No. 24-645

In the Supreme Court of the United States

KELSEY CASCADIA ROSE JULIANA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in holding that petitioners lack Article III standing to pursue claims challenging the government's climate-change policies.

2. Whether the court of appeals erred in granting a writ of mandamus to enforce its mandate directing the district court to dismiss petitioners' claims.

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OPINIONS BELOW

The order of the court of appeals granting a writ of mandamus (Pet. App. 1a-5a) is available at 2024 WL 5102489. The prior opinion of the court of appeals remanding and directing the district court to dismiss for lack of Article III standing (Pet. App. 101a-164a) is reported at 986 F.3d 1295. The opinion and order of the district court on that remand denying the motion to dismiss the second amended complaint (Pet. App. 25a-78a) is available at 2023 WL 9023339. The opinion and order of the district court on remand granting leave to file the second amended complaint (Pet. App. 79a-100a) is available at 2023 WL 3750334.

JURISDICTION

The judgment of the court of appeals was entered on May 1, 2024. A petition for rehearing was denied on July 12, 2024 (Pet. App. 270a-271a). On September 16,

2024, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including December 9, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In 2015, petitioners sued the United States, the President, multiple federal departments and agencies, and the departments' and agencies' heads, claiming that the defendants had violated their "right to a stable climate system." Pet. App. 2a (citation omitted). The district court held that petitioners had Article III standing to pursue their claims, but the court of appeals reversed that decision and remanded the case with instructions to dismiss. See *id.* at 101a-164a. Instead of dismissing the case, the district court granted petitioners leave to amend their complaint and concluded that the amendment cured the Article III problems identified by the court of appeals. See *id.* at 25a-78a. The court of appeals then issued a writ of mandamus directing the district court to dismiss the complaint forthwith. See *id.* at 1a-5a.

1. This suit was filed in 2015 by 21 minor children, an "association of young environmental activists" known as Earth Guardians, and "'future generations,'" purportedly acting through their claimed "guardian," Dr. James Hansen. Pet. App. 186a. The plaintiffs, petitioners here, sued the President, multiple Cabinet-level departments and agencies, and various other agencies and officials. See *id.* at 187a & n.2. Petitioners claimed that those federal departments, agencies, and officials have collectively violated their "right to a stable climate system that can sustain human life," which assertedly arises from the Fifth and Ninth Amendments. *Id.* at 2a

(citation omitted). Petitioners also argued that the government writ large has a legal duty to "take affirmative steps to protect" "'essential public trust resources'"—such as "our atmosphere, waters, oceans, and biosphere"—from climate change. *Id.* at 75a (citation omitted). Petitioners sought an injunction directing the federal defendants to "prepare and implement an enforceable national remedial plan to phase out fossil fuel emissions and draw down excess atmospheric CO2 to stabilize the climate system." *Id.* at 10a (citation omitted). They also sought "several forms of declaratory relief." *Id.* at 81a-82a.

The district court denied the government's motion to dismiss, holding (as relevant here) that petitioners had established Article III standing. See 217 F. Supp. 3d 1224. The court declined to certify its order for interlocutory appeal under 28 U.S.C. 1292(b). See 2017 WL 2483705. The court of appeals denied the government's petition for a writ of mandamus to require the district court to dismiss the case, noting that the case was still "at a very early stage." 884 F.3d 830, 837.

Returning to district court, the government moved for judgment on the pleadings and summary judgment. See Pet. App. 34a. Without acting on those motions, the court allowed petitioners to take extensive discovery and proceeded toward trial. See, *e.g.*, D. Ct. Doc. 212 (May 25, 2018). With trial approaching, the government sought mandamus from the court of appeals and a stay from this Court. See 895 F.3d 1101, 1104; Pet. App. 269a. Although the court of appeals and this Court both denied those applications as "premature," this Court noted the "striking" "breadth" of petitioners' claims. Pet. App. 269a; see 895 F.3d at 1105.

Shortly before the trial was scheduled to begin, the district court largely denied the still-pending dispositive motions, see Pet. App. 185a-268a, and refused to certify its order for interlocutory appeal under 28 U.S.C. 1292(b), see Pet. App. 263a-267a. The government again sought mandamus from the court of appeals and a stay from this Court. See *id.* at 181a. This Court denied a stay on the ground that the government could still obtain relief from the court of appeals. See *id.* at 183a. The court of appeals then invited the district court to reconsider its refusal to certify its earlier orders for interlocutory appeal. See 18-73014 C.A. Doc. 3, at 2 (Nov. 8, 2018). The district court did so, certifying its orders for interlocutory appeal, see Pet. App. 174a-180a, and the court of appeals agreed to hear the interlocutory appeal, see *id.* at 165a-173a.

Resolving that appeal, the court of appeals reversed the district court's decision and held that petitioners lacked Article III standing because they had failed to show that their injuries were judicially redressable. See Pet. App. 101a-164a. The court first explained that declaratory relief "is not substantially likely to mitigate [petitioners'] asserted concrete injuries." *Id.* at 116a. It then determined that the injunctive relief that petitioners sought—requiring the various departments, agencies, and officials to adopt "a comprehensive scheme to decrease fossil fuel emissions and combat climate change"—lay "beyond the power of an Article III court." *Id.* at 119a. The court remanded the case to the district court "with instructions to dismiss for lack of Article III standing." *Id.* at 127a. Judge Staton dissented, explaining that she would have held that petitioners had Article III standing to pursue their claims. See *id.* at 128a-164a.

The court of appeals denied petitioners' petition for rehearing en banc. See 986 F.3d 1295. Petitioners did not seek review in this Court.

2. Even though the court of appeals had remanded the case "with instructions to dismiss," Pet. App. 127a, the district court did not dismiss the case. The court instead allowed the case to remain pending on its docket for two years before granting petitioners leave to file a second amended complaint. See *id.* at 79a-100a. That complaint did not allege any new facts or raise any new legal claims. See D. Ct. Doc. 462, at 2, 9 (Mar. 9, 2021). It instead added conclusory allegations that a declaratory judgment "would significantly increase the likelihood" of relief and would prompt the government to "correct the unconstitutional policies and practices of the national energy system." D. Ct. Doc. 542 ¶ 19-A (June 8, 2023).

The district court largely denied the government's motion to dismiss the second amended complaint. See Pet. App. 25a-78a. The court stated: "Some may balk at the Court's approach as errant or unmeasured, but more likely than not, future generations may look back to this hour and say that the judiciary failed to measure up at all." *Id.* at 32a (footnote omitted).

The district court first concluded that the court of appeals' instruction to dismiss the case did not require dismissal because it "did not expressly address the possibility of amendment." Pet. App. 89a. The district court then held that petitioners' alleged injuries could be redressed through "a declaration that 'the national energy system' violates the Constitution and the public trust doctrine." *Id.* at 54a-55a (citation omitted); see *id.* at 54a-62a. The court anticipated that enforcing that

declaration would require the court to assume an "innovative judicial role," in which the court would retain "ongoing jurisdiction" over the case, "supervise the parties in crafting a plan" to address climate change, and potentially appoint a "special master" to oversee compliance with the plan. *Id.* at 60a.

Turning to the merits, the district court invoked a theory of substantive due process to recognize a "right to a climate system that can sustain human life." Pet. App. 67a. The court also held that petitioners had stated a claim that the government had violated an asserted public-trust doctrine by impairing "our country's life-sustaining climate system, which encompasses our atmosphere, waters, oceans, and biosphere." *Id.* at 75a. The court once more refused to certify its order for interlocutory appeal. See *id.* at 77a-78a.

3. The court of appeals granted the government's petition for a writ of mandamus. See Pet. App. 1a-5a.

The court of appeals observed that, "[i]n the prior appeal," it had held that "neither the request for declaratory relief nor the request for injunctive relief was justiciable." Pet. App. 3a. The court also noted that "[its] mandate was to dismiss." *Id.* at 4a. "Neither the mandate's letter nor its spirit," the court explained, "left room for amendment." *Ibid.* The court thus directed the district court "to dismiss the case forthwith for lack of Article III standing, without leave to amend." *Id.* at 5a. The district court complied with that directive and dismissed the case later the same day. See *id.* at 6a.

DISCUSSION

Petitioners contend (Pet. 15-37) that the court of appeals erred in holding that they lack Article III standing and in granting the government's petition for a writ of mandamus ordering the district court to dismiss the

case forthwith, without leave to amend. Those contentions lack merit, and the court of appeals' unpublished order does not conflict with any decision of this Court or of any other court of appeals. Moreover, this case seeking sweeping relief against multiple departments, agencies, and officials across the federal government is beyond the Article III jurisdiction and equitable authority of a federal court, and petitioners' claims on the merits have no basis in the Due Process Clause. The court of appeals properly brought this ten-year-old case to a definitive end, after the district court declined to follow the court of appeals' prior order to do so. This Court should deny the petition for a writ of certiorari.

A. The Court Of Appeals' Decision That Petitioners Lack Article III Standing Does Not Warrant Further Review

1. Article III authorizes federal courts to exercise only "judicial Power," which extends only to "Cases" and "Controversies." U.S. Const. Art. III, § 2, Cl. 1. The case-or-controversy requirement confines federal courts to the types of matters that have "traditionally" been resolved in "American courts," *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 425 (2021), and in "the courts at Westminster" before the Founding, *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U.S. 765, 774 (2000) (citation omitted). A suit is a case or controversy for purposes of Article III only if the plaintiff has standing—that is, only if (1) the plaintiff has suffered "an injury in fact that is concrete, particularized, and actual or imminent," (2) the injury was "likely caused" by the challenged action, and (3) the injury "would likely be redressed by judicial relief."

TransUnion, 594 U.S. at 423. Petitioners have not satisfied those requirements.*

First, this sprawling and unprecedented suit is far beyond the type of matter traditionally resolved by "American courts," *TransUnion*, 594 U.S. at 424, or by "the courts at Westminster," *Stevens*, 529 U.S. at 774 (citation omitted). Petitioners have asked the district court to review and assess the entirety of Congress's and the Executive Branch's programs and regulatory decisions relating to climate change and then to pass upon the constitutionality of those policies, programs, and inactions in the aggregate. Neither the courts at Westminster nor the federal courts have ever purported to use the judicial power to perform such a sweeping policy review of the actions of the political Branches, outside the separate statutory frameworks, substantive standards, procedural requirements, and judicial-review provisions applicable to each of the departments and agencies that petitioners named as defendants. For good reason. Article I commits to Congress the power to enact comprehensive government-wide measures of the sort that petitioners seek, and Article II commits to the President the power to oversee the Executive Branch's administration of those measures. Such functions are not the province of Article III courts.

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* In resolving the government's interlocutory appeal, the court of appeals held that petitioners had not established redressability but had otherwise satisfied the requirements for Article III standing. See Pet. App. 111a-123a. "As the prevailing party," however, the government is "free to defend its judgment on any ground * * * whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals." *Washington* v. *Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979).

Second, petitioners have not alleged a "particularized" injury—*i.e.*, an injury that affects them "in a personal and individual way," *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992), as opposed to an effect on a "general interest common to all members of the public," *Carney* v. *Adams*, 592 U.S. 53, 59 (2020) (citation omitted). Petitioners' asserted injuries arise from a diffuse, global phenomenon that affects countless other persons in their communities, in the United States, and throughout the world. Indeed, the Chief Justice has observed that the "very concept of global warming seems inconsistent with" the "particularization requirement" because "[g]lobal warming is a phenomenon 'harmful to humanity at large.'" *Massachusetts* v. *EPA*, 549 U.S. 497, 541 (2007) (Roberts, C.J., dissenting) (citation omitted).

Third, petitioners have not shown that the asserted injuries were "likely caused" by the undifferentiated aggregation of government actions that they challenge, much less by any specific action by a particular agency that must be the focus of a judicial challenge. *TransUnion*, 594 U.S. at 423. Nor can they do so. "[E]missions in New Jersey may contribute no more to flooding in New York than emissions in China." *American Electric Power Co.* v. *Connecticut*, 564 U.S. 410, 422 (2011). As a result, petitioners cannot establish the requisite "predictable chain of events leading from the government action to the asserted injury." *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 385 (2024).

Finally, petitioners have not shown that the remedy sought in the second amended complaint, a declaratory judgment, would likely redress their asserted injuries. Typically, proper declaratory relief provides redress through its "preclusive effect on a traditional lawsuit

that is imminent." *Haaland* v. *Brackeen*, 599 U.S. 255, 293 (2023) (citation omitted). For instance, a person who faces a credible threat of criminal prosecution under an allegedly unconstitutional statute could obtain a declaratory judgment that the statute violates the Constitution, thus precluding the prosecution. See *Steffel* v. *Thompson*, 415 U.S. 452, 458-460 (1974). Here, however, petitioners do not identify any imminent suit in which a declaratory judgment would have preclusive effect. Nor do they identify any other way in which a declaration would operate as "a binding adjudication." *Brackeen*, 599 U.S. at 293 (citation omitted).

The district court sought to overcome that problem by stating that it would create an "innovative" form of declaratory relief, in which the court would retain "ongoing jurisdiction" over the case, "supervise the parties in crafting a plan" to address climate change, and potentially appoint a "special master" to oversee compliance with the plan. Pet. App. 60a. But any remedy that would require the government to develop a government-wide comprehensive plan and to take specified steps to implement that plan would constitute an injunction rather than a declaratory judgment. More importantly, regardless of the label, such a remedy would exceed the power of the federal courts. As the court of appeals explained in resolving the government's interlocutory appeal, "it is beyond the power of an Article III court to order, design, supervise, or implement" a plan to fight climate change. *Id.* at 119a. "[A]ny effective plan would necessarily require a host of complex policy decisions," such as "how much to invest in public transit" and "how quickly to transition to renewable energy." *Id.* at 119a-120a. The Constitution entrusts the

power to make such decisions to Congress and the Executive Branch, not to district courts or special masters. Moreover, decision-making in the Executive Branch typically entails the opportunity for public participation, enabling the agency concerned to receive and weigh a range of comments and perspectives, many of which may be quite different from those petitioners present in this case. Judicial proceedings at the behest of a handful of individual plaintiffs, like petitioners here, would ignore these statutory requirements that Congress has imposed.

2. Petitioners' contrary arguments lack merit. Petitioners argue (Pet. 21-22) that a plaintiff who "establishes the first two elements of standing (injury and traceability)" necessarily also establishes the third element, redressability, by seeking "declaratory relief." But this Court has treated injury in fact, causation, and redressability as distinct requirements. See, *e.g.*, *TransUnion*, 594 U.S. at 423. "Redressability can * * * pose an independent bar in some cases. For example, a plaintiff who suffers injuries caused by the government still may not be able to sue because the case may not be of the kind 'traditionally redressable in federal court.'" *Alliance for Hippocratic Medicine*, 602 U.S. at 381 n.1 (citation omitted). Redressability poses an independent bar here because the relief that would be needed to address climate change goes far "beyond the power of an Article III court." Pet. App. 119a.

Petitioners also argue (Pet. 23) that a declaratory judgment provides redress because it "*necessarily* effectuates a change in the legal status" of the parties. That, too, is wrong. A declaration provides redress only when it operates as a "binding adjudication"—for instance, when it has "preclusive effect on a traditional

lawsuit that is imminent." *Brackeen*, 599 U.S. at 293 (citations omitted). An abstract declaration of rights that lacks any binding legal effect "is little more than an advisory opinion." *Ibid.*

Petitioners rely (Pet. 23-24) on this Court's decision in *Uzuegbunam* v. *Preczewski*, 592 U.S. 279 (2021), which they have pointed to as the intervening legal development justifying their filing of their second amended complaint. But that decision has no bearing on this suit. There, this Court held that "an award of nominal damages * * * can redress a past injury," *id.* at 283, explaining that English and American courts had long entertained suits for such relief, see *id.* at 285-289. This suit involves a declaratory judgment rather than nominal damages and future injury rather than past injury. And neither English nor American courts have traditionally entertained suits seeking the type of comprehensive policy review that petitioners demand here.

Petitioners' theory of redressability appears to come down to the contention that, if a federal court declares that the Constitution protects a right to a stable climate system, Congress or the Executive Branch might take additional steps to address climate change. That theory is flawed. "[R]edressability requires that the court be able to afford relief through the exercise of its power, not through the persuasive or even awe-inspiring effect of [its] opinion." *Brackeen*, 599 U.S. at 294 (citation and emphasis omitted). "Otherwise, redressability would be satisfied whenever a decision might persuade actors who are not before the court—contrary to Article III's strict prohibition on 'issuing advisory opinions.'" *Ibid.* (citation omitted). The possibility that an abstract declaration of petitioners' rights would prompt the political Branches to adopt a government-wide plan to address

climate change is far too speculative and open-ended to satisfy Article III. And a declaratory judgment that numerous departments and agencies must adopt and implement such a plan affecting millions of individuals and entities throughout the Nation, entered at the behest of a mere handful of plaintiffs having one particular perspective, would greatly exceed the equitable authority of a federal court.

3. Petitioners err in arguing (Pet. 16-19) that the court of appeals' decision conflicts with the decisions of the First, Third, Sixth, and Eighth Circuits. None of those cases involved a suit asking a court to conduct a comprehensive review of the government's climate-change policies and enter nationwide relief calling for a government-wide plan to address climate change. Rather, in each of the cited cases, the court concluded only that a regulated party could seek a declaratory judgment precluding the government from enforcing an allegedly unconstitutional or unlawful statute or regulation. See *Antilles Cement Corp.* v. *Fortuño*, 670 F.3d 310, 317-318 (1st Cir. 2012); *Khodara Environmental, Inc.* v. *Blakey*, 376 F.3d 187, 192-193 (3d Cir. 2004); *Parsons* v. *United States Department of Justice*, 801 F.3d 701, 715-717 (6th Cir. 2015); *Alexis Bailly Vineyard, Inc.* v. *Harrington*, 931 F.3d 774, 780 (8th Cir. 2019).

A declaratory judgment precluding enforcement of a specific law or regulation is far different than the type of declaratory relief that petitioners seek here. Such a judgment provides meaningful redress because it "establish[es] a binding adjudication that enables the parties to enjoy the benefits of reliance and repose secured by res judicata." *Brackeen*, 599 U.S. at 293 (citation omitted). A court could enforce such a judgment simply by giving it "preclusive effect" if the government sought

to enforce the challenged law or regulation against the prevailing party. *Ibid.* By contrast, enforcing a declaration that the Constitution guarantees a right to a stable climate system would require making "a host of policy choices that must be made by elected representatives, rather than by federal judges." Pet. App. 137a (quoting *Collins* v. *City of Harker Heights*, 503 U.S. 115, 129 (1992)) (ellipsis omitted).

4. Petitioners argue (Pet. 19-20) that this case overlaps with *Gutierrez* v. *Saenz*, cert. granted, No. 23-7809 (oral argument scheduled for Feb. 24, 2025), and *Diamond Alternative Energy, LLC* v. *EPA*, cert. granted in part, No. 24-7 (Dec. 13, 2024). They argue (Pet. 19-20) that this Court should hold petitioners' petition for a writ of certiorari pending resolution of those cases and should then grant their petition, vacate the judgment of the court of appeals, and remand the case for further consideration (GVR). Those arguments lack merit.

A GVR order is appropriate only if (1) "intervening developments * * * reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration," (2) "such a redetermination may determine the ultimate outcome of the litigation," and (3) "the equities of the case" support a GVR order. *Lawrence* v. *Chater*, 516 U.S. 163, 167-168 (1996) (per curiam). This case satisfies none of those requirements.

To begin, petitioners have not shown a "reasonable probability" that this Court's decisions in *Gutierrez* and *Diamond Alternative Energy* would affect the court of appeals' redressability analysis. *Lawrence*, 516 U.S. at 167. In *Gutierrez*, this Court granted a petition for a writ of certiorari presenting the following question:

"Does Article III standing require a particularized determination of whether a specific state official will redress the plaintiff's injury by following a favorable declaratory judgment?" Pet. at ii, *Gutierrez*, *supra* (No. 23-7809). But the redressability problem in this case does not consist of petitioners' failure to identify a "specific * * * official" who would redress their injury after the entry of judgment. *Ibid.* The problem is that "it is beyond the power of an Article III court to order, design, supervise, or implement" a government-wide plan to fight climate change. Pet. App. 119a.

In *Diamond Alternative Energy*, *supra*, fuel producers challenged the Environmental Protection Agency's reinstatement of a waiver that enabled California to impose certain vehicle-emission standards. See *Ohio* v. *EPA*, 98 F.4th 288, 293 (D.C. Cir. 2024), cert. granted in part, No. 24-7 (Dec. 13, 2024), and cert. denied, No. 24-13 (Dec. 16, 2024). The D.C. Circuit concluded that the fuel producers lacked standing to challenge the waiver because the redressability of their claimed injuries hinged on "the actions of third parties" ("the automobile manufacturers who are subject to the waiver") and the fuel producers had failed to establish that the automobile manufacturers would respond in a manner that would materially benefit the producers. *Id.* at 302. That case-specific ruling has no relevance to this case. This Court granted the fuel producers' petition for a writ of certiorari, limited to the following question: "Whether a party may establish the redressability component of Article III standing by relying on the coercive and predictable effects of regulation on third parties." Pet. at I, *Diamond Alternative Energy*, *supra* (No. 24-7). But the court of appeals' decision in this case did not turn on the extent to which courts may rely on the effects of

regulation on third parties. Rather, it turned on the recognition that the type of sweeping relief sought by petitioners lies "beyond the power of an Article III court" to begin with. Pet. App. 119a.

In any event, reconsideration of redressability would not "determine the ultimate outcome of the litigation." *Lawrence*, 516 U.S. at 167. As discussed above, this suit violates Article III for a variety of reasons even apart from a lack of redressability: The suit is far removed from the type of dispute that federal courts have traditionally resolved; petitioners have not suffered a particularized injury; and petitioners have not shown that the government has likely caused the injury. See pp. 7-11, *supra*. As discussed below, moreover, petitioners' underlying claims lack merit. See p. 22, *infra*. Even if the court of appeals were to reconsider its redressability analysis in light of *Gutierrez* or *Diamond Alternative Energy*, the "ultimate outcome of the litigation" would remain unchanged. *Lawrence*, 516 U.S. at 167.

Finally, "the equities of the case" do not support a GVR order. *Lawrence*, 516 U.S. at 168. This suit, which should have been dismissed at the outset years ago because it exceeds the federal courts' judicial power, has now dragged on for nearly a decade. Over that period, the Department of Justice has devoted more than 21,000 attorney and paralegal hours to this litigation and has spent millions of dollars on expert fees, travel expenses, and other non-attorney fees. See Gov't C.A. Mandamus Pet. 48. Prolonging this litigation would force the government to devote additional time and money to a non-justiciable and meritless suit. Because "the delay and further cost entailed in a remand are not

justified by the potential benefits of further consideration by the lower court, a GVR order [would be] inappropriate." *Lawrence*, 516 U.S. at 168.

B. The Court Of Appeals' Decision To Grant Mandamus Does Not Warrant Further Review

1. Under the All Writs Act, 28 U.S.C. 1651(a), a court of appeals may issue a writ of mandamus in order to confine a district court "to a lawful exercise of its prescribed jurisdiction." *Cheney* v. *United States District Court*, 542 U.S. 367, 380 (2004) (citation omitted). To obtain a writ of mandamus, a party generally must show that (1) it has "'no other adequate means'" of obtaining relief; (2) its right to relief is "'clear and indisputable'"; and (3) "the writ is appropriate under the circumstances." *Id.* at 380-381 (citations omitted).

The government satisfied those requirements here. First, because the district court had refused to certify for interlocutory appeal its order denying the motion to dismiss the second amended complaint, see Pet. App. 77a-78a, the government had no alternative means of preventing an unlawful, time-consuming, wasteful, and intrusive trial. That trial would involve numerous agencies and officials across the government and reach far beyond the Article III jurisdiction and equitable authority of the district court. Second, because the court of appeals had already "remand[ed] this case to the district court with instructions to dismiss for lack of Article III standing," *id.* at 127a, the government had a clear and indisputable right to dismissal. And even aside from the district court's failure to respect the prior mandate, petitioners had failed to demonstrate any basis for invoking Article III jurisdiction in the second round of proceedings in the district court. Finally, the issuance of the writ was appropriate. Mandamus is an

appropriate mechanism to direct a lower court "to execute the mandate" of an appellate court, *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895), and to "restrain a lower court when its actions would threaten the separation of powers," *Cheney*, 542 U.S. at 381.

2. Petitioners' contrary arguments lack merit. Petitioners contend (Pet. 35) that the government "had other adequate means of obtaining relief" because it could have filed an appeal "after final judgment." But the government had already obtained a decision from the court of appeals directing the district court to dismiss the case. "A litigant who * * * has obtained judgment in [a court of appeals] after a lengthy process of litigation * * * should not be required to go through that entire process again to obtain execution of the judgment." *General Atomic Co.* v. *Felter*, 436 U.S. 493, 497 (1978) (per curiam).

Petitioners also argue (Pet. 36) that the government lacked a clear right to relief because the mandate did not preclude leave to amend. But this Court owes "great weight" to the issuing court's interpretation of its own orders. *Madsen* v. *Women's Health Center, Inc.*, 512 U.S. 753, 795 (1994) (Scalia, J., concurring in the judgment in part and dissenting in part). Here, the court of appeals determined that "[n]either the mandate's letter nor its spirit left room for amendment." Pet. App. 4a. The mandate, by its plain terms, required the district court "to dismiss" the case, *id.* at 127a, not to keep the case alive by granting leave to amend. The mandate, moreover, reflected the court of appeals' holding that "a declaration * * * is not substantially likely to mitigate [petitioners'] injuries." *Id.* at 116a. The dis-

trict court defied that holding by concluding that petitioners' request for declaratory relief had established redressability. See *id.* at 58a-62a.

3. Petitioners argue (Pet. 29-30) that the Ninth Circuit's standard for mandamus, set forth in *Bauman* v. *United States District Court*, 557 F.2d 650 (1977), conflicts with the mandamus standard set forth in this Court's decision in *Cheney* and applied by other courts of appeals. That contention is wrong. Under *Bauman*, the Ninth Circuit examines the following factors when deciding whether to grant mandamus: (1) whether the applicant has another "adequate way to obtain the relief sought," (2) whether the applicant "will suffer damage or prejudice that cannot be corrected on appeal," (3) whether "the district court clearly erred as a matter of law," (4) whether the error "is often repeated or shows the district court's persistent disregard for the federal rules," and (5) whether "there are new and important issues at stake." *In re U.S. Department of Education*, 25 F.4th 692, 697-698 (9th Cir. 2022) (citing *Bauman*, 557 F.2d at 654-655).

The Ninth Circuit has described that five-factor test as an "articulat[ion]" or "[d]istill[ation]" of, rather than a departure from, the standard that this Court set forth in *Cheney*. *Burlington Northern & Santa Fe Railway Co.* v. *United States District Court*, 408 F.3d 1142, 1146, cert. denied, 546 U.S. 939 (2005). The first two factors correspond to *Cheney*'s requirement that the applicant have "no other adequate means" of obtaining relief. *Cheney*, 542 U.S. at 380 (citation omitted). The third factor corresponds to the requirement that the applicant's right to relief be "clear and indisputable." *Id.* at 381 (citation omitted). The fourth and fifth factors help

a court determine whether mandamus is "appropriate under the circumstances." *Ibid.*

Petitioners argue (Pet. 29) that *Bauman* differs from *Cheney* because the Ninth Circuit has sometimes allowed parties to seek mandamus without first seeking "interlocutory review." *In re Kirkland*, 75 F.4th 1030, 1049 (2023). But that supposed distinction between *Bauman* and *Cheney* has no relevance here. In this suit, the government *did* ask the district court to certify for interlocutory appeal its order denying the motion to dismiss the second amended complaint. See Pet. App. 77a-78a. The court refused to do so, see *ibid.*—even though this Court previously recognized that the case satisfies the requirement for interlocutory appeal under 28 U.S.C. 1292(b) that the justiciability of petitioners' claims "presents substantial grounds for difference of opinion." Pet. App. 269a.

4. Petitioners also assert (Pet. 26-29) that the courts of appeals disagree about whether the three-part test set forth in *Cheney* applies when a party seeks a writ of mandamus to enforce an appellate court's mandate. No such circuit conflict exists.

This Court has repeatedly recognized that, when a lower court "does not give full effect to the mandate [of a higher court], its action may be controlled by a writ of mandamus to execute the mandate." *Felter*, 436 U.S. at 497 (citation and ellipsis omitted); see, *e.g.*, *Vendo Co.* v. *Lektro-Vend Corp.*, 434 U.S. 425, 427-428 (1978) (per curiam); *Sanford Fork & Tool Co.*, 160 U.S. at 255. When a lower court defies a higher court's mandate, *Cheney*'s prerequisites for mandamus generally will be satisfied. The applicant generally will lack an adequate alternative remedy; a litigant who has obtained a judgment "af-

ter a lengthy process of litigation" "should not be required to go through that entire process again to obtain execution of the judgment." *Felter*, 436 U.S. at 497. The applicant's right to relief also will generally be clear; a lower court is "bound" by a higher court's mandate and "must carry it into execution." *Sanford Fork & Tool Co.*, 160 U.S. at 255. Finally, the writ generally will be appropriate; "mandamus [i]s the proper remedy to enforce compliance with the mandate." *United States* v. *United States District Court*, 334 U.S. 258, 263-264 (1948). "It is, indeed, a high function of mandamus to keep a lower tribunal from interposing unauthorized obstructions to enforcement of a judgment of a higher court." *Id.* at 264.

The decision below and the other decisions cited by petitioners (Pet. 26-29) comport with those principles. In each of those cases, a court of appeals recognized that a writ of mandamus is an appropriate means for enforcing a mandate. See, *e.g.*, *Vizcaino* v. *United States District Court*, 173 F.3d 713, 719-720 (9th Cir. 1999), cert. denied, 528 U.S. 1105 (2000). Some of those courts also applied *Cheney*'s three-part test, but their decisions simply confirm that *Cheney*'s requirements generally will be satisfied when a lower court defies a higher court's mandate. See, *e.g.*, *In re Trade & Commerce Bank*, 890 F.3d 301, 303 (D.C. Cir. 2018) (per curiam) (stating that the D.C. Circuit's "mandamus cases dealing with enforcement of the mandate" were consistent with *Cheney* even though some of those decisions had not "explicitly spell[ed] out each of the factors mentioned in *Cheney*").

5. In all events, this Court "reviews judgments, not statements in opinions." *Black* v. *Cutter Laboratories*, 351 U.S. 292, 297 (1956). Regardless of whether the

court of appeals' opinion articulated the correct test, the court's judgment awarding mandamus is plainly correct. As explained above, the government has satisfied each of the requirements for mandamus relief set forth in *Cheney*. See pp. 17-18, *supra*. "The fact that the [court of appeals] reached its decision through analysis different than this Court might have used does not make it appropriate for this Court to rewrite [the court of appeals'] decision." *California* v. *Rooney*, 483 U.S. 307, 311 (1987) (per curiam).

C. This Case Would Be A Poor Vehicle For Considering The Questions Presented

Even if this Court were otherwise inclined to consider petitioners' far-reaching theory of standing or their wide-ranging challenge to the court of appeals' mandamus practices, this unusual suit would be a poor vehicle to do so because petitioners' underlying legal claims are wholly meritless. Petitioners argue that the Due Process Clause of the Fifth Amendment guarantees a "right to a stable climate system." Pet. App. 2a (citation omitted). But no federal court (apart from the district court in this case) has ever recognized such an unenumerated right, and no such right is "deeply rooted in this Nation's history and tradition." *Washington* v. *Glucksberg*, 521 U.S. 702, 721 (1997) (citation omitted). Petitioners also assert claims under the "public trust doctrine." Pet. App. 18a. But that doctrine, which concerns "public access to * * * waters * * * for purposes of navigation, fishing, and other recreational uses," is "a matter of state law." *PPL Montana, LLC* v. *Montana*, 565 U.S. 576, 603 (2012). It provides no basis for relief against the federal government.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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