

No. A-_____

In the Supreme Court of the United States

*Nantucket Residents Against Turbines and Vallorie Oliver,
Applicants,*

v.

*United States,
Respondent.*

**APPLICATION TO EXTEND TIME TO
FILE A PETITION FOR WRIT OF CERTIORARI**

**Directed to the Honorable Ketanji Brown Jackson,
Associate Justice of the United States and Circuit Justice for the
United States Court of Appeals for the First Circuit**

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Rule 29.6 Disclosure Statement

Under Supreme Court Rule 29.6, applicants Nantucket Residents Against Turbines and Vallorie Oliver, state as follows:

Nantucket Residents Against Turbines is a 501(c)(3) non-profit, non-governmental corporation. It has no parent corporation and no publicly held company owns 10% or more of its stock.

To the Honorable Ketanji Brown Jackson, as Circuit Justice for the United States Court of Appeals for the First Circuit:

Under this Court's Rules 13.5, 22, and 30.3, Nantucket Residents Against Turbines and Vallorie Oliver (collectively, Nantucket Residents) respectfully request a 60-day extension of time to file its petition for writ of certiorari. This request, if granted, would extend the deadline from July 23, 2024, to September 23, 2024. Nantucket Residents will be asking this Court to review a decision of the United States Court of Appeals for the First Circuit in *Nantucket Residents Against Turbines v. U.S. Bureau of Ocean Energy Mgmt.*, 100 F.4th 1 (1st Cir. 2024) (App. A), decided on April 24, 2024. That decision affirmed a ruling from the United States District Court for the District of Massachusetts, *Nantucket Residents Against Turbines v. U.S. Bureau of Ocean Energy Mgmt.*, 675 F. Supp. 3d 28 (D. Mass. 2023) (App. B), which held that the Bureau of Ocean Energy Management (BOEM) properly relied on a biological opinion issued by the National Marine Fisheries Service (NMFS) when it approved the Vineyard Wind project, and that BOEM did not violate the Endangered Species Act (ESA) or National Environmental Policy Act (NEPA) when it approved the Vineyard Wind project. This Court has jurisdiction to review the First Circuit's judgment under 28 U.S.C. § 1254(1).

Nantucket Residents request this extension of time to file a petition for writ of certiorari seeking review of the First Circuit's decision for the following reasons:

1. Nantucket Residents' counsel, Roger J. Marzulla and Nancie G. Marzulla, who have been recently retained and did not represent Nantucket Residents below,

have significant briefing and discovery responsibilities between now and the scheduled due date for the petition, including briefing in *Green Oceans v. United States Dept. of the Interior*, Case No. 1:24-cv-00141-RCL (D.D.C.), briefing in *Preservation Society of Newport Cnty. v. Deb Haaland*, Case No. 1:23-cv-03510-APM (D.D.C.), briefing in *Committee for a Constructive Tomorrow v. United States Department of the Interior*, Case No. 1:24-cv-00774-LLA (D.D.C.), and discovery obligations in *Arnhold v. United States*, 1:19-cv-01407-TMD (Fed. Cl.) and *Ysla v. United States*, Case No. 18-1292C (Fed. Cl.). Counsel is also engaged as class counsel in *Carson v. United States*, Case No. 18-1902C (Fed. Cl.), with a pending deadline to notify the nearly 1,300 potential class members of their opportunity to opt in to the class action by November 1, 2024.

2. This case presents substantial and important administrative law and environmental statutory and regulatory compliance issues—and raises questions about whether the panel’s rulings ran afoul of the Court’s newly announced decision in *Loper Bright Enterprises v. Raimondo*.¹ In *Loper Bright*, the Supreme Court overruled *Chevron, U.S.A., Inc. v. N.R.D.C, Inc.*,² which had directed courts to defer to reasonable interpretations of ambiguous statutes by administrative agencies.³

The panel’s decision cannot be reconciled with that holding. *Loper Bright* underscores the “solemn duty of the Judiciary” to interpret statutes and “say what

¹ *Loper Bright Enterprises v. Raimondo*, 603 U.S. ___, No. 22-451 (June 28, 2024).

² *Chevron, U.S.A., Inc. v. N.R.D.C, Inc.*, 467 U.S. 837 (1984).

³ *Loper Bright*, 603 U.S. at 35.

the law is,”⁴ not to avoid that duty. The panel’s view that it was “command[ed]” to defer to the agency’s determinations and defer to agency determinations that were “rational” cannot be reconciled with *Loper Bright*.⁵

The forthcoming petition will present important and complex questions regarding the intersection of four major environmental statutes,⁶ questions that the panel avoided examining because it concluded that the agency’s interpretations were “reasonable.”⁷ The petition will squarely present the question of how *Loper Bright* applies directly to agency decisions, and the Judiciary’s obligation to find the “best” reading of the statute applies “[i]n an agency case as in any other.”⁸

3. This case also presents important and complex questions regarding administrative law, agency discretion, and the proper application of the environmental statutes that seek to preserve critically endangered species—even when doing so may delay or hinder the irreversible industrialization of our nation’s aquatic resources. At its core, this case is about affirming the Government’s

⁴ *Loper Bright*, 603 U.S. at 7-8 (cleaned up).

⁵ See *Nantucket Residents Against Turbines v. U.S. Bureau of Ocean Energy Mgmt.*, 100 F.4th 1, 18 (1st Cir. 2024).

⁶ *Nantucket Residents Against Turbines*, 100 F.4th at 8 (“This case lies at the intersection of four federal environmental statutes: (1) the Outer Continental Shelf Lands Act (“OCSLA”), (2) the Endangered Species Act (“ESA”), (3) the Marine Mammal Protection Act (“MMPA”), and (4) the National Environmental Policy Act (“NEPA”)”).

⁷ See, e.g., *Nantucket Residents Against Turbines*, 100 F.4th at 18.

⁸ *Loper Bright*, 603 U.S. at 23.

responsibility to ensure the continued existence of the critically endangered North Atlantic Right Whale in the face of a massive proposed offshore energy project that will irreversibly alter and industrialize the species habitat and migration path. Specifically, this case is about affirming that the mandatory obligations of the Endangered Species Act require agencies to ensure the protection of endangered species using the best available science, regardless of the countervailing developmental potential of the habitat necessary for such protection. With scores of additional massive wind energy projects being proposed and approved along the North Atlantic Right Whale's migration path, this case could very well decide the fate of this critically endangered species.

4. Applicants thus request an extension of time, to and including September 23, 2024, to allow counsel to research the extensive factual record and complex legal issues presented in this case. This additional time will allow counsel to prepare a petition that fully addresses the important and far-reaching issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

Dated: July 11, 2024

Respectfully submitted,

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