Exhibit

No. 25-13759

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

HUNT REFINING CO.,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

On Petition for Review of Final Agency Action
of the Environmental Protection Agency

RESPONSE OF GROWTH ENERGY TO JURISDICTIONAL QUESTION

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 27-1, the undersigned counsel of record certifies that the persons identified in the Certificate of Interested Persons attached to respondents' response to the Court's Jurisdictional Question, ECF #28, are known to have an interest in the outcome of this case

Dated: December 17, 2025

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INTRODUCTION

In a recent case nearly identical to this one, the Supreme Court held that, under the Clean Air Act, EPA's decision resolving a petition for a small-refinery exemption ("SREs") under the Renewable Fuel Standard ("RFS") must be reviewed exclusively in the D.C. Circuit if a generally applicable principle was used to reach the presumptive resolution of the SRE petition. That is exactly what EPA did in adjudicating Hunt's and myriad other SRE petitions in *August 2025 Decisions on Petitions for RFS Small Refinery Exemptions*, EPA-420-R-25-010 ("2025 SRE Decisions").[1]

Yet, Hunt filed this case anyway. Hunt's defense of its attempted forum shopping in the face of clear, dispositive Supreme Court precedent rests on a fundamental misunderstanding of EPA's action. Contrary to Hunt's suggestion, the two relevant nationwide determinations did not set up the DOE matrix as a mere questionnaire to guide EPA's analysis. Rather, they established that EPA would presumptively treat DOE's substantive matrix-generated recommendation as the correct disposition of each SRE petition. And in fact, EPA adhered to DOE's matrix-generated recommendation for every SRE petition resolved through the

[1] https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101HUDF.pdf

2025 SRE Decisions; the additional refinery-specific information EPA considered did not rebut the presumption for any of them.

Therefore, the Court should dismiss (or transfer) the case—and the Court should do so immediately. Deferring the question to the merits panel will only waste the Court's and the parties' resources litigating the merits unnecessarily, as happened when the Court carried the same question in Hunt's prior SRE case. With the benefit of the Supreme Court's intervening guidance on the question, there certainly is no need to defer the question this time.

Growth Energy agrees with the arguments presented in the government's brief, *see* ECF #28, and submits this brief to add a few discrete points.

ARGUMENT

I. THE D.C. CIRCUIT IS THE EXCLUSIVE VENUE TO HEAR HUNT'S PETITION FOR REVIEW

A. An EPA Action Is "Based on" a Nationwide Determination if the Determination Creates a Presumptive Decision

The Clean Air Act declares that a petition to review an EPA action "may be filed only in" the D.C. Circuit "if" the "action is based on a determination of nationwide scope or effect." 42 U.S.C. § 7607(b)(1).[2] In *EPA v. Calumet*

[2] Section 7607(b)(1) is both a jurisdictional provision and a venue provision. It is jurisdictional insofar as it imposes a 60-day time deadline to petition for review of EPA actions under the Clean Air Act and insofar as it specifies that

Shreveport Refining LLC, 605 U.S. 627, 145 S. Ct. 1735 (2025), and the companion *Oklahoma v. EPA*, 605 U.S. 609, 145 S. Ct. 1720 (2025), the Supreme Court elaborated how to apply this provision. The Supreme Court held that "an EPA action is based on a determination of nationwide scope or effect only if a justification of nationwide breadth"—i.e., a justification that "appl[ies] throughout the country as a legal matter (de jure) [or] as a practical one (de facto)"—"is the primary explanation for and driver of EPA's action." *Calumet*, 145 S. Ct. at 1750-1751.[3]

Applying this test, the Supreme Court concluded that EPA's 2022 SRE actions were based on two nationwide determinations: that an SRE may be granted "only [for disproportionate economic] hardship ['DEH'] that is caused by RF[S] compliance" and that "small refineries ordinarily do not suffer [DEH] as a result of the RF[S] because RIN costs are fully passed through to consumers." *Id.* at 1745. Together, those determinations "creat[ed] a presumption against granting exemptions." *Ibid.* Although EPA then assessed whether "the petitioning refineries' evidence regarding their specific circumstances" rebutted that

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petitions for review of such actions must be filed in courts of appeals, rather than district courts. It is a venue provision insofar as it specifies *which* court of appeals any given petition for review must be filed in.

[3] All quotations omit internal citations and immaterial punctuation unless otherwise indicated.

presumption as to any individual refinery, the Supreme Court still held that the SRE actions were "based on" those nationwide determinations, declaring: "[W]here EPA relies on determinations of nationwide scope or effect to reach a presumptive resolution, those determinations qualify as the primary driver of its decision." *Id.* at 1752. Accordingly, the Supreme Court held that EPA's 2022 SRE actions could be reviewed only in the D.C. Circuit.

B. EPA's Disposition of Hunt's SRE Petition Was Based on Two Determinations That Yielded the Presumptive Resolution

In the 2025 SRE Decisions, EPA did exactly what the Supreme Court held makes the D.C. Circuit the exclusive forum: it adopted two nationwide determinations that made DOE's recommendation the presumptive disposition of all SRE petitions before it, including Hunt's.[4]

Hunt concedes that the relevant determinations have nationwide scope or effect, as they obviously do. But Hunt asserts that EPA's disposition of Hunt's SRE petition was not "based on" those determinations because they "simply

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[4] For purposes of this brief, Growth Energy accepts Hunt's declaration that EPA's third nationwide determination "is inapplicable" to Hunt's SRE petition. Hunt Jurisdictional Br. 16, ECF #27. That determination specifies "that the only permissible way to implement [an SRE] when a small refinery has retired RINs for compliance is to return those retired RINs," even if the returned RINs have already expired. 90 Fed. Reg. 41,829, 41,831:2 (Aug. 27, 2025). Any 2025 SRE Decisions involving refineries that had already retired RINs were "based on" this nationwide determination because it completely resolved the relief to be provided to the refinery. *See ibid.*

establish the sort of 'nationally consistent … framework' for evaluating exemption petitions"—"'heuristics that aided [EPA's] analysis'"—"that the Supreme Court held insufficient to satisfy the 'based on' requirement." Hunt Jurisdictional Br. 14, 18 (quoting *Oklahoma*, 605 U.S. at 617, 624). Rather, Hunt argues, the SRE decision was "based on a number of intensely factual determinations particular to" Hunt. *Id.* at 12. Hunt believes this is "apparent from the fact that, although [the nationwide] determinations supposedly applied in each of the 175 individual exemption petitions EPA adjudicated, EPA's decisions were all over the map …. As a matter of basic logic, EPA's nationwide determinations, which were constant across the 175 petitions, cannot have been the primary explanation for and driver of these variable outcomes." *Id.* at 15.

Hunt's telltale "as a matter of basic logic" rhetoric signals the reality: Hunt's reasoning is confused. The "'4-step framework' for evaluating State implementation plan ['SIP'] submissions" at issue in *Oklahoma* was deemed a heuristic because the determination that defined each step merely specified what information EPA needed to analyze. 605 U.S. at 617. First, EPA resolved to use a particular "model[] … for its assessment"; the data would still have to be collected and put into the model. *Id*. at 624. Second, EPA "used [the 1% contribution] threshold only for screening purposes: Where the threshold was triggered, EPA would further evaluate the upwind State's emissions." *Id.* at 624-625. Third, EPA

required every State to "analyz[e] whether its own emissions significantly contribute to downwind nonattainment" notwithstanding "the relative contributions of other States." *Id.* at 624. And fourth, EPA mandated that any "emission-reduction measures" on which a State sought to rely had to be "incorporated into its state plan." *Ibid.* "None of these determinations, either alone or in combination, ma[d]e[] clear why EPA concluded" that the proposed SIPs were "inadequate." *Id.* at 624. The determinations were mere "analytical guidepost[s]," neither presumptively nor conclusively resolving any substantive issues regarding the proposed SIPs' adequacy. *Id.* at 625.

Hunt's attempt to analogize the 2025 SRE Decisions to the SIP actions at issue in *Oklahoma* rests on the belief that EPA adopted DOE's matrix as if it were merely a questionnaire for EPA to fill in with "refinery-specific" data. Hunt Jurisdictional Br. 12-15. That is false. EPA's first two determinations are: (1) 42 U.S.C. § 7545(*o*)(9) "provides EPA with the authority to find that a small refinery would experience partial DEH if required to comply with its RFS obligations and to extend a partial exemption," 90 Fed. Reg. 41,829, 41,829:3-41,830:1 (Aug. 27, 2025); and (2) "the DOE matrix is a reasonable proxy for DEH, and EPA will defer to DOE's findings unless EPA's consideration of other economic factors compels a different result," *id.* at 41,830:1.

Unlike the 4-step SIP framework in *Oklahoma*, EPA's determinations here do not merely identify supposedly relevant data to collect and analyze. Rather, like the nationwide determinations in *Calumet*, these determinations were "used to reach a presumptive conclusion as to how the exemption petitions before [EPA] should be resolved." *Oklahoma*, 605 U.S. at 623. Specifically, "[t]he first and second determinations together … create a rebuttable presumption that application of the DOE matrix produces the correct DEH finding." 90 Fed. Reg. at 41,830:3-41,831:1. In other words, the determinations together establish that DOE's *substantive recommendation* for *each* individual SRE petition (including Hunt's) generated by applying the matrix—full SRE, half SRE, or no SRE—is the *resolution* of each SRE petition that EPA will reach. Thus, the determinations "all but settle[d] EPA's ultimate decisions" as to whether and to what extent to grant Hunt's and all other SRE petitions. *Oklahoma*, 605 U.S. at 623.

EPA explains that, in reviewing its 2022 SRE decisions, the D.C. Circuit held that EPA had "improperly focused on RFS compliance costs and not economic hardship," had erroneously required a refinery's RFS compliance to be the "sole cause" of its asserted DEH, and had inadequately accounted for the ability of "each small refinery" to "pass through" its RIN costs." 2025 SRE Decisions at 5, 11; *see Sinclair Wyoming Refining Co. LLC v. EPA*, 114 F.4th 693, 707-714 (D.C. Cir. 2024). According to EPA, relying on DOE's matrix remedies

those substantive errors because (in EPA's view) the matrix "properly assesses DEH," accounts for "some connection" between the DEH and "RFS compliance," and "implicitly considers the ability for small refineries to recover the cost of acquiring the RINs they need for RFS compliance." 2025 SRE Decisions at 9-10, 12. Thus, as EPA puts it, its second determination creates "a rebuttable presumption that DOE's *finding* as to whether *a given* small refinery would experience DEH, based on application of the DOE matrix, is correct." *Id.* at 25 (emphasis added).

Further, EPA's first determination, that EPA has authority to grant partial SREs, ensures that EPA "can issue an exemption commensurate with the degree of DEH experienced by small refineries" as found through DOE's matrix-generated assessment per the second determination: full SRE, a half SRE, or no SRE. 2025 SRE Decisions at 15, 19. In other words, EPA's first determination allows EPA to treat DOE's matrix-generated recommendation (per the second determination) as fully and precisely specifying the extent to which EPA should grant an SRE. *See* 2025 SRE Decisions at 19 ("EPA's approach is to now grant both full and partial exemptions, as the DOE matrix may suggest either full or partial exemptions for small refineries."). Together, these two determinations create a substantive presumption that each refinery-specific matrix-generated recommendation *is* the measure of exemption that EPA will award that refinery.

Although the presumption can be rebutted if "EPA's consideration of other economic factors compels it to depart from DOE's findings," 90 Fed. Reg. at 41,830:2, that possibility does not undermine EPA's finding that every 2025 SRE adjudication was "based on" the first two nationwide determinations. Much of the other "information" EPA considered "was already considered in the DOE matrix." *Id*. at 41,831:1. Moreover, the additional economic information EPA considered "did not otherwise justify departing from the finding reached by application of the DOE matrix." *Ibid.* Indeed, EPA's review of additional economic information "did not change the final decision for any of the SRE petitions." *Id.* at 41,831:2. In short, just as in the 2022 SRE actions at issue in *Calumet*, EPA "considered other, refinery-specific considerations only to confirm that it had no reason to depart from its presumptive disposition." 145 S. Ct. at 1752; *accord Oklahoma*, 605 U.S. at 623.

Therefore, the fact that, as Hunt puts it, "EPA's decisions were all over the map" actually confirms rather than refutes that each 2025 SRE decision was "based on" the first two determinations. It was *DOE's* matrix-generated recommendations that were all over the map, and EPA deferred to those recommendations without exception pursuant to the first two determinations, resulting in similarly varied final decisions by EPA.

II. THE COURT SHOULD DECIDE WHETHER IT MAY HEAR THE CASE NOW, NOT DEFER IT TO THE MERITS STAGE

Hunt asserts that, "[a]t a minimum, the Court should order that [the threshold forum] issues be carried with the case" to the merits stage. Hunt Jurisdictional Br. 20. The Court should not do that because that would invite significant waste of the Court's and the parties' resources.

The litigation of EPA's 2022 SRE action provides an object lesson of why the Court should decide the question now. Hunt petitioned this Court for review of EPA's 2022 SRE action, and other refineries petitioned the Fifth Circuit for review of the same action. *See Hunt Refining Co. v. EPA*, No. 22-11617 (11th Cir.); *Calumet Shreveport Refining, L.L.C. v. EPA*, No. 22-60266 (5th Cir.). EPA moved to dismiss (or transfer) both cases on the ground that the D.C. Circuit was the exclusive forum because the action was based on nationwide determinations. Both courts carried the issue with their respective cases, requiring the parties to fully brief and prepare for oral argument on the merits of the refineries' challenges, and requiring the courts to then devote oral argument to the merits. After all that process, this Court dismissed on the ground that EPA had raised in its initial motion to dismiss: the D.C. Circuit was the exclusive forum. *Hunt Refining Co. v. EPA*, 90 F.4th 1107 (11th Cir. 2024). The Fifth Circuit concluded it was the proper forum and issued a lengthy opinion on the merits, *Calumet Shreveport Refining, L.L.C. v. EPA*, 86 F.4th 1121 (5th Cir. 2023), only to have its forum

ruling reversed and its merits judgment nullified by the Supreme Court in *Calumet*, 145 S. Ct. 1754.

Thus, all of the parties and the courts' efforts on the merits in the 2022 SRE cases were wasted. But at least at that time there was arguably reason for the motions panels to be less sure of the proper forum given the absence of controlling Supreme Court guidance on the issue. That is no longer the case. *Calumet* and *Oklahoma* provide ample guidance, and, as shown above, that guidance makes clear that this case belongs in the D.C. Circuit, not this Court. Therefore, there is no good reason to force the Court and the parties to again expend time, energy, and money litigating the merits here.

CONCLUSION

For the foregoing reasons, the Court should dismiss (or transfer) the case.

Respectfully submitted,

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December 17, 2025

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned hereby certifies:

1. No specific rule or order specifies a word limit for this brief. This brief contains 2,445 words, excluding the exempted portions, as provided in Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

2. This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

/s/ David M. Lehn
DAVID M. LEHN

December 17, 2025

CERTIFICATE OF SERVICE

I certify that on this day, I caused the foregoing to be served on all parties through the Court's CM/ECF system.

/s/ David M. Lehn
DAVID M. LEHN

December 17, 2025