations, including the HON Rule and eight others, from which a party could request exemption. *Id.* Regulated sources were instructed to provide their requests to EPA by March 31, 2025, a mere two weeks after the initial press release. *Id.*

On July 17, 2025, the President issued a single proclamation that relied on Section 7412(i)(4) to mass-exempt 50 facilities from the HON Rule. Regulatory Relief for Certain Stationary Sources to Promote American Chemical Manufacturing Security, Proclamation No. 10,957, 90 Fed. Reg. 34,587 (July 23, 2025) ("Proclamation"). The Proclamation gives the shortest of shrift to the mandatory predicate findings. It totals four paragraphs. The fourth presents

the formal "determinations" and states simply that the "technology to implement the HON Rule . . . does not exist in a commercially viable form," and that it "is in the national security interests of the United States to issue this Exemption." *Id.* ¶¶ a-b.

The rest of the Proclamation fails to support either of these summary determinations. Paragraph 1 states only that the exempted facilities produce essential materials for various industries and that continued domestic production of those materials "is essential not only to economic resilience but also to military readiness, public health, and national preparedness." *Id.* ¶ 1. Paragraph 2 identifies the HON Rule as the source of the requirements to be exempted. *Id.* ¶ 2; *see id.* ¶ b (explaining that national security determination was based on "the reasons stated in paragraphs 1 and 3"). Paragraph 3 purports to address the HON Rule's impacts and concludes, without explanation, that the rule's "testing and monitoring requirements . . . rely on technologies that are not practically available, not demonstrated at the necessary scale, or cannot be implemented safely or consistently under real-world conditions." *Id.* ¶ 3. It further states that "the timeline for compliance . . . would require shutdowns or massive capital investments before any proven pathway to compliance exists." *Id.* These purported disruptions "would weaken key supply chains, increase dependence on foreign producers, and impair our ability to respond effectively in a time of crisis," which could further impact the Nation's "industrial strength and emergency readiness." *Id.* Those conclusory assertions are the full extent of the discussion, and do not stand on any industry-, technology-, or source-specific analysis. They make no distinction among the HON Rule's different standards for different pollutants at three distinct types of manufacturing facilities—facilities that manufacture different products, serve different value chains, and reach different end-use markets. All these various processes, pollutants, and facilities

are swept into a single bucket, with no more analysis than copying and pasting the statutory language, and with no evident effort to actually meet the law's requirements.[3]

ARGUMENT

It is a foundational principle of our federal system that "[t]he President's power, if any, to issue [an] order must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). There is no suggestion that the President had constitutional authority to issue the Proclamation. The only potential source of legal authority comes from statute—specifically, Section 7412(i)(4). But that provision grants authority to the President to exempt certain sources if, and only if, he makes two predicate factual determinations. Absent these mandatory determinations, the President lacks authority to exempt any source.

Here, the President satisfied neither statutory obligation. Because the President's conclusory "determinations" lacked sufficient detail—indeed any details at all—to satisfy the requisite findings, the President's proclamation is *ultra vires*. The Constitution gives this Court the authority to review that action under the *ultra vires* standard, a vital protection against presidential overreach. When the Article II Executive purports to act pursuant to authority granted by the Article I legislature, it is the clear responsibility of Article III courts to ensure that he has in fact been given that authority.

[3] President Trump has issued six additional proclamations exempting 180 facilities from EPA's NESHAPs, each with the same copied-and-pasted language: that the requisite "technology does not exist in a commercially viable form," and that "[i]t is in the national security interests of the United States to issue the Exemption for the reasons stated in paragraphs 1 and 3 of th[e] proclamation." *E.g.*, MATS Proclamation: Regulatory Relief for Certain Stationary Sources to Promote American Energy, Proclamation No. 10,914, 90 Fed. Reg. 16,777 (Apr. 21, 2025); *infra*, sect. II.B.

An *ultra vires* claim succeeds where (i) judicial review is not expressly precluded by statute, (ii) there is no alternative procedure for review of the statutory claim; and (iii) the executive action is in excess of delegated powers and contravenes a prohibition in the statute that is clear and mandatory. *Glob. Health Council v. Trump*, 153 F.4th 1, 20 (D.C. Cir. 2025) (cleaned up).[4] The first two elements concern reviewability, while the third turns on whether the action plainly violates the statute. All three are met here. But because the third element is the heart of the matter, that is where this brief begin.

I. The Proclamation is *Ultra Vires.*

In issuing the Proclamation, the President plainly acted in excess of his statutorily granted powers under Section 7412 and wiped away its robust protections against dangerous HAPs. Such an outrageous error meets even the "very stringent" standard of *ultra vires* review. *Nyunt v. Chairman, Broad. Bd. of Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009).

In Section 7412(i)(4), Congress narrowly cabined the President's statutory authority by requiring two predicate findings: that (1) "the technology to implement such standard is not available" and (2) an exemption "is in the national security interests of the United States." 42 U.S.C. § 7412(i)(4). Both determinations are required for the President to unlock the authority, and nothing in the statute gives precedence to one or the other.

[4] Plaintiffs argue persuasively that the third factor's "specific prohibition" requirement should not apply here, because courts require that showing only where the relevant statute confines judicial review to a particular scheme. Pls.' Br. at 34-37. Such was the case in *Global Health Council* in which the court held that the Impoundment Control Act established a detailed scheme for addressing statutory violations. *Glob. Health Council v. Trump*, 153 F.4th at 8-9, 21 n.18. While this distinction is no doubt important, it is not necessary to resolve here. Section 7412(i)(4) clearly prohibits exemption absent predicate findings. The President flagrantly violated that prohibition. These facts satisfy either standard. *See Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 722 (D.C. Cir. 2022) (explaining that specific statutory prohibition is violated by "patent[] . . . misconstruction" of the statute that "disregards" statutory direction).

In short, the President failed to do the necessary work. The Proclamation treats the HON Rule, which spans over 250 pages in the Federal Register and contains dozens of new and amended emission standards for different HAPs, as a monolith, and fails to tether its mass exemption to any specific pollutant, source, standard, or technology. For instance, the Proclamation—which depends on a finding of technical unavailability—ignores that several of the technologies in the HON Rule are already implemented by existing facilities. The Proclamation required fenceline monitoring for neoprene facilities, but the only neoprene facility in the United States *already has* the required technology. HON Rule at 43,008. The President also exempted the facility from requirements—such as more frequent inspections—that do not require technology *at all*. *See, e.g.*, *id.* at 43,075 ("Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal."); *id.* at 43,080 (certain detected leaks must be repaired within 15 calendar days).

In lieu of genuine determinations, the Proclamation offers *ipse dixit*. The Proclamation incants the statutory phrases "available technology" and "national security" as if they are magic words that, once spoken, require nothing more.

- The Proclamation insists that the HON Rule relies on technology that is "not practically available, not demonstrated at the necessary scale, or cannot be implemented safely or consistently under real-world conditions," but offers not a shred of evidence for that assertion. Proclamation ¶ 3. It claims that HON Rule's compliance deadlines would "require shutdowns or massive capital investments" for "many facilities," *id.*, but does not point to even one facility in such straits, nor make any effort to connect such purported consequences to any HON Rule requirement.

- The Proclamation provides zero substance to support its purported national security concerns. The Proclamation claims unidentified national security harms would result from a "disruption of [] capacity," *id.*, without specificity or evidence.
- The Proclamation insists—apparently without irony—that the HON Rule "imposes requirements that assume uniform technological availability across facilities, despite significant variation in site conditions, permitting realities, and equipment configuration." *Id.* ¶ 3. Setting aside that this is plainly untrue, *supra* at 4-5, it is entirely backwards. The Proclamation, based on zero specifics, exempts 50 disparate facilities from every single requirement under the HON Rule. It is the Proclamation that is guilty of "assum[ing] uniform technological [un]availability across facilities, despite significant variation in site conditions, permitting realities, and equipment configuration," *id.* ¶ 3—the very allegation it incorrectly lobs at the HON Rule.

These blanket assertions do not just fail to justify the President's determinations; they are not determinations at all.[5]

[5] The only other time a President has even considered using this statutory authority stands in stark contrast to this sham process. In 2025, President Biden issued a Memorandum establishing a detailed framework for consideration of exemptions for facilities that sterilize medical products. Memorandum on the Orderly Implementation of the Air Toxics Standards for Ethylene Oxide Commercial Sterilizers, 90 Fed. Reg. 6,773 (Jan. 17, 2025). The Memorandum set out a process for sources to submit "specific information of sufficient detail to enable verification of the reason or reasons" that required technology was not available, and further required that sources provide a plan for obtaining such technology and a list of all mitigation measures during the exemption period. 90 Fed. Reg. at 6774. The Memorandum made clear that only "exceptional circumstances" would warrant an exemption, and that an exemption would only be granted where the source had demonstrated "due diligence and best efforts" to comply. *Id.* The Memorandum did not itself exempt any source, and ultimately, no exemptions were ever granted as a result of this process.

The HON Proclamation is a cartoon version of presidential authority, in which none of the work has been done to connect cause to effect, rule to consequence, or regulation to injury, let alone distinguish among varied products, processes, or facilities. The Proclamation replaces the honest work of analysis with incantation of feigned, conclusory assertions. Congress gave no authority to so blithely overwrite Section 7412(i)(4), so as to upend Section 7412 writ large. That flies in the face of Congress's design. *EPA v. Calumet Shreveport Refin., LLC*, 605 U.S. 627, 644 (2025) ("Congress, after all, is unlikely to intend for an exception to swallow the rule.").

Even under the deferential *ultra vires* standard, the Court need not accept the President's obviously superficial "determinations." The Administration has candidly revealed its true aim: to end-run the process required to lawfully rescind the HON Rule (and other NESHAPs). Because the Administration did not even try to engage with the specific findings that the law demands, rejecting these hollow assertions does not require the Court to scrutinize the merits of findings or second-guess the President's judgment. It need only decline to "exhibit a naiveté from which ordinary citizens are free." *Dep't of Comm. v. New York*, 588 U.S. 752, 785 (2019) (Roberts, C.J.) (quoting *United States v. Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977). There is simply no there there.

It is harsh to accuse an administration of acting illegally under false pretexts. But lately, a growing number of courts have declined to extend the presumption of regularity to this Administration, as the President has shown "indifferen[ce] to the purposes and requirements of" statutes he administers, and even "act[ed] deliberately in contravention of them." *NTEU v. Trump*, 780 F. Supp. 3d 237, 253-54 (D.D.C. 2025) (quoting *Am. Fed'n of Gov't Emps., AFL-CIO v. Reagan*, 870 F.2d 723, 727-28 (D.C. Cir. 1989)) (finding plaintiffs rebutted presumption of regularity where Executive Order was at odds with earlier factual findings and was likely "in

furtherance of unrelated policy goals rather than based on the statutory criteria"); *see also Am. Foreign Serv. Ass'n v. Trump*, 783 F. Supp. 3d 248, 264-65 (D.D.C. 2025) (finding same). On this topic, Judge Friedman did not mince words: "Generations of presidential administrations and public officials have validated th[e] underlying premise of the presumption of regularity: their actions writ large have raised little question that they act in obedience to [their] duty. Over the last six months, however, courts have seen instance after instance of departures from this tradition." *Fed. Educ. Ass'n v. Trump*, 795 F. Supp. 3d 74, 90 (D.D.C. 2025) (cleaned up).[6]

In particular, courts have admonished this Administration for adopting an "overly broad interpretation of the term 'national security.'" *NTEU*, 780 F. Supp. 3d at 262; *see also Am. Foreign Serv. Ass'n*, 783 F. Supp. 3d at 267-69 (applying "[t]he same analysis" to the question as in *NTEU*). Judicial skepticism of national security claims has crossed into the environmental sphere. Recently, five courts confronted the Administration's attempt to "stop work" on permitted offshore wind projects. In those cases, every court rejected the Administration's invocation of "national security."[7] "National security" can be as ready a pretext as any other executive assertion, so merely

[6] In the context of the presumption of regularity, it is unfortunately noteworthy how often this Administration has propounded arguments and declarations found by courts to be "disingenuous," "bad faith," "pretextual," or contradicted by the agency's own public statements. *See, e.g.*, *Am. Fed'n of Gov't Emps. v. Trump*, 139 F.4th 1020, 1033 (9th Cir. 2025) (the government's "characterization is at best disingenuous, and at worst flatly contradictory to the record"); *Abrego Garcia v. Noem*, 348 F.R.D. 594, 599 (D. Md. 2025) (the government's false-premise objection to certain discovery "reflects a willful and bad faith refusal to comply with discovery obligations"); *Presidents and Fellows of Harv. Coll. v. U.S. Dep't of Health and Human Servs.*, 798 F. Supp. 3d 77, 121 (D. Mass. 2025) (facts "lead the Court to conclude that the sudden focus on antisemitism was, at best . . . arbitrary and, at worst, pretextual"); *League of United Latin Am. Citizens v. Exec. Office of the President*, 780 F. Supp.3d 135, 184 (D.D.C. 2025) (finding that the government's argument "fails to persuade because it misconceives (and in one instance misrepresents) the Executive Order, Plaintiffs' claims, the law, and the facts").

[7] *See, e.g.*, Ex. A, Hearing Tr. at 52:5-20, *Vineyard Wind 1, LLC v. U.S. Dep't of Interior*, No. 26-10156 (D. Mass. Jan. 27, 2026) (overly broad national security claim failed to articulate connection between the particular concern and the particular aspect of the project that would implicate that concern); Ex. B, Hearing Tr. at 12:5-9, 40:13-22, *Revolution Wind, LLC v. Burgum*, No. 1:25-cv-

invoking national security "does not end the inquiry." Ex. A, Hearing Tr. (*Vineyard Wind*) at 55:8-12. "National security" is not a talisman that shields executive claims from judicial scrutiny.

The Court should reject the national security invocation here. The Proclamation offers no reasoned connection between the vague national security concerns it asserts and any specific exemption. A generalized, multisector-wide claim of national security concerns, without explaining how any actual compliance obligation could potentially disrupt domestic production in any way, much less at a level that could "weaken key supply chains, increase dependence on foreign producers, and impair our ability to respond effectively in a time of crisis," Proclamation ¶ 3, is simply not credible. The work was not done.

Nor does the Proclamation offer any explanation for the wholesale two-year compliance relief it provides, to 50 facilities, of different types, producing different products, and emitting different dangerous pollutants, for *all* standards. The Proclamation not only fails to connect the dots; it fails to identify any dots at all.

In sum, the Proclamation's exemptions exhibit "indifferen[ce] to the purposes and requirements" of the law and unlawful purpose "in furtherance of unrelated policy goals rather than based on the statutory criteria."[8] *NTEU*, 780 F. Supp. 3d at 253-54 (quoting *Am. Fed'n of*

02999-RCL (D.D.C. Sep. 22, 2025) (rejecting national security claim that was based on "mere potential for national security concerns" without "actually point[ing] to any factual findings" justifying stop-work order); Ex. C, Hearing Tr. at 48:23-49:18, *Va. Elec. & Power Co.v. U.S. Dep't of Interior*, No. 25-cv-830 (E.D. Va. Jan. 16, 2026) (asserted national security concerns were "not particularized" and failed to justify halt to the entire project); *id.* at 51:13-23 (noting "some inconsistencies" between the Administration's in-court representations about the national security issues and the court's *in camera* review of classified national security documentation). Due to the expedited nature of these cases, the judges issued oral orders with no written order to follow. Thus, *amicus* submits these transcripts as Exhibits for the Court's benefit.

[8] Even the process by which the President issued the exemptions undercuts the offered national security justification. The Proclamation resulted from a voluntary process in which polluters were invited to email a government inbox to request an exemption. If compliance with the HON Rule

Gov't Emps., AFL-CIO v. Reagan, 870 F.2d at 728). The Proclamation therefore fails *ultra vires* review.

II. The Proclamation is Subject to Judicial Review.

Notwithstanding this startling violation of the statute, Defendants argue that this Court can do nothing about it. That is not what the Supreme Court or this Court have said, however. *Ultra vires* review ensures that courts can still police the boundaries of statutorily granted authority against clear violations. The Proclamation must be subject to judicial scrutiny—scrutiny it cannot survive.

A. The Proclamation is Reviewable Under the *Ultra Vires* Standard.

The *ultra vires* standard asks whether Congress barred review of the claim altogether or provided an alternative review mechanism thus foreclosing *ultra vires* review. Here it did neither. To begin, the CAA does not preclude *ultra vires* review of the Proclamation. To be sure, Congress has authority to preclude judicial review of presidential action. *Dalton v. Specter*, 511 U.S. 511, 477 (1994). But it did not do so in the CAA, explicitly or otherwise. Nothing in the statute supports an inference that Congress meant to preclude review of these presidential exemptions. Although the CAA establishes an extensive judicial review scheme for actions taken *by EPA*, *see* 42 U.S.C. § 7607(b)(1), *presidential* action falls outside of the scope of that scheme entirely. Section 7607's limitation of judicial review likewise applies only to "regulations or orders of the Administrator." *Id.* § 7607(e). Elsewhere in the CAA itself, Congress proved that it knew how to prohibit judicial review of presidential action when it wants to. *See id.* § 7475(d)(2)(D)(ii).

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posed a true national security threat, it strains belief to think that the threat could be reasonably or reliably eliminated through a voluntary email request system.

Absent preclusion, judicial review is available. *See DCH Reg'l Med. Ctr. v. Azar*, 925 F.3d 503, 509 (D.C. Cir. 2019) ("[J]udicial review is presumed to be available absent a clear statute to the contrary."); *Patel v. Garland*, 596 U.S. 328, 346 (2022) ("Because executive determinations generally are subject to judicial review . . . [courts] presume that review is available when a statute is silent." (cleaned up)). The landmark case of *Leedom v. Kyne*, 358 U.S. 184 (1958), is instructive. There, the National Labor Relations Board argued that a statute's silence about whether an action by the Board was reviewable implied that it was not. *Kyne*, 358 U.S. at 187-88. The Supreme Court disagreed. Because disallowing *any* review of the NLRB's action would mean "a sacrifice or obliteration" of a right Congress sought to protect, something more than silence was needed. *Id.* at 190. Congress "intends that the President heed" its statutory commands, and "it remains the responsibility of the judiciary to ensure that the President acts within those limits." *Am. Forest Res. Council v. U.S.*, 77 F. 4th 787, 797 (D.C. Cir. 2023) (citing *Chamber of Comm. of U.S. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996)).

Defendant's reliance on *Block v. Community Nutrition Inst.*, 467 U.S. 340 (1984), is misplaced. Defs.' Br. (ECF No. 34-1) at 15. *Block* stands for the unremarkable propositions that a presumption in favor of judicial review can be overcome by Congress and that courts can infer congressional intent to bar judicial review from statutory context. *Block*, 467 U.S. at 349. There, the Agricultural Marketing Agreement Act established a specific and detailed mechanism for administrative exhaustion and judicial review of a claim by dairy handlers. *Id.* at 346. The Court concluded that Congress's establishment of a review mechanism for a specific kind of claim and conscious decision to limit who could bring claims supported an inference to exclude other potential claimants. *Id.* at 347.

But that statutory context differs greatly from the CAA, which contains no indication that Congress gave any consideration to limiting review of presidential action. Mere silence cannot bar review, especially where absence of review would eviscerate Congress's statutory purpose. *Kyne*, 358 U.S. at 190. Moreover, the decision in *Block* only precluded claims brought by a particular class of plaintiffs. It did not insulate agency action from judicial review altogether; other plaintiffs, *i.e.*, dairy handlers, could challenge the agency action. Defendants' position here would shield all Section 7412(i)(4) action from judicial scrutiny.

Just as the CAA's silence regarding presidential action does not preclude judicial review, neither does it provide an alternate mechanism for such review. Courts have been clear that the Administrative Procedure Act does not directly reach a president's actions. *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992). Absent *ultra vires* review, then, there is no avenue for relief from the President's unlawful evisceration of the HON Rule. *See Leedom v. Kyne*, 358 U.S. at 190 ("[B]ut for the general jurisdiction of the federal courts there would be no remedy to enforce the statutory commands which Congress had written . . . .").

B. Defendants' Arguments are Inconsistent with Section 7412(i)(4) and Case Law.

Defendants say otherwise. They invite the Court to ignore Congress's prescribed limits on the President's authority, maintaining that the Proclamation is wholly unreviewable because the statute commits decisionmaking to the President's discretion. Defs.' Br. at 16. This position is at odds with the statute and controlling precedent.

It is well-established that, where statutes place discernible limits on the President's discretion, *ultra vires* review is available. Congress can and often does cabin the discretion it grants the President, and it remains the responsibility of the judiciary to ensure that the President acts within those limits. *Reich*, 74 F.3d at 1327. If a statute "plainly delineates" the limits of

statutory authority and Congress has not expressly precluded review, *ultra vires* review is within the purview of courts. *Nat'l Ass'n of Postal Supervisors v. U.S. Postal Serv.*, 26 F.4th 960, 971 (D.C. Cir. 2022). Indeed, courts have contemplated *ultra vires* review of presidential action even when a statute grants the President broad discretion. *See, e.g.*, *Am. Forest Res. Council*, 77 F.4th at 797 (*ultra vires* review deemed available for challenges to national-monument designations "notwithstanding the broad discretion the Antiquities Act vests in the President"); *Mass. Lobstermen's Ass'n v. Raimondo*, 141 S. Ct. 979, 980 (2021) (Roberts, C.J., respecting the denial of certiorari) (indicating that courts can review *ultra vires* Antiquities Act claims even though "[t]he Act vests significant discretion in the President").

Judicial review of presidential determinations under Section 7412(i)(4) fits easily into this framework. The provision does not grant limitless authority to the President, but bounds the authority by requiring the President to make two predicate findings. These are specific and mandatory determinations; they do not turn on vague or discretionary terms. As such, they delineate the limits Congress placed on the President's exercise of Section 7412 exemption authority clearly enough to enable judicial review. *See Nat'l Ass'n of Postal Supervisors*, 26 F.4th at 971-72 (finding similar requirements "undoubtedly mandatory" and distinguishing statutory terms like "appropriate" or "suitabl[e]" (cleaned up)). The judiciary can and must determine whether the President has exceeded this statutory grant of authority. *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1136 (D.C. Cir. 2002).

Simply put, presidential action is not categorically beyond the reach of judicial review. Nor should it be. That would mean "there are no judicially enforceable limits on presidential action . . . so long as the President claims that he is acting pursuant to a statutory directive." *Mountain States*, 306 F.3d at 1136 (quoting *Reich*, 74 F.3d at 1332) (cleaned up). Such a result

would be "untenable," particularly to Congress. *Id.* Barring judicial review here would allow the President to unilaterally override the entire Section 7412 program. *Leedom v. Kyne*, 358 U.S. at 190 (affirming reviewability where denial of review would "sacrifice or obliterat[e]" congressional intent (quoting *Switchmen's Union of N. Am. v. Nat'l Mediation Bd.*, 320 U.S. 297, 300 (1943)).

In just half a year, the President has used Section 7412(i)(4) to issue seven proclamations, which in total exempt over 180 sources from seven NESHAP rules containing dozens of health protection requirements. Each of these proclamations contains the exact same conclusory "determinations"—that the requisite "technology does not exist in a commercially viable form," and that "[i]t is in the national security interests of the United States to issue the Exemption for the reasons stated in paragraphs 1 and 3 of th[e] proclamation"—despite profound differences in sources, standards, and required technology. *E.g.*, EtO Proclamation: Regulatory Relief for Certain Stationary Sources To Promote American Security With Respect to Sterile Medical Equipment, Proclamation No. 10,959, 90 Fed. Reg. 34,747 (July 23, 2025).[9] This cookie-cutter approach reduces the Section 7412(i)(4) exemption process to farce. It is plainly at odds with the way Congress designed the statute to work and its goal of protecting Americans from the most dangerous air pollutants. The Court is not powerless to prevent such absurdity.

[9] The other five proclamations are: MATS Proclamation: Regulatory Relief for Certain Stationary Sources To Promote American Energy, Proclamation No. 10,914, 90 Fed. Reg. 16,777 (Apr. 21, 2025); MATS Proclamation No. 2: Regulatory Relief for Certain Stationary Sources To Further Promote American Energy, Proclamation No. 10,956, 90 Fed. Reg. 34,583 (July 23, 2025); Taconite Proclamation: Regulatory Relief for Certain Stationary Sources To Promote American Iron Ore Processing Security, Proclamation No. 10,958, 90 Fed. Reg. 34,743 (July 23, 2025); Copper Proclamation: Regulatory Relief for Certain Stationary Sources To Promote American Mineral Security, Proclamation No. 10,987, 90 Fed. Reg. 49,211 (Nov. 3, 2025); Coke Oven Proclamation: Regulatory Relief for Certain Stationary Sources To Promote American Coke Oven Processing Security, Proclamation No. 10,993, 90 Fed. Reg. 54,517 (Nov. 26, 2025).

Even Defendants' own cases do not go so far as to suggest a *per se* ban on judicial review of presidential action. Defendants rely heavily on *Dalton v. Specter*, 511 U.S. 462, Defs.' Br. at 15-16, 19, 20, but the statute at issue in that case stands in stark contrast to Section 7412 and the cases discussed *supra*, many of which postdate *Dalton*. The *Dalton* Court considered whether it could review the President's decision to close the Philadelphia Naval Shipyard pursuant to the Defense Base Closure and Realignment Act of 1990. That statute mandated an "elaborate" process by which federal officials, Congress, and an independent commission made recommendations in a report to the President. *Dalton*, 511 U.S. at 464-5. Congress left it up to the President to decide whether to approve or disapprove, in part or in their entirety, the recommendations. *Id.* The statute did "not at all limit the President's discretion." *Id.* at 476. As this Court put it, "*Dalton*'s holding merely stands for the proposition that when a statute entrusts a discrete specific decision to the President and contains no limitations on the President's exercise of that authority, judicial review of an abuse of discretion claim is not available." *Reich*, 74 F.3d at 1331; *see also Mountain States*, 306 F.3d at 1136 (distinguishing the statute at issue in *Dalton* from those that place discernible limits on presidential discretion, which "do[] not implicate separation of powers concerns to the same degree"). Section 7412(i)(4) contains express limitations on the President's exercise of his authority, which its conditioned on making mandatory predicate findings. Nor does *Trump v. Hawaii*, 585 U.S. 667 (2018) support Defendants' position. There, the statutory provision "exude[d] deference to the President in every clause." 585 U.S. at 667, 684. That is a far cry from the grant of authority here.

Defendants and their supporting *amici* have also argued that allowing judicial review would improperly invite the court to decide if the President's determinations were correct, Defs.' Br. at 14-16, or scrutinize the "factual determinations supporting [the] presidential finding," Am.

Chem. Council Br. (ECF No. 36-1) at 14. The *ultra vires* standard itself resolves these concerns by directing the court to review for only the most egregious violations of clear statutory provisions. That stringent standard avoids the kind of second guessing of which Defendants warn. A court cannot find an action to be *ultra vires* merely because it disagrees with the President's findings or judgment. Here, the point is not that the President erred in making the required determinations. It is that he did not undertake those determinations at all. The cookie-cutter justifications applied without distinction across so many distinctive industries, facilities, processes, and chemicals prove that incontrovertibly. There is no danger of improperly scrutinizing factual findings that do not exist in the first place.

Defendants rely on a number of cases that arise in the sphere of foreign affairs or under statutes that turn only on national security findings. Defs.' Br. at 16, 18-19 (citing, for example, *Trump v. Hawaii*, 585 U.S. at 684). Those cases do not answer the question at hand. True, courts have understandably hesitated to extend their review into powers that our Constitution vests in the Executive Branch. *Id.* at 20 (declining to conduct a "[s]earching inquiry" into the President's justifications because doing so would be inconsistent with "the deference traditionally accorded the President" in the realm of international affairs and national security); *see also El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010) ("[C]ourts are not a forum for reconsidering the wisdom of discretionary decisions made by the political branches in the realm of foreign policy or national security."). But even in such cases, the mere fact that "a case may involve the conduct of the nation's foreign affairs does not necessarily prevent a court from determining whether the Executive has exceeded the scope of prescribed statutory authority." *El-Shifa Pharm. Indus. Co.*, 607 F.3d at 842. And those cases raised no question of pretextual assertion of national security concerns.

Here, Congress did not condition exemption under Section 7412(i)(4) on national security considerations alone. It included a second, just-as-mandatory condition concerning availability of emission control technology. Such a determination does not implicate powers traditionally confined to the Executive or complex matters of foreign affairs with which the judiciary hesitates to meddle. Rather, technology issues like these are regularly addressed by Congress in Article I legislation and routinely subject to Article III judicial review. There is thus no reason for courts to refrain from ascertaining and enforcing the bounds of this statutorily granted authority.

CONCLUSION

At its core, this case concerns our legal system's balancing of power among the branches of the federal government. To lawfully issue the Proclamation, the President required authority. The only potential source of such authority is Section 7412(i)(4), a provision in which Congress granted limited authority to the President, conditioned on his making certain determinations. The President failed entirely to satisfy those prerequisite obligations. He acted in flagrant disregard of the statute and without proper authority. The Court should say so. Otherwise, nothing stands in the way of the President disregarding congress mandates and aggrandizing power to himself by the mere recitation of the statutory standard, with none of the work of actual compliance.

For these reasons, Plaintiffs' Motion for Summary Judgment should be granted, and Defendants' Motion to Dismiss should be denied.

Respectfully submitted on March 9, 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with: (1) the requirements of Local Civil Rule 7(o)(4) and does not exceed 25 pages and (2) the type-face and type-style requirements of Local Civil Rule 5.1(d) because it has been prepared in a proportionally spaced typeface using Microsoft Word and 12-point Times New Roman font. I further certify that this brief complies with Local Civil Rule 7.1(o)(5) and Federal Rule of Appellate Procedure 29(a)(4).

/s/ Eric Pilsk
W. Eric Pilsk

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, I served the foregoing with the Clerk of the Court by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Eric Pilsk
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