

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-1229

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

CALUMET SHREVEPORT REFINING, L.L.C., ET AL.

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

MOTION OF THE PETITIONER
TO HOLD THE BRIEFING SCHEDULE IN ABEYANCE

Pursuant to Rule 21.1 of the Rules of this Court, the Acting Solicitor General, on behalf of petitioner United States Environmental Protection Agency (EPA), respectfully moves to hold the briefing schedule in abeyance, without prejudice to any party requesting to have the briefing schedule reinstated should the matter not be resolved. The reply briefs for petitioner and for the respondents supporting petitioner (Growth Energy and the Renewable Fuels Association) are currently due on February 20, 2025, and the case has not yet been scheduled for argument. Respondents (including the respondents supporting petitioner) oppose petitioner's

request to hold the briefing schedule in abeyance and intend to file a response.

1. When a petitioner seeks review of a "final action" taken by the EPA under the Clean Air Act (CAA), 42 U.S.C. 7401 et seq., Section 7607(b)(1) of Title 42 authorizes direct court of appeals review of the petitioner's challenge. That provision makes the D.C. Circuit the exclusive venue for a petition for review of certain specified actions or "any other nationally applicable regulations promulgated, or final action taken, by" EPA. 42 U.S.C. 7607(b)(1). By contrast, a petition for review of an action that is "locally or regionally applicable may" generally "be filed only in the United States Court of Appeals for the appropriate circuit." Ibid. But a petition for review of a locally or regionally applicable EPA action must be filed in the D.C. Circuit if the agency action "is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." Ibid.

At issue in this case are two EPA actions denying 105 petitions filed by small refineries across the country seeking exemptions from their obligations under the CAA's Renewable Fuel Standard program. 87 Fed. Reg. 24,300 (Apr. 25, 2022); 87 Fed. Reg. 34,873 (June 8, 2022). Six small refineries filed petitions for review in the Fifth Circuit, collectively challenging both denial actions. Pet. App. 2a, 6a. Growth Energy and the Renewable Fuels

Association were granted leave to intervene as respondents. See 22-60266 Doc. 303-1 (Mar. 16, 2023).

The court of appeals granted the petitions for review, vacated the denial actions as to the six petitioners, and remanded to EPA for further proceedings. Pet. App. 1a-34a. As relevant here, the court denied EPA's motion to transfer the petitions to the D.C. Circuit. Id. at 9a-15a. The court concluded that the denial actions are "locally or regionally applicable" rather than "nationally applicable," and that neither denial action is "based on a determination of nationwide scope or effect." 42 U.S.C. 7607(b)(1); see Pet. App. 11a-14a.

On May 20, 2024, EPA filed a petition for a writ of certiorari, which presents the question whether venue for the refineries' challenges lies exclusively in the D.C. Circuit because the agency's denial actions are "nationally applicable" or, alternatively, are "based on a determination of nationwide scope or effect." 42 U.S.C. 7607(b)(1). On October 21, 2024, this Court granted EPA's petition.

2. After the change in Administration, EPA's Acting Administrator has determined that the agency should reassess the basis for and soundness of the underlying denial actions. Such a reassessment could obviate the need for this Court to determine the proper venue for challenges to those actions. Accordingly, petitioner respectfully requests that this Court hold the briefing

schedule in abeyance. The reply briefs for petitioner and respondents supporting petitioner are currently due on February 20, 2025, and the case has not yet been scheduled for argument. Given the Acting Administrator's determination, it would be appropriate for the Court to hold further proceedings in this case in abeyance to allow for EPA to reassess the basis for and soundness of the denial actions. The Court has previously held the briefing schedule in abeyance in light of developments arising after the grant of certiorari in other cases. See, e.g., Biden v. Sierra Club, No. 20-138 (Feb. 3, 2021); Mayorkas v. Innovation Law Lab, No. 19-1212 (Feb. 3, 2021). Petitioner therefore requests an order holding the briefing schedule in abeyance, without prejudice to any party requesting to have the briefing schedule reinstated should the matter not be resolved.

3. We have consulted with counsel for respondents (including the respondents supporting petitioner), who have informed us that they oppose the relief requested and intend to file a response. If this motion is granted, we will advise the Court of material developments that would support further action by the Court.

Respectfully submitted.

SARAH M. HARRIS
Acting Solicitor General
Counsel of Record

JANUARY 2025