No. 25-6714

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EVA LIGHTHISER; et al.,
Plaintiffs-Appellants,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; et al.,
Defendants-Appellees,

STATE OF MONTANA; et al.,
Defendants/Intervenors-Appellees.

On Appeal from the United States District Court
for the District of Montana – Butte Division (No. 2:25-cv-00054-DLC)
Hon. Dana L. Christensen

APPELLANTS' OPENING BRIEF

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INTRODUCTION

This appeal concerns whether an Article III court has the power to redress constitutional injuries that are caused by Executive Orders through the issuance of declaratory or injunctive relief. This case comes to this Court after the district court disclaimed its judicial power to provide young Plaintiffs redress and dismissed for lack of standing. Below, the district court found Plaintiffs suffer significant injuries-in-fact to their health and well-being—injuries that the court characterized as a "children's health emergency"—and determined that those injuries are directly caused by the three challenged Executive Orders (14154, 14156, and 14261) from 2025, which are explicitly designed to unleash fossil fuels, fueling harm to Plaintiffs. Yet, despite finding injury-in-fact and causation, and that a remedy in Plaintiffs' favor could provide at least partial relief, the district court wrongly believed that this Court's 2020 opinion in *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020), curtailed its Article III power to redress Plaintiffs' injuries and mandated dismissal. This Court's prior and subsequent redressability precedents, as well as new Supreme Court precedent like *Diamond Alternative Energy v. EPA*, 606 U.S. 100 (2025), make clear that Article III courts are not so drastically limited in their redressability powers. If they were, executive action giving rise to widescale constitutional injuries, as is regularly occurring today, would ordinarily be immune from the careful checks and balances the Framers crafted. This Court's precedent holds that

Article III courts can disclaim judicial power in only exceptional and extraordinary cases, not here.

As the district court determined, the facts here are straightforward. "The record [ ] demonstrates that climate change and the exposure from fossil fuels presents a children's health emergency." 1-ER-13. "Plaintiffs have presented overwhelming evidence that implementation of the Challenged EOs will increase the concentration of atmospheric carbon dioxide, thereby exacerbating the harms Plaintiffs experience from an already-warming climate." *Id.* (citations omitted). The Challenged EOs will continue to do so if deemed a lawful exercise of Article II power. 1-ER-15, 1-ER-17. Based on its findings, the district court held injury and causation were indisputably satisfied. 1-ER-18–23.

The district court committed reversible error in disclaiming its Article III redressability power. Plaintiffs seek traditional declaratory and injunctive relief over specific Executive Order directives—relief district courts are awarding throughout the country: declarations that Executive Orders are unconstitutional and ultra vires, and an injunction stopping their implementation. As explained herein, those traditional remedies are available, workable, and well within the scope of Article III courts.

Contrary to Defendants' position below, not all cases involving youth and climate change are the same as *Juliana*. The district court erred in following the

Defendants' mischaracterization of that case to "reluctantly" dismiss, while inviting this Court to reverse. 1-ER-14, 1-ER-33–34. Notably, *Juliana* was "no ordinary lawsuit." *Juliana v. United States*, 217 F. Supp. 3d 1224, 1234 (D. Or. 2016), *rev'd and remanded*, 947 F.3d 1159 (9th Cir. 2020). There, unlike here, the plaintiffs challenged fifty years of federal government policies and practices implemented across the entire federal government and requested a comprehensive climate recovery plan setting specific policies, which constituted the redressability focus of the Ninth Circuit's dismissal of *Juliana* in 2020. 947 F.3d at 1171.

In sharp contrast, the youth Plaintiffs here challenge discrete provisions of three Executive Orders issued in 2025. Instead of requesting a comprehensive climate recovery plan, like in *Juliana*, Plaintiffs seek only traditional declaratory and injunctive relief. Those critical differences—in what is challenged, and what is sought—set this case apart from *Juliana*. Before this Court is a constitutional case against specific executive acts beginning in 2025 that are being actively implemented, brought by children and youth who are suffering particularized harms caused by the challenged actions, who seek traditional relief to protect their lives. Such relief is well within the power of a federal court to award, even if it ultimately exercises its equitable discretion to formulate narrower relief on the merits.

As set forth below, nothing in the text, history, or principles of Article III prevents a federal court from hearing and deciding this Fifth Amendment and ultra

vires challenge to Executive Orders. The district court erred in concluding otherwise, and this Court should reverse and remand.

JURISDICTIONAL STATEMENT

The district court has jurisdiction under 28 U.S.C. § 1331 and Article III, Section 2 and the Fifth Amendment of the U.S. Constitution.

This Court has jurisdiction pursuant to 28 U.S.C. § 1291 over this appeal of a final judgment.

The district court issued final judgment on October 15, 2025, and Plaintiffs filed a notice of appeal on October 20, 2025. Notice was timely under 28 U.S.C. § 2107(b) and Federal Rules of Appellate Procedure 4(b).

ISSUES PRESENTED

1. Whether the district court can issue declaratory relief on Plaintiffs' claims that is substantially likely to partially redress Plaintiffs' injuries by resolving a live controversy between the parties and altering the parties' legal status.
2. Whether the district court can issue traditional injunctive relief on Plaintiffs' claims that is substantially likely to partially redress Plaintiffs' injuries.
3. Alternatively, whether the district court erred in denying Plaintiffs leave to amend their Complaint.

STATUTORY AND CONSTITUTIONAL AUTHORITIES

Relevant statutory and constitutional authorities appear in the Addendum to this brief.

STATEMENT OF THE CASE

On January 20, 2025, President Trump signed Executive Orders 14154 and 14156 entitled "Unleashing American Energy" and "Declaring a National Energy Emergency," respectively. On April 8, 2025, President Trump signed Executive Order 14261: "Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241." These three EOs, collectively "the Challenged EOs" or "EOs," direct discrete executive actions designed to unleash and expand fossil fuel energy on the premise of an energy emergency. 1-ER-5–8. They exclude "wind" and "solar" from the federal definition of "energy," directing the federal government to block wind and solar energy and electric vehicles. 6-ER-1258–59; 6-ER-1366–70. They also require the federal government to suppress science and science-based decision-making affecting fossil fuel activities, on the basis that such science presents an "undue burden" on the unleashing of fossil fuels. 6-ER-1257–58, 6-ER-1275–80; 2-ER-215–26; 5-ER-1169–73.

The Challenged EOs direct agency Defendants to implement new and particular courses of conduct. 6-ER-1257–62; *see, e.g.*, 5-ER-1174–75. The Challenged EOs block renewable energy, so there will be less substitution of

renewables for fossil fuels. 6-ER-1288, 6-ER-1291, 6-ER-1294. Their impact aligns with the Executive's stated intent to "unleash" more fossil fuels. 6-ER-1257–59. The fossil fuels unleashed pursuant to the Challenged EOs cause pollution that harms Plaintiffs' lungs and bodies, 6-ER-1266–67, trapping heat where Plaintiffs live and worsening their injuries. 6-ER-1263, 6-ER-1265.

Defendants have been implementing the Challenged EOs and continue to do so. 6-ER-1272–1310; 4-ER-678; 5-ER-1016–20; 5-ER-1176–88; 3-ER-628–31. As a direct and predictable result, fossil fuel development, production, and the pollution it creates are on the rise. 6-ER-1264–65; 2-ER-161–62; 4-ER-695–98. While any increase in fossil fuel use worsens these young Plaintiffs' inescapable living conditions—thereby harming their lives, health, and safety—the Challenged EOs will generate substantially increased emissions that far exceed the status quo. 1-ER-13, 1-ER-17–19, 1-ER-28; 5-ER-987, 5-ER-990; 4-ER-674–75; 2-ER-161–63; 5-ER-1085, 5-ER-1091–92; 6-ER-1383–91.

On May 29, 2025, Plaintiffs filed suit, asserting the offending sections of the Challenged EOs violate Plaintiffs' enumerated Fifth Amendment rights to life and liberty and are ultra vires for assuming powers reserved to Congress by Article I, Section 1 of the U.S. Constitution, which the Executive must "take Care" to "faithfully execute[ ]." U.S. Const. art. II, § 3. Specifically, the Complaint challenges EO 14154 ("Unleashing American Energy") §§1–3, 5, 7, which directs federal

agencies to unleash fossil fuels, block wind, solar, and electric vehicles and dismantle the "undue burden" of climate science; EO 14156 ("Declaring a National Energy Emergency"), which directs federal agencies to invoke emergency powers to accelerate the use of fossil fuels; and EO 14261 ("Reinvigorating America's Beautiful Clean Coal Industry and Amending EO 14241") §§2–3, 5–7, which direct agencies to increase the utilization and export of coal. Plaintiffs' case seeks traditional declaratory relief under the Declaratory Judgment Act and injunctive relief. 6-ER-1214–1339.

On June 13, 2025, Plaintiffs moved for a preliminary injunction prohibiting Defendants from implementing the Challenged EOs. 5-ER-1210–11. Meeting the "clear showing" standard to demonstrate standing for a preliminary injunction, *Murthy v. Missouri*, 603 U.S. 43, 58 (2024), Plaintiffs proffered nine Plaintiff declarations, sixteen declarations from expert and fact witnesses, and substantial documentary evidence. Doc. 25; 4-ER-699–931; 5-ER-934–1209; *see also* Doc. 38; 4-ER-643–98; Doc. 68; 3-ER-580–631; 4-ER-634–36.

On August 13, 2025, the district court granted nineteen states and Guam Defendant-Intervenor status. Doc. 46. Defendants and Defendant-Intervenors filed motions to dismiss. Docs. 42, 47. The district court held a two-day evidentiary hearing on the parties' respective motions on September 16-17, 2025, in Missoula, Montana. 1-ER-4. Five youth Plaintiffs testified, as well as five expert witnesses and

one fact witness. 1-ER-11. Neither Defendants nor Defendant-Intervenors called any witnesses. 3-ER-486–87. The district court admitted dozens of documents and declarations into evidence. 2-ER-41–43, 2-ER-83.

On October 15, 2025, the district court issued its Order on the motions to dismiss, holding that Plaintiffs had established injury and causation, and finding that Plaintiffs' expert testimony demonstrated that injunctive relief would likely ameliorate Plaintiffs' health injuries. 1-ER-28. However, the district court dismissed Plaintiffs' case on the basis that it lacked the "power" to award the requested declaratory or injunctive relief, ruling Plaintiffs lacked standing based on this Court's decision in *Juliana*. 1-ER-13, 1-ER-23, 1-ER-29–30, 1-ER-33.

With respect to injury and causation, the district court held in part: "Plaintiffs have presented overwhelming evidence that implementation of the Challenged EOs will increase the concentration of atmospheric carbon dioxide, thereby exacerbating [Plaintiffs'] harms[.]" 1-ER-13 (citing Doc. 25-24 ¶ 17 (5-ER-1085); Doc. 25-20 ¶ 9 (5-ER-987)). The Challenged EOs "will result in an immediate rise in carbon dioxide." 1-ER-13; *see* 5-ER-993. In addition, "[b]y 2027, Plaintiffs estimate the Challenged EOs will generate an additional 205 million annual metric tons of carbon dioxide-equivalent; by 2035, this number will rise to 510 million metric tons annually." 1-ER-13 (citing Doc. 25-20 ¶¶ 21, 9, 18 (5-ER-993, 5-ER-987, 5-ER-991)). "According to Plaintiffs' expert Dr. Running, every additional ton of carbon

dioxide emitted into the atmosphere will further warm the planet . . . This increase in carbon dioxide, [ ] is scientifically significant and will worsen Plaintiffs' climate-related injuries." 1-ER-17. The district court rejected Defendants' arguments that the level of pollution was insignificant and that it was too far in the future to challenge today. 1-ER-17–18.

"The record further demonstrates that . . . exposure from fossil fuels presents a children's health emergency." 1-ER-13 (citing Doc. 25-3 ¶ 12 (4-ER-738)). "Plaintiffs have filed several sworn declarations attesting to a broad range of personal injuries" that "will imminently worsen due to the Challenged EOs." 1-ER-15. The court found Plaintiffs' injuries include increased exposure to life-threatening heatwaves, wildfire smoke, hurricanes, and flooding, 1-ER-15–17; 6-ER-1224–49; and some of Plaintiffs' direct exposure to pollution from coal transport and combustion will be amplified in Montana as a direct result of the Challenged EOs. 1-ER-16 (citing Doc. 1 ¶¶ 176–77 (6-ER-1289)). The court found that the Challenged EOs will aggravate existing asthma and other health-related conditions that are worsened by the combination of higher average temperatures and air pollution. *Id.* (citing Doc. 1 ¶¶ 19–20 (6-ER-1232–34)). The court further found that more fossil fuel pollution unleashed by the EOs will augment the physical health harms to Plaintiffs and lead to their "elevated risk of mortality." 1-ER-17 (citing Doc. 1 ¶¶ 24, 26 (6-ER-1238–41)). Based on Plaintiffs' evidence, the district court

ultimately "conclude[d] that Plaintiffs' injuries are both sufficiently tied to the Challenged EOs and meaningfully contribute to global greenhouse gas concentrations such that causation is satisfied." 1-ER-22–23.

In addition to their particularized health harms, Plaintiffs established injury-in-fact resulting from Defendants' dismantling of climate science pursuant to the Challenged EOs. As the district court found, several Plaintiffs, who are students studying climate change, are harmed by the dismissal of researchers and offices necessary for the National Climate Assessment ("NCA"), and the loss of other climate data generated and housed by the federal government. 1-ER-15 (citing Doc. 25-1 ¶¶ 4, 7 (4-ER-700–01, 4-ER-703)); 6-ER-1224–26, 6-ER-1229, 6-ER-1232–33, 6-ER-1244–49, 6-ER-1278, 6-ER-1299-1300, 6-ER-1304–05, 6-ER-1308. The growing loss of access to climate data, information, and government warning systems also endangers Plaintiffs' lives. 6-ER-1277, 6-ER-1304–06, 6-ER-1309–10. Plaintiffs will also suffer economic injuries because of the Challenged EOs. 6-ER-1265, 6-ER-1271; 6-ER-1354–65.

On redressability, the district court found—referencing the recent U.S. Supreme Court case of *Diamond Alternative Energy v. EPA* —that "unlike *Juliana*, the expert testimony in this matter demonstrates that injunctive relief would likely ameliorate Plaintiffs' potential climate-related injuries. Indeed, if one dollar of relief is sufficient [as in *Diamond Alternative Energy*], the reduction of 205 million metric

tons per year—and, by 2035, 505 million metric tons—of injury-causing greenhouse gas should be, too." 1-ER-28 (internal citations omitted). However, on the question of Plaintiffs' requested relief, the district court held it was without Article III power to redress Plaintiffs' injuries based on this Court's decision in *Juliana*. 1-ER-23–24. The district court did not address its power to redress each claim for relief separately, including Plaintiffs' ultra vires claims not present in *Juliana*.

The district court dismissed with prejudice and without leave to amend, stating: "It is the Court's view that an amendment in this matter would be futile. Pursuant to *Juliana*, the relief sought in this case is beyond the bounds of this Court's Article III authority, a fact that cannot be cured by amendment." 1-ER-34. The district court denied as moot Plaintiffs' motion for a preliminary injunction. *Id.* This appeal followed.

SUMMARY OF THE ARGUMENT

Plaintiffs have standing, the district court has the power to award traditional declaratory and equitable relief to prevent the Challenged EOs from causing and worsening Plaintiffs' injuries, and this Court should reverse and remand with instructions to consider Plaintiffs' motion for preliminary injunction. First, *Juliana* is distinguishable on the facts, claims, and relief requested from this far narrower constitutional challenge to specific Executive Orders. A proper redressability analysis under current precedent, including the origins of this Court's "two-part

redressability test" identified in *Juliana*, shows Plaintiffs have standing. Second, declaratory relief will likely redress Plaintiffs' injuries because it would result in a reduction of the pollution that is a direct and predictable result of the Challenged EOs and well within the Court's power to award for each claim for relief. Third, injunctive relief will likely redress Plaintiffs' injuries, is workable, and is also within the Court's power to award. In the alternative, should any standing deficiency remain, Plaintiffs should be afforded leave to amend.

STANDARDS OF REVIEW

Standing involves mixed questions of fact as well as law. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). To establish Article III standing at least one plaintiff must: (1) have suffered or likely will suffer an injury in fact; (2) that was likely caused or will be caused by the defendant; and (3) that is likely to be at least partially redressed by "the judicial relief requested." *Diamond Alternative Energy v. EPA*, 606 U.S. 100, 111–12 (2025). In a facial challenge to Plaintiffs' Article III standing under Rule 12(b)(1), the court must "accept as true all material allegations" and "construe the complaint in favor of the complaining party." *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011); Fed. R. Civ. P. 12(b)(1). The court "presum[es] that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990).

This Court reviews de novo the district court's dismissal under Rule 12(b)(1) for lack of subject matter jurisdiction. *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134, 1142 (9th Cir. 2024). The district court's factual findings are reviewed for clear error and legal conclusions are reviewed de novo. *Monasky v. Taglieri*, 589 U.S. 68, 83 (2020); *see also Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 23–24 (2021). The Court reviews Plaintiffs' standing to bring each claim separately. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008).

Denial of leave to amend a complaint is reviewed for abuse of discretion. *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004). A "court should freely give leave [to amend the pleadings] when justice so requires." Fed. R. Civ. P. 15(a).

ARGUMENT

I. The District Court Erred in Relying on *Juliana* to Deny Plaintiffs Standing

Ten years ago in a different constitutional case, twenty-one youth sued the federal government and multiple federal agencies and officials for *fifty years* of U.S. energy policies and practices that caused and contributed to climate change. *Juliana v. United States*, 947 F.3d 1159, 1169 (9th Cir. 2020). The systemic government conduct they challenged included all federal policies that promoted the use of fossil fuels, "including beneficial tax provisions, permits for imports and exports, subsidies for domestic and overseas projects, and leases for fuel extraction on federal land" undertaken over decades pursuant to several different statutes. *Id.* at 1167. While

they sought a declaration that such systemic conduct was unconstitutional, the "crux" of the remedy they sought was a mandatory injunction requiring twelve federal agencies to prepare a comprehensive plan to remediate climate change and reduce U.S. greenhouse gas emissions by set amounts dictated by the court. *Id.* at 1170. In a 2020 split decision, this Court reversed the district court on interlocutory appeal and dismissed *Juliana* for lacking one prong of standing—redressability—after finding injury and causation satisfied. *Id.* at 1168–70. Following a complex procedural history, the U.S. Supreme Court denied certiorari. *Juliana v. United States*, 145 S. Ct. 1428 (2025). *Juliana* is factually and legally distinguishable from this case. A careful look at this Court's redressability precedents relied upon in *Juliana*, and later cases distinguishing *Juliana,* unequivocally support Plaintiffs' standing here.

A. *Juliana* Is Factually and Legally Distinguishable

This case is not identical to *Juliana* and therefore does not merit an identical outcome. *Juliana* challenged "a host of federal policies, from subsidies to drilling permits, spanning 'over 50 years,' and [other] direct actions by the government." 947 F.3d at 1169. By contrast, Plaintiffs in this case seek redress for injuries arising from EO directives issued *in 2025*. Given the sharp distinction in the span of government action challenged here, *Juliana* neither dictates the result—which is highly fact-dependent—nor creates a jurisdictional bar to declaring the Challenged

EOs unconstitutional. *See Day v. Henry*, 152 F.4th 961, 967–68 (9th Cir. 2025). In *Juliana*, the Court found declaratory relief regarding those fifty years of challenged conduct was "unlikely by itself to remediate their alleged injuries absent further court action." 947 F.3d at 1170. By contrast, here, even without "further court action," such a declaration would tell Defendants the EOs are no longer valid and cannot be implemented. *Contra id.* at 1170.

Additionally, "the central issue" in *Juliana* was whether "an Article III court can provide the plaintiffs the redress they seek—an order requiring the government to develop a plan to 'phase out fossil fuel emissions and draw down excess atmospheric CO_2.'" 947 F.3d at 1164–65. The Court determined it could not order and supervise such a plan and denied redressability on that basis. *Id*. Here, Plaintiffs do not seek a remedial plan subject to potentially decades-long court oversight and continuing court approval, but rather: (1) a traditional injunction prohibiting Defendants from implementing the Challenged EOs; and (2) an injunction against agency directives implementing the Challenged EOs prior to the injunction. 6-ER-1338. This case is more like *Day v. Henry*, where this Court distinguished *Juliana* to hold that wine drinkers who challenged the constitutionality of a regulatory scheme with widespread effect had standing. 152 F.4th at 965, 967–68. Here, as in *Day*, although an injunction "eliminating enforcement of the allegedly [unconstitutional] laws altogether . . . might be broad, it is not the kind of relief that is outside the power

of Article III courts under *Juliana*," and consequently, "the redressability requirement of standing has been met." *Id.* at 968; *see also Johnson v. City of Grants Pass*, 72 F.4th 868, 882 (9th Cir. 2023) (distinguishing remedy requested to enjoin city ordinances from *Juliana*'s mandatory injunction request to "phase out fossil fuel emissions and draw down excess atmospheric CO_2"), *rev'd and remanded on non-standing grounds, on the merits, sub nom.*, *City of Grants Pass v. Johnson*, 603 U.S. 520 (2024).

Whether Plaintiffs ultimately obtain their relief is not the question for purposes of standing. *Day*, 152 F.4th at 968; *Bonnichsen v. United States*, 367 F.3d 864, 873 (9th Cir. 2004). The traditional prohibitory injunctive relief requested here is materially distinct from the mandatory injunction sought in *Juliana* and is well within the power of an Article III court to issue, as this Court's cases interpreting *Juliana* make clear, and as described more fully below. *Day*, 152 F.4th at 967–68; *see infra* Section III.

B. *Juliana*'s Analysis of the Ninth Circuit Two-Part Redressability Test Controls in Extraordinary Circumstances Not Present Here

Juliana's redressability analysis relied heavily on the Court's two-part redressability test articulated in *M.S. v. Brown*., 947 F.3d at 1170–75. Yet *M.S.* and its predecessors, *Republic of Marshall Islands v. United States* and *Gonzales v.*

Gorsuch,[1] affirm the power of the district court to redress Plaintiffs' injuries here. *M.S.*, like *Juliana*, involved extraordinary factual circumstances. The plaintiff in *M.S.* asked a federal court to declare that a state voter referendum was void and unconstitutional and that the Governor of Oregon was required to issue driver cards pursuant to a bill that never became a law. *M.S.*, 902 F.3d at 1083–84. Analyzing each request for relief separately, this Court held that a federal court did not have the power to direct the State to issue voter cards under a state law that was never duly enacted, as such an order would violate principles of federalism. *Id.* at 1084–86. This Court also held that declaring the voter referendum unconstitutional would not have changed the legal status of the parties, because the bill plaintiffs wanted enacted would still be just a bill, not a law. *Id.* Importantly, *M.S.* affirms that the exercise of judicial power is proper as a check on sovereignty "subject to those constitutional limitations which have been duly adopted and remain unrepealed." *Id.* at 1087 (citation omitted). "As the Supreme Court has recognized, 'fundamental rights may not be submitted to a vote; they depend on the outcome of no elections.'" *Id.* at 1088 (citations omitted). *M.S.* is thus different than this case, where the federal court has clear judicial power to declare the Challenged *federal* EOs unconstitutional and to order *federal* defendants to stop implementing unconstitutional executive directives.

[1] *M.S. v. Brown*; 902 F.3d 1076 (9th Cir. 2018); *Republic of Marshall Islands v. United States*, 865 F.3d 1187 (9th Cir. 2017); *Gonzales v. Gorsuch*, 688 F.2d 1263 (9th Cir. 1982).

M.S. itself relied on another extraordinary case, which is likewise distinguishable from the present action. In *Republic of Marshall Islands*, this Court considered a case where "a state party violates a non-self-executing treaty provision" and held that "the judicial courts have nothing to do and can give no redress." 865 F.3d at 1199 (quoting *Head Money Cases*, 112 U.S. 580, 598 (1884)). Treaty enforcement cases between two sovereigns are in a unique category of their own and are easily distinguishable from a constitutional rights case where Defendants are enacting and carrying out specific executive directives that cause and worsen a children's health emergency in the United States, injuring Plaintiffs who are U.S. citizens.

Republic of Marshall Islands in turn relied on *Gonzales v. Gorsuch*, another distinguishable case where individuals brought a citizen suit challenging allegedly improper expenditures of EPA grant funding under the Clean Water Act that did not relate to water pollution. 688 F.2d at 1265. The relief requested was not within the court's power to award because "Gonzales waited almost one year before commencing discovery and, as a consequence, by the time the court below ruled on cross-motions for summary judgment, the two year planning period was over, and most of the original sums had been spent." *Id*. at 1268. Thus, even if the court ordered the refund of monies spent, "the court would not bring about the water pollution

planning Gonzales sought." *Id.* For this reason, the court could not provide likely redress. *Id.*

Here, by contrast, Plaintiffs sought a preliminary injunction soon after the Challenged EOs were signed, and the EOs are being actively implemented and are causing ongoing injuries. Further, there are specific executive directives the court could enjoin that would redress Plaintiffs' injuries by halting unnecessary mandated unleashing of fossil fuels, freeing wind and solar from the Challenged EOs' constraints, and ending the EOs' attack on science as an "undue burden" on fossil fuels. *See* Section III, *infra*.

Importantly, in each prior (and rare) case where this Court has found a lack of judicial power, the Court focused on the unique factual circumstances in articulating the *exceptional* barrier to the court's ability to provide redress for the plaintiffs' injuries through declaratory or injunctive relief: enforcement of a state bill not yet signed into law (*M.S. v. Brown*); international treaty enforcement for non-self-executing provision (*Republic of Marshall Islands*); injurious conduct substantially complete and irreversible due to plaintiff's delay (*Gonzales*); and a five decadal span of challenged conduct deemed too broad to be remediable by an Article III court (*Juliana*). The relief requested here—a declaration that the Challenged EOs signed and effectual in 2025 are unconstitutional and ultra vires and enjoined—presents no such jurisdictional constraints and is routinely issued in a variety of contexts. *See*

Sections II and III, *infra*. Only by incorrectly conflating the present action with the facts of *Juliana* could a court apply its ultimate fact-specific holding to the circumstances presented here. To do so would betray the court's duty to take as true the facts alleged in this Complaint and the district court's unrebutted factual findings.

Neither *Juliana*, its extraordinary predecessors, nor its distinguishing successors prevent Plaintiffs from establishing redressability in this case, nor do they strip the district court of its Article III remedial power. Quite the opposite—they support Plaintiffs' standing in this case. On the district court's analysis that *Juliana* "mandate[d] this outcome," alone, it committed reversible error. 1-ER-34.

II. The District Court Can Provide Likely Redress for Plaintiffs' Injuries by Awarding Declaratory Relief

A. The District Court Has the Power to Award Declaratory Relief

Since *Juliana* does not mandate dismissal, the district court erred in concluding that declaratory relief, on its own, might be insufficient to redress Plaintiffs' injuries. 1-ER-26. The plain language of the Declaratory Judgment Act ("DJA"), 28 U.S.C. § 2201(a), and longstanding U.S. Supreme Court precedent confirm that the district court has the power to grant declaratory relief to resolve live federal controversies, regardless of whether it is coupled with injunctive relief. Indeed, 28 U.S.C. § 2201(a) specifically provides that courts may "declare the rights and other legal relations of any interested party seeking such declaration, *whether or not further relief is or could be sought*." (emphasis added).

Since codification of the DJA, courts have routinely recognized declaratory judgment alone can redress an ongoing injury in constitutional cases for purposes of Article III standing. *See, e.g.*, *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 77–78 (1978); *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992); *see also Cornett v. Donovan*, 51 F.3d 894, 897 (9th Cir. 1995) (declaratory judgment on the constitutionality of the state's conduct toward institutionalized persons sufficiently redressed the ongoing injuries of plaintiffs who remained institutionalized); *Ass'n des Éleveurs de Canards et d'Oies du Quebec v. Bonta*, 33 F.4th 1107, 1120 (9th Cir. 2022) (declaratory judgment clarifying the constitutionality of California's foie gras ban could redress ongoing injuries). A declaratory judgment here as to the constitutionality of the Challenged EOs would likely provide redress because it would make "a 'definitive determination of the legal rights of the parties,'" i.e., whether the Challenged EOs violate the Fifth Amendment or are ultra vires. *Pharm. Rsch. & Mfrs. of Am. v. Stolfi*, 153 F.4th 795, 831 (9th Cir. 2025) (quoting *Aetna Life Ins., Inc. v. Haworth*, 300 U.S. 227, 241 (1937)) (declaratory judgment satisfies redressability because "the preclusive effect of the judgment" would bind the government defendant in future lawsuits).

Uzuegbunam v. Preczewski, 592 U.S. 279 (2021), is instructive on this point. In *Uzuegbunam*, the Supreme Court held that when there is a completed violation of a constitutional right, a request for nominal damages "satisfies the redressability

element of standing."[2] *Id.* at 292. Because declaratory judgments and nominal damages are corollaries—in that nominal damages redress a completed past injury, while declaratory judgments redress an ongoing or impending injury, *id.* at 285–86—a declaration that the Challenged EOs and their implementation are unconstitutional satisfies redressability. *Kareem v. Cuyahoga Cnty. Bd. of Elections*, 95 F.4th 1019, 1027 (6th Cir. 2024) (request for declaratory and injunctive relief redresses alleged prospective harm in constitutional rights case).

The district court disregarded this principle of redressability, choosing instead to hinge its analysis on an incorrect theory that *Gutierrez v. Saenz* and *Massachusetts v. EPA* implicitly hardened the redressability standard for substantive due process cases when they analyzed "procedural" injury claims, and thus are inapplicable to Plaintiffs' substantive claims. 606 U.S. 305 (2025); 549 U.S. 497 (2007). *See* 1-ER-26. But neither case overturned the DJA or the efficacy of declaratory relief in the context of *substantive* due process claims, which are routinely resolved through declaratory relief. *See, e.g.*, *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (declaring school segregation policies unconstitutional); *United States v. Windsor*, 570 U.S. 744, 775 (2013) (declaring Defense of Marriage Act invalid); *Obergefell v. Hodges*,

[2] This Court has affirmed this treatment of nominal damages as a form of declaratory relief. *Platt v. Moore*, 15 F.4th 895, 903 (9th Cir. 2021) ("There is scant difference between a claim for declaratory relief and incidental damages and one for nominal damages, except that the nominal damages are more like pure declaratory relief because they are by definition minute and so of no budgetary consequence.").

576 U.S. 644, 675 (2015) (declaring laws prohibiting same-sex marriage unconstitutional).[3]

The redressability analyses of *Gutierrez* and *Massachusetts* are not limited to procedural violations. Nor does the precedent from those cases that support Plaintiffs here hinge on whether the injuries were substantive or procedural. *Massachusetts* simply applies longstanding precedent that a remedy that eliminates or reduces the risk of harm in a substantive rights case satisfies redressability. *See, e.g.*, *Meese v. Keene*, 481 U.S. 465, 476–77 (1987) (declaring an act that would require filmmaker to label his films "political propaganda" as unconstitutional would at least partially reduce the risk of reputational injury, which is sufficient for redressability); *Matsumoto v. Labrador*, 122 F.4th 787, 801 (9th Cir. 2024). In fact, the case cited by the *Massachusetts* majority in support of its holding that a remedy prompting EPA to slow or reduce emissions suffices for redressability was a declaratory judgment action resolving *substantive* Fifth Amendment claims. 549 U.S. at 521 (citing *Duke Power Co.*, 438 U.S. 59).

Similarly, *Gutierrez* reaffirms the longstanding principle, also applied in substantive contexts, that when an injury flows from the government's enforcement

[3] *Juliana* did not alter these longstanding precedents. And as described above, *supra* Section I.A., *Juliana* is distinguishable from the scope of the present declaratory relief request: fifty years of expansive conduct across twelve agencies in *Juliana* compared to three Challenged EOs issued in 2025 here.

of an unconstitutional policy, like the Challenged EOs here, declaratory relief alters the governing legal framework by ordering a change in legal status or removing a legal barrier. 606 U.S. at 316–20. This in turn redresses the injury, even if additional steps may be required for full relief. *Id*. at 318–20; *see also Ne. Fla. Chapter, AGC v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (Fourteenth Amendment substantive equal protection claim); *Meese*, 481 U.S. at 476–77 (First Amendment substantive right claim). Nothing in Article III limits these bedrock standing principles to procedural due process claims only. Indeed, Article III standing to protect a substantive fundamental right has never required a heightened redressability standard. *See, e.g.*, *Uzuegbunam*, 592 U.S. at 292 (rejecting argument that one dollar could not partially redress damage from constitutional rights' violation). Accordingly, the district court erred in concluding it lacked the power to redress Plaintiffs' substantive due process injuries by declaring the Challenged EOs invalid, which would remove a barrier to Plaintiffs' lives and liberties, and eliminate or reduce a risk of further harm from the Challenged EOs.

B. Declaratory Judgment Is Substantially Likely to Provide Meaningful Redress for Plaintiffs' Injuries

The district court erroneously disregarded Plaintiffs' actual injuries by presuming that "at the heart of Plaintiffs' request [for declaratory relief] is that the Court wind back the clock to the regulatory framework that existed on January 19,

2025."[4] 1-ER-27. This assumption does not reflect the declaratory relief Plaintiffs actually requested in their Complaint, 6-ER-1338, which is prospective in nature and focused on stopping the source of their ongoing and worsening injuries: the Challenged EOs. Specifically, Plaintiffs sought a "declaration pursuant to 28 U.S.C. § 2201 that Executive Orders 14154 §§ 1–3, 5, 7; 14156; and 14261 §§ 2–3, 5–7 and any implementing executive actions pursuant thereto are unlawful, unconstitutional, ultra vires, and invalid." 6-ER-1338. Such a declaration would provide meaningful redress in at least four ways, each of which independently confirms redressability.

First, the declaration would resolve a legal controversy as to the constitutionality of the Challenged EOs that the district court agreed are the source of Plaintiffs' injuries. This constitutes a classic remedy for unlawful executive orders that federal courts have long had the power to award. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588 (1952). Second, and relatedly, declaratory judgment would clarify the rights of the parties. *Utah v. Evans*, 536 U.S. 452, 464 (2002) (plaintiffs demonstrate redressability in declaratory judgment action where requested relief "would have ordered a change in a legal status . . . , and the practical consequence of that change would amount to a significant increase in the likelihood

[4] At oral argument, Plaintiffs' counsel requested that the district court *preliminarily enjoin* actions taken to implement the EOs since their issuance, but did not abandon Plaintiffs' request for relief in their Complaint for *prospective* declaratory and injunctive relief. 3-ER-510.

that the plaintiff would obtain relief that directly redresses the injury suffered"). Here, Defendants assert that Plaintiffs' injuries are not sufficient for a constitutional violation on the merits, denying that Plaintiffs have protectable rights to life and liberty against the Executive's interest in mandating fossil fuel use, with its attendant pollution. *See, e.g.*, 4-ER-640–42 (Defendants assert legal and factual controversy over Plaintiffs' right to life and whether EOs are conscience-shocking); 4-ER-638 (same); 3-ER-548 (Defendants arguing "plaintiffs have not at all established that these are the sort of executive orders that shock the conscience"). Plaintiffs alleged otherwise, and the district court, without deciding the merits, has already found their injuries are life-threatening. 6-ER-1221–23, 6-ER-1225, 6-ER-1233–35, 6-ER-1243, 6-ER-1262–72, 6-ER-1275–80, 6-ER-1314–38; 1-ER-14–19 ("Plaintiffs convincingly allege will expose them to imminent, increased harm from a warming climate.") Thus, there is a live controversy as to whether Plaintiffs' constitutional rights are infringed by acts committed pursuant to the EOs. If declaratory relief were granted, that controversy would be resolved and Defendants would predictably conform their conduct to respect Plaintiffs' rights consistent with the court's declaration of law. *See Evans*, 536 U.S. at 463–64.

Third, declaratory judgment would overturn unconstitutional law—the EOs—which would in turn limit their enforcement. *Steffel v. Thompson*, 415 U.S. 452, 469–70 (1974) (a "federal declaration of unconstitutionality reflects the opinion of the

federal court that [a law] cannot be fully enforced"); *see also Diamond*, 606 U.S. at 123 ("To deny standing based on a theory that invalidating an important regulation would actually have zero impact on a dynamic and heavily regulated market requires a degree of economic and political clairvoyance that is difficult for a court to maintain."). Declaring a law unconstitutional may not undo all the harm that occurred while the law was implemented, but such relief still redresses ongoing and future injuries because the government may no longer implement the law. The precedent has been unanimous on this point, for centuries. *See, e.g.*, *Franklin*, 505 U.S. at 803 (1992) (courts should presume the government will comply with court orders); *Osborn v. Bank of U.S.*, 22 U.S. 738, 868 (1824) (government agents cannot claim they are acting pursuant to law once they are declared void); *see also* 2-ER-196–98, 2-ER-200. Even if declaring the Challenged EOs illegal would not "wind back the clock to the regulatory framework that existed on January 19, 2025," 1-ER-27, Plaintiffs would still have redress because Defendants could no longer implement the EOs causing Plaintiffs' ongoing injuries. Plaintiffs are not required to prove how Defendants will correct their unconstitutional behavior, nor allege how Defendants will comply with a declaration to establish redressability. *See, e.g.*, *Gutierrez*, 606 U.S. at 319–20 (courts need not "speculate" about how government will respond to a declaration). Plaintiffs also need not allege that declaratory relief in this case will permanently prevent Defendants from ever acting unconstitutionally

again with respect to fossil fuels. *See Day*, 152 F.4th at 968. The court need only adjudicate the specific EOs before it.

Fourth, declaratory judgment would prevent future litigation against the EOs. A central purpose of the DJA is to resolve federal issues early to avoid "the threat of impending litigation." *Seattle Audubon Soc'y v. Moseley*, 80 F.3d 1401, 1405 (9th Cir. 1996) (per curiam). Here, absent a declaration, Defendants will continue implementing the Challenged EOs, which will require Plaintiffs and others similarly situated to continue to litigate to protect themselves from ongoing harm. Thus, there is a controversy whether the EOs and their implementation will cause Plaintiffs further ongoing harm if they remain law, and redress in this case will prevent future litigation as more harm occurs.

The district court's reliance on *Juliana*[5] further highlights its improper disregard of the facts in considering redressability. 1-ER-27. In *Juliana*, this Court ruled declaratory relief was "unlikely by itself to remediate" the plaintiffs' injuries because the source of their injuries was fifty years of conduct taken by over a dozen defendants. 947 F.3d at 1165, 1170. The extent of the injurious conduct was so long-

[5] The court also cited to *G.B. v. U.S. EPA*, No. CV 23-10345-MWF, 2024 WL 3009302 (C.D. Cal. May 8, 2024), a case currently on appeal in this Court. That case challenges the specific discounting policies and practices of EPA and OMB as unconstitutionally discriminatory and brings different claims under the Equal Protection Clause. *Genesis* challenges different conduct stemming from different government policies than challenged here or in *Juliana*, and they should be evaluated on their unique factual circumstances.

standing and broad that the Court determined a remedy above and beyond declaratory relief would have been required to provide meaningful redress. *Id.* at 1167 n.4, 1170. Here, a declaration would not merely benefit Plaintiffs "psychologically," 2-ER-126–27; 6-ER-1270–71; 4-ER-772; 5-ER-939; 5-ER-999–1001; 5-ER-1062, 5-ER-1064–66, but would clearly communicate to Defendants the unconstitutionality of the EOs and what implementing conduct cannot lawfully be pursued going forward. *See, e.g.*, *Franklin*, 505 U.S. at 803 (government officials should abide by courts' "authoritative interpretation" of law and the Constitution).

The district court's reliance on *Reeves v. Nago* only highlights the district court's error. 535 F. Supp. 3d 943, 955 (D. Haw. 2021). There, former Hawaiian residents challenged on equal protection grounds a state statute that prevented certain former residents from voting absentee. *Id.* at 948–49. Plaintiffs there sought (1) a declaration that the provision was unconstitutional and (2) an order allowing the plaintiffs to vote absentee and expanding voting rights to all former Hawai'i citizens. *Id.* at 949. While those plaintiffs' injuries were traceable to the challenged statute, the court concluded that declaratory relief alone was insufficient redress because it would not enable absentee voters to cast their votes. Instead, additional injunctive relief striking the discriminatory language was required, but such relief was not requested in the complaint. *Id*. at 955. In addition, the court found that ordering the state to expand voting rights through an injunction exceeded its judicial

powers because that was a legislative function, like the constraint on redressability recognized in *M.S. v. Brown*. 902 F.3d at 1090–91.

Nonetheless, in *Reeves*, the court granted leave to amend to seek the necessary remedy identified in the earlier decision and ultimately found standing, which was affirmed by this Court. *See Borja v. Nago*, 115 F.4th 971, 976, 978 (9th Cir. 2024). The district court here ignored these subsequent developments in *Reeves*, which support Plaintiffs' redressability, as well as Plaintiffs' request to seek leave to amend, and illustrate the stark differences between this case and the *Juliana* and *M.S. v. Brown* line of cases.

III. The District Court Can Provide Likely Redress for Plaintiffs' Injuries by Awarding Traditional Injunctive Relief

The injuries to Plaintiffs' fundamental rights and their ultra vires injuries would at least be partially redressed by injunctive relief against the Challenged EOs and their implementation. Injunctive relief for these types of claims is routine and within the court's traditional equitable powers to award. The district court's holding to the contrary failed to examine the actual separate requests for injunctive relief in Plaintiffs' Complaint, relied on three inapplicable cases, and raised hypothetical barriers that have been readily overcome by courts around the country in a variety of different factual contexts. Plaintiffs address below the court's power to issue relief for both their Fifth Amendment (1, 2, 6) and ultra vires (3, 4, 5) claims.

A. The Court Has Traditional Equitable Powers to Fashion Injunctive Relief

The Judiciary Act of 1789, which established lower federal courts, repeats the Constitution's command that such courts have jurisdiction over "*all* suits . . . in equity." § 11, 1 Stat. 78 (emphasis added). The Supreme Court has "held that the statutory grant encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception." *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025) (quoting *Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 319 (1999)). Not only were injunctions awarded by the courts of equity; they are so central to American law that they are "the most common equitable remedy in the United States." Samuel L. Bray, *The System of Equitable Remedies*, 63 UCLA L. Rev. 530, 553 (2016). Accordingly, federal courts issue prohibitory and mandatory injunctions as standard remedial tools for preventing or rectifying invasions of plaintiffs' rights. *See, e.g.*, *Washington v. U.S. Dep't of Educ.*, 161 F.4th 1136, 1141 (9th Cir. 2025) (refusing to stay injunction prohibiting Department of Education from enforcing a decision to discontinue plaintiffs' grants, and requiring defendants to take every step necessary to immediately effectuate the court's order); *Elev8 Baltimore, Inc. v. Corp. for Nat'l & Cmty. Serv.,* No. 1:25-cv-01458, Dkt. 46, Order at 1 (D. Md. July 7, 2025) (mandatory injunction requiring Americorps to reinstate terminated employees and rescind reduction-in-force notices).

The Supreme Court has a long and well-established practice of affirming—and ordering—injunctions that prohibit agencies and officers from implementing unconstitutional executive orders. "The ability to sue to enjoin unconstitutional actions by state and federal officers . . . reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015); *see, e.g.*, *Youngstown Sheet & Tube*, 343 U.S. at 584 (affirming injunction restraining Secretary of Commerce from implementing unconstitutional executive order); *Panama Refining Co. v. Ryan*, 293 U.S. 388, 433 (1935) (ordering injunction to restrain federal officials from implementing two executive orders); *Sterling v. Constantin*, 287 U.S. 378, 404, 399 (1932) (affirming injunction prohibiting governor and officers from enforcing unconstitutional executive orders); *Osborn*, 22 U.S. at 871 (1824) (affirming injunction prohibiting state executive officials from using unconstitutionally collected funds). Notably, and similar to the relief requested here, in *Panama Refining Co. v. Ryan*, the Supreme Court *ordered* the district court "to grant permanent injunctions, restraining" Department of Interior officials from enforcing two ultra vires executive orders and regulations adopted thereunder. 293 U.S. at 433. In short, there can be no doubt that it is within the power of an Article III court to enjoin implementation of executive orders that violate the Constitution.

B. Injunctive Relief Will Protect Prospective Infringement of Plaintiffs' Fundamental Rights

1. An injunction would likely redress Plaintiffs' injuries for Claims 1, 2, and 6

"[I]f a court decision can provide a small incremental step to reduce the risk of harm to the plaintiffs to some extent, that is enough to show . . . redressability." *Matsumoto*, 122 F.4th at 801 (cleaned up). Redress need not be large. Even benefit equivalent to one dollar is sufficient under the Supreme Court's standing precedent. *Diamond*, 606 U.S. at 114; *Uzuegbunam*, 592 U.S. at 292. Injunctive relief here satisfies this requirement for Plaintiffs' Fifth Amendment Due Process claims. Claim 1 alleges infringement of the fundamental enumerated right to life. 6-ER-1314. Claim 2 alleges infringement of the fundamental right to liberty, including the already-recognized liberty interests of personal security, bodily integrity, dignity, and opportunity to pursue happiness. 6-ER-1317; *Ingraham v. Wright*, 430 U.S. 651, 673 (1977) (personal security); *Vacco v. Quill*, 521 U.S. 793, 807 (1997) (bodily integrity); *Obergefell*, 576 U.S. 644 (dignity); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (right to acquire useful knowledge). Claim 6 alleges a personal security violation of the state-created danger doctrine, consisting of affirmative government conduct exposing Plaintiffs to a known danger with deliberate indifference to such danger. 6-ER-1335.

The district court found that Plaintiffs here made a "compelling case for redress." 1-ER-33. The district court wrote that in *Juliana*, an injunction would not "suffice to . . . even ameliorate [the plaintiffs'] injuries," whereas here,

> unlike *Juliana*, the expert testimony in this matter demonstrates that injunctive relief would likely ameliorate Plaintiffs' potential climate-related injuries. Indeed, if one dollar of relief is sufficient, the reduction of 205 million metric tons per year—and, by 2035, 505 million metric tons—of injury-causing greenhouse gas should be, too.

1-ER-25 (citing *Juliana*, 947 F.3d at 1170); 1-ER-28 (citing Doc. 25-20 ¶¶ 17–18 (5-ER-990–91)).

The district court arrived at its conclusion "that injunctive relief would likely ameliorate Plaintiffs' potential climate-related injuries" after hearing unrefuted live testimony from Plaintiffs' eleven witnesses, and after reviewing twenty-four unrebutted declarations from Plaintiffs' witnesses, which proved Plaintiffs' Complaint allegations. 1-ER-28; 6-ER-1222–49, 6-ER-1261–72, 6-ER-1291, 6-ER-1310. Those experts testified that every ton of CO_2 emissions makes global warming worse, and every ton not emitted lessens global warming. 2-ER-162–63; 6-ER-1341–48; 6-ER-1371–82. "The medical evidence is unambiguous—'unleashing' more fossil fuels will harm the health of children, including these 22 youth Plaintiffs, . . . and increase the risk of premature death. On the other hand, reducing fossil fuel pollution will result in healthier children with longer lifespans." 4-ER-727; *see also* 4-ER-743 ("Any decrease in fossil fuel pollution, or fossil fuel pollution avoided,

will provide an immediate benefit to Plaintiffs' health, lives, and longevity."); *see* 4-ER-892, 4-ER-902, and 2-ER-71–76 (Plaintiff Joseph's life-threatening condition from increasing heat exposure after nearly dying once already); 6-ER-1340. Plaintiffs put forth unrebutted expert testimony from John Podesta, former White House Chief of Staff and senior advisor to numerous Presidents, who testified that an injunction prohibiting implementation of the EOs would result in the government abandoning reliance on them for future decision-making. 2-ER-201 ("if the injunction were to take place . . . , then it would be incumbent on every agent of the federal government who has taken an oath of office to abide by that order, up to and including the President"). Defendants did not provide evidence to refute any of Plaintiffs' testimony. 3-ER-486–87.

Further, "causation and redressability . . . are often 'flip sides of the same coin.' If a defendant's action causes an injury, enjoining the action . . . will typically redress that injury." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380–81 (2024) (quoting *Sprint Commc'ns Co. v. APCC Services, Inc.*, 554 U.S. 269, 288 (2008)); *Diamond*, 606 U.S. at 111; *California v. Texas*, 593 U.S. 659, 671 (2021) (redressability is traceability from a different "point of view"); *Bennett v. Spear*, 520 U.S. 154, 168 (1997) (analyzing traceability and redressability as a single inquiry); *Duke Power Co.*, 438 U.S. at 74 (redressability is traceability "put otherwise"). Cases where injury and traceability are met, but redressability is not,

ordinarily contain a basic flaw preventing any remedy from benefiting the plaintiff. *See, e.g., Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) (sued wrong defendants). This typical expectation of redressability, backed by factual allegations in Plaintiffs' Complaint, has not been rebutted by Defendants and must be taken as true. 6-ER-1222–49, 6-ER-1261–72, 6-ER-1291, 6-ER-1310; *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 191, 195 (2024). Here, because the district court found injury and traceability satisfied, 1-ER-19, 1-ER-22–23, an injunction satisfies the Article III redressability requirement.

In sum, as the district court correctly found, enjoining the Challenged EOs will likely prevent significant quantities of the harmful CO_2 emissions, thereby ameliorating the increased danger to Plaintiffs' lives, liberty, and safety attributable to the EOs. *See* 1-ER-28. Accordingly, an injunction will likely redress Plaintiffs' injuries for Claims 1, 2, and 6.

2. Traditional injunctive relief against conduct that violates fundamental rights is consistent with longstanding precedent and is within the powers of an Article III court to award

"When determining the extent of the district court's remedial power for purposes of redressability, we 'assume that [the] plaintiff's claim has legal merit.'" *M.S.*, 902 F.3d at 1083 (quoting *Bonnichsen*, 367 F.3d at 873). As to Claims 1, 2, and 6, the Court should assume, for purposes of redressability, that Defendants' conduct implicates infringement of Plaintiffs' Fifth Amendment rights to life and liberty and

personal security under the state-created danger doctrine. 6-ER-1314, 6-ER-1317, 6-ER-1335; *Juliana*, 947 F.3d at 1170 (assuming existence of right asserted for purposes of redressability). The district court concluded redressability was lacking because "[i]t is beyond the power of an Article III court to create environmental policy, which is left 'for better or worse, to the wisdom and discretion of the executive and legislative branches.'" 1-ER-30 (quoting *Juliana*, 947 F.3d at 1171–72). First, as discussed in Section III.D., *infra*, Plaintiffs' remedies do not require the creation of environmental policy, but rather seek to enforce fundamental constitutional rights against the Challenged EOs' directives that infringe Plaintiffs' rights. District courts clearly have the power to enjoin government conduct that violates fundamental rights. *See, e.g.*, *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020); *Obergefell*, 576 U.S. at 681; *Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025). Second, the district court's conclusion would upend judicial remedies as it misconstrues the crucial role courts play in protecting fundamental rights, even when doing so has policy implications. Like the right to "self-defense," the right to life "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees,'" all of which constrain government policy choices. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality)). Article III courts have no less power to enjoin government policies that deprive

children of their fundamental rights to life and personal security than they do to enjoin government policies depriving adults of the right to bear arms.

"[T]he executive branch has no discretion with which to violate constitutional rights." *LaDuke v. Nelson*, 762 F.2d 1318, 1325 (9th Cir. 1985), *amended*, 796 F.2d 309 (9th Cir. 1986).

> The idea of the Constitution "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." This is why "fundamental rights may not be submitted to a vote; they depend on the outcome of no elections."

Obergefell, 576 U.S. at 677 (quoting *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943)). Because fundamental rights are not subject to political discretion,

> [t]he Nation's courts are open to injured individuals who come to them to vindicate their own direct, personal stake in our basic charter. An individual can invoke a right to constitutional protection when he or she is harmed, even if the broader public disagrees and even if the legislature refuses to act.

Obergefell, 576 U.S. at 677.

Because the political branches lack discretion to create or implement policy that invades fundamental rights, "[a] court of competent jurisdiction may entertain a suit to remedy a deprivation committed by an unconstitutional exercise of discretion . . . without in any way substituting its discretion and judgment" for an executive officer's. *Nguyen v. Kissinger*, 528 F.2d 1194, 1199 (9th Cir. 1975). Consequently, "this is not a case about judicial encroachment on the discretionary authority of the

Executive Branch. This is a case about unlawful Executive encroachment on" Plaintiffs' fundamental rights. *Washington v. Fed. Emergency Mgmt. Agency*, No. CV 25-12006-RGS, 2025 WL 3551751, at *4 (D. Mass. Dec. 11, 2025) (issuing permanent injunction against FEMA). Such an encroachment can only be enjoined by a court. As Chief Justice Marshall wrote, "The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

Notably, the injunctions requested here do not come close to the outer limits of the district courts' power to enjoin conduct by political branches that invades fundamental rights. At the outer limits of their power, federal courts "have jurisdiction to order a remedy requiring the enactment of legislation[.]" *M.S.*, 902 F.3d at 1087. The distinct injunctions requested here—prohibiting implementation of the unconstitutional sections of the EOs, and mandating rescission of existing implementation measures (6-ER-1338)—are nowhere near as intrusive as the injunction mandating the enactment of legislation contemplated in *M.S.*, *see* Section I.B., *supra*, and align with injunctions being issued by federal courts around the country. *See, e.g.*, *Washington v. Trump*, 145 F.4th 1013, 1039 (9th Cir. 2025) (affirming preliminary injunction against executive orders relating to birthright citizenship, concluding the injunction provided complete relief to plaintiffs

consistent with *Trump v. CASA*, 606 U.S. 831 (2025)); *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 996 (9th Cir. 2025) (partially denying stay of preliminary relief against an EO-implementing action, consistent with *CASA*); *Am. Ass'n of Physicians for Hum. Rts. v. NIH*, 795 F. Supp. 3d 678, 700 (D. Md. 2025). Because the injunctions Plaintiffs request to remedy the alleged violations of Plaintiffs' fundamental rights are within the district court's power to award, Claims 1, 2, and 6 are redressable through injunctive relief.

C. Traditional Injunctive Relief Will Partially Redress Plaintiffs' Injuries from Defendants' Ultra Vires Actions (Claims 3, 4, & 5)

Not only did the district court err in concluding it lacked authority to fashion injunctive relief redressing Plaintiffs' substantive due process injuries, it also erred when it entirely failed to analyze Plaintiffs' ultra vires claims for redressability. Plaintiffs advanced three ultra vires claims. First, Plaintiffs allege that the President's EO directives to "unleash" fossil fuels violate the separation of powers and the take care and presentment clauses because they require EPA to take actions contrary to and outside of statutory commands set by Congress on major questions of pollution and the agency's purpose (Claim 3). Second, Plaintiffs allege that the Office of the President and NASA's implementation of the Challenged EOs by disbanding the United States Global Change Research Program ("USGCRP") and defunding and cancelling the National Climate Assessment ("NCA") violate the separation of powers and the take care and presentment clauses (Claim 4). Finally, Plaintiffs allege

Defendants' implementation of the Challenged EOs by suppressing climate science contravenes multiple congressional mandates, violating the separation of powers and the take care and presentment clauses (Claim 5). To remedy these ultra vires EOs and implementation, Plaintiffs requested injunctive relief. 6-ER-1338.

Plaintiffs have alleged facts—and presented evidence—showing redressability for their ultra vires claims: Claim 3 regarding the EOs' ultra vires directives contravening Congress' mandate that EPA prevent pollution, including GHG air pollutants (*see, e.g.*, 42 U.S.C. §§ 7401(b)(1)-(2), (c), 7403(a), 7602(h), 7432(d)(4); 6-ER-1285–87; 5-ER-1009–15; 4-ER-763; 5-ER-1016–50; 6-ER-1349–53); Claim 4 regarding the EOs' ultra vires directives contravening Congress' mandate to prepare the NCA (*see, e.g.*, 15 U.S.C. §§ 2931(b), 2933, 2936; 6-ER-1299–1300; 4-ER-700–01, 4-ER-706–07; 4-ER-930; 4-ER-899–900, 4-ER-902 ("If work on the next National Climate Assessment is not restarted immediately, the report *will not* be available in 2027 for me to use to educate myself and advocate with"); 2-ER-166; 5-ER-1204–07); and Claim 5 regarding the EOs' ultra vires directives contravening Congress' mandates on climate science (*see, e.g.*, 33 U.S.C. § 893; 49 U.S.C. § 102(g); 6-ER-1244, 6-ER-1278, 6-ER-1284, 6-ER-1304–09; 4-ER-897–99, 4-ER-902; 4-ER-821–23, 4-ER-826–27; 2-ER-127–28; 5-ER-1189–1203; 5-ER-1208–09; 4-ER-689–94); *see also generally* 6-ER-1222–23, 6-ER-

1338; 2-ER-201. Plaintiffs' injuries from Defendants' ultra vires EO directives and implementation thereof are redressable by injunctive relief.

1. Traditional injunctive relief enjoining ultra vires Executive acts is consistent with longstanding precedent and within the powers of an Article III court

"When an executive acts ultra vires, courts are normally available to reestablish the limits on his authority." *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988). Plaintiffs' ultra vires claims are based on the axiom that the President's power to issue executive orders "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube*, 343 U.S. at 582, 585–88 (holding as unconstitutional President's order directing seizure of nation's steel mills). "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes." *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). Consequently, neither the President nor executive agencies may issue orders that violate the Constitution or specific statutory commands set by Congress. "Equitable actions to enjoin *ultra vires* official conduct . . . seek a judge-made remedy for injuries stemming from unauthorized government conduct, and they rest on the historic availability of equitable review." *Sierra Club v. Trump*, 963 F.3d 874, 890–91 (9th Cir. 2020) (citing *Armstrong*, 575 U.S. at 327), *vacated and remanded on other grounds (mootness)*, 142 S. Ct. 46 (2021) (quotation omitted).

Granting traditional injunctive relief against ultra vires actions "is consistent with [the Court's] longstanding precedent." *Sierra Club*, 963 F.3d at 892. *See, e.g.*, *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 110–11 (1902) (instructing court to temporarily enjoin ultra vires order, "[o]therwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law"); *Panama Refining Co.*, 293 U.S. at 433; *Am. Fed'n of Gov't Emps. v. Trump*, 139 F.4th 1020, 1033–34 (9th Cir. 2025) (denying stay of injunction of ultra vires executive order pending appeal), *stayed sub nom. Trump v. Am. Fed'n of Gov't Emps.*, 145 S. Ct. 2635 (2025); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d 19, 110 (D.D.C. 2025), *stay denied in part and granted in part*, No. 25-5243, Per Curiam Order (D.C. Cir. Aug. 1, 2025) (narrow injunction prohibiting implementation of Presidential Proclamation); *Fed. Educ. Ass'n v. Trump*, 795 F. Supp. 3d 74, 103 (D.D.C. 2025) (granting preliminary injunction for ultra vires executive order); *Fed. Educ. Ass'n v. Trump*, No. 25-5303, 2025 WL 2738626 (D.C. Cir. Sept. 25, 2025) (denying stay of preliminary injunction for ultra vires executive order); *Newsom v. Trump*, 797 F. Supp. 3d 1092, 1129, 1131–32 (N.D. Cal. 2025) (issuing injunctive relief to cease ultra vires actions in violation of Posse Comitatus Act); *Newsom v. Trump*, No. 25-CV-04870-CRB, 2025 WL 3533818, at *19 (N.D. Cal. Dec. 10, 2025) (granting preliminary injunction on, *inter alia*, ultra vires grounds and enjoining deployment

of National Guard). That traditional injunctive relief is available to redress ultra vires action makes sense, because those actions are, by their nature, beyond the scope of executive authority. *See Murphy Co. v. Biden*, 65 F.4th 1122, 1129–31 (9th Cir. 2023) (President's actions reviewable for constitutionality as ultra vires); *California v. Trump*, No. 25-CV-10810-DJC, 2025 WL 2663106, at *7 (D. Mass. Sept. 17, 2025) (ultra vires challenge against Executive Orders valid cause of action). Accordingly, an injunction enjoining the EOs is well within the district court's power.

2. Plaintiffs' requested injunction is substantially likely to redress Plaintiffs' injuries-in-fact from ultra vires acts

As with Plaintiffs' Fifth Amendment claims, to satisfy the redressability prong for their ultra vires claims, Plaintiffs need not show that their requested remedy will result in complete relief for every injury, *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982), nor that there is "a 'guarantee' that their injuries will be redressed by a favorable decision." *Mecinas v. Hobbs*, 30 F.4th 890, 900 (9th Cir. 2022) (quoting *Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012)). "Partial amelioration of a harm" suffices, as it does for all injuries. *Matsumoto*, 122 F.4th at 801. In dismissing the Complaint, the district court held Plaintiffs established injury-in-fact, and that Plaintiffs' injuries were "sufficiently tied to the Challenged EOs." 1-ER-18–19, 1-ER-22–23. The district court did not analyze or rule on whether Plaintiffs' requested remedies for their ultra vires claims—injunctions prohibiting implementation or

enforcement of the EOs—were substantially likely to provide partial relief, as Plaintiffs alleged and supported with evidence. *See infra* Section III.D.

Instead of looking to the specific relief Plaintiffs sought in connection with their ultra vires claims, claims for relief not present in *Juliana*, the district court grouped together all the relief sought in the Complaint and Plaintiffs' motion for a preliminary injunction, improperly characterizing it as a request "to scrutinize every climate-related agency action taken since January 20, 2025, to determine whether it was implemented pursuant to the Challenged EOs[.]" 1-ER-29. While the court acknowledged the Complaint "name[s] several regulations and allegedly actions taken pursuant to the Challenged EOs," it determined it could not ascertain how many actions would be "swept up in any order." 1-ER-31. The court thus held that, under *Juliana*, it lacked the power to award *that type* of broad-ranging injunction.

Thus, not only did the district court misconstrue the scope of the injunctive relief requested by conflating the relief sought by Plaintiffs in the Complaint with the preliminary injunction motion, it failed to consider whether it could fashion an equitable remedy that provided Plaintiffs with at least partial relief to their acknowledged injuries-in-fact caused by Defendants' ultra vires acts. This ignored the Supreme Court's instruction that "[i]f a defendant's action causes an injury, enjoining the action . . . will typically redress that injury." *Food & Drug Admin.*, 602 U.S. at 381. Plaintiffs' requested injunction enjoining operation of the Challenged

EOs would provide a cognizable remedy that will at least partially ameliorate their injuries inflicted by the EOs. *See Matsumoto*, 122 F.4th at 801.

As an illustration, pertaining to Claim 4, in 1990, Congress enacted the Global Change Research Act (Pub. L. 101-606), mandating the creation of the USGCRP and issuance of the NCA to "understand, assess, predict, and respond to" climate change. 15 U.S.C. § 2931(b); 15 U.S.C. § 2933 ("The President shall establish" the USGCRP); 15 U.S.C. § 2936 (USGCRP "shall prepare and submit to the President and the Congress" the NCA); 6-ER-1298. The USGCRP is required to release an NCA every four years to the U.S. government. 6-ER-1298. Plaintiffs allege Defendants "Office of the President and NASA are dismantling the USGCRP and NCA to carry out the EOs directives." *Id*. This "means the sixth NCA will not move forward or be published, despite the congressional mandate." 6-ER-1299. "Without a 2027 NCA, Plaintiffs . . . will be forced to rely on the increasingly outdated information from the 2023 NCA[,]" leaving Plaintiffs unable to protect themselves "from climate change, whose risks are rapidly escalating." *Id*. For instance, Plaintiff Delaney "is immediately harmed by the canceling of the NCA because she planned to consult the 2027 NCA to create strategies for reducing GHG emissions, educating others, and restoring a stable climate system." 6-ER-1299–1300; *see also* 1-ER-15. "Plaintiffs are immediately harmed by" the NCA cancellation and "their inability to access congressionally-mandated information that supports their efforts to protect

their rights from government action that threatens their climate." 6-ER-1300. "No statute authorizes the termination of the NCA," 6-ER-1330–31, which is occurring under the Challenged EOs, and the President is without constitutional authority to "amend" or "repeal statutes." *Clinton*, 524 U.S. at 438.

By terminating the USGCRP, canceling all relevant NCA contracts, and firing all staff working on the NCA, "Defendants exceed[ed] their authority under the Constitution" because those actions "violate the separation of powers . . . the Take Care Clause, and the Presentment Clause." 6-ER-1298–99, 6-ER-1330–31. There is no other adequate remedy at law or statutory review mechanism to challenge these ultra vires acts. 6-ER-1331. Taking those allegations as true, and based on the district court's conclusion that the Challenged EOs cause injuries to these Plaintiffs, a traditional injunction enjoining implementation and enforcement of the EOs is not just "substantially likely" to redress Plaintiffs' injuries—it is certain to do so, because the EOs themselves are the direct source of Plaintiffs' harm.

On de novo review, this Court can plainly determine from Plaintiffs' unrefuted factual allegations taken as true that their injunctive relief requests for their ultra vires claims satisfy redressability. Alternatively, because the district court failed to analyze Plaintiffs' ultra vires claims separately, this Court could reverse and remand.

D. Injunctive Relief against Executive Order Implementation Is Workable and Within the Court's Power to Award

The district court erred by holding that it could not redress Plaintiffs' injuries through injunctive relief because the requested injunction was allegedly "unworkable" and beyond the power of an Article III court to award. 1-ER-29. The district court based its redressability holding on the speculative notion that an injunction would require "monitoring" of many agency actions and would potentially enjoin future actions not presently before the court. 1-ER-29, 1-ER-31. The district court also based its decision on a concern that enjoining the EOs would revert to and somehow lock in the prior administration's policies, and the court was unclear on how to craft an injunction with reasonable specificity. 1-ER-30–33. In making its decision, the district court relied on distinguishable and inapplicable caselaw and did not analyze the actual scope of requested injunctive relief in Plaintiffs' Complaint, its ability to fashion narrower injunctive relief, or its discretion to deny injunctive relief after a merits decision without stripping Plaintiffs of their standing. Further, similar concerns to those raised by the district court have already been addressed by courts across the country in other contexts, where they have repeatedly granted the type of injunctive relief that Plaintiffs request here. The requested injunctive relief in Plaintiffs' Complaint would redress Plaintiffs' injuries, is manageable, and is within the traditional equitable power of an Article III court. *See supra* Section III.A.–C.

Just because the Administration is moving at breakneck speed to implement numerous unconstitutional actions does not mean courts have no power to redress injuries caused by those actions. While the district court expressed concern that the requested injunction would require scrutiny over "every climate-related agency action taken since January 20, 2025," 1-ER-29, 1-ER-32, that overstates Plaintiffs' requested relief, which seeks to enjoin Defendants from implementing or enforcing the Challenged EO provisions deemed unconstitutional. Moreover, courts across the country, including this Court, have engaged in the task of reviewing dozens to hundreds of agency actions taken since January 20, 2025, while reviewing the Administration's rapid-fire actions on other issues. *See, e.g.*, *Washington*, 145 F.4th at 1023; *Drs. for Am. v. Off. of Pers. Mgmt.*, 793 F. Supp. 3d 112, 135 (D.D.C. 2025) (hundreds of removals of webpages were fairly traceable to the administration's implementation of Executive Order); *Am. Fed'n of Gov't Emps., AFL-CIO v. Trump*, 782 F. Supp. 3d 793, 812 (N.D. Cal. 2025), *stayed sub nom. Trump v. Am. Fed'n of Gov't Emps.*, 145 S. Ct. 2635 (2025) (thousands of terminations traceable to implementation of Executive Order); *New York v. Kennedy*, 789 F. Supp. 3d 174, 193–97 (D.R.I. 2025), *stay denied*, 155 F.4th 67, 77 (1st Cir. 2025). The number of implementing actions at issue does not preclude a court from redressing an injury. *See, e.g.*, *Drs. for Am.*, 793 F. Supp. 3d at 135–36 (declaring agency guidance unlawful and ordering defendants to restore the resulting bulk webpage removals

redresses plaintiffs' injuries). Courts always retain the ability to order defendants to file reports concerning relevant agency actions, or order plaintiffs to file additional information, as demonstrated by numerous court orders in 2025.[6]

The three cases the district court cited do not support the principle that courts may disclaim their Article III power and deny Plaintiffs' standing based on the number of potential implementing actions by Defendants in carrying out the unlawful policies. *See* 1-ER-29–30 (citing *Juliana*, 947 F.3d at 1172, *Nat. Res. Def. Council, Inc. v. EPA*, 966 F.2d 1292 (9th Cir. 1992), and *Rucho v. Common Cause*, 588 U.S. 684 (2019)). In two of the cited cases, standing was not an issue. *Nat. Res. Def. Council*, 966 F.2d at 1297, 1300 (holding plaintiffs satisfied standing and awarding declaratory relief); *see generally Rucho*, 588 U.S. at 693 (no standing issue). In *Rucho*, the dismissal turned instead on a political question doctrine analysis where the Court focused on the standard principle "that [sometimes] the judicial

[6] *See, e.g.*, *Am. Fed'n of Gov't Emps., AFL-CIO v. U.S. Off. of Pers. Mgmt.*, No. 25-cv-1237, Preliminary Injunction at 2 (S.D.N.Y. June 20, 2025) (ordering defendant to file a report of all of defendants' actions related to plaintiffs' challenge within four weeks of the injunction); *Ass'n of Am. Univs. v. Dep't of Def.*, 792 F. Supp. 3d 143, 184 (D. Mass. 2025) (ordering plaintiffs to file a list of affected universities within three days of the injunction); *Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. 25-3417, 2025 WL 3465518, at *37 (D.D.C. Dec. 2, 2025) (ordering written reports and regular meet-and-conferrals to ensure compliance with the injunction given the uncertainties on the specifics of the challenged conduct); *Am. Ass'n of Univ. Professors v. Trump*, No. 25-cv-07864, 2025 WL 3187762, at *38 n.26 (N.D. Cal. Nov. 14, 2025) ("The parties should work together to identify any information needed to effectuate the preliminary injunction entered in this case.").

department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches or involves no judicially enforceable rights." 588 U.S. at 696 (citing *Vieth v. Jubelirer*, 541 U.S. 267 (2004)), 699–703. Unlike in *Rucho*, here, the district court did not find the content of the Challenged EOs constitutionally entrusted to any political branch. They are not. Nor did the district court disavow the judicially enforceable rights at stake, including Plaintiffs' Fifth Amendment fundamental right to life. The court's remaining citation to *Juliana* is distinguishable, as the requested relief was a mandatory injunction that would require court supervision for "decades," and the plaintiffs there had in fact requested continuing court jurisdiction as a remedy. 947 F.3d at 1172;[7] *see supra* Section I. None of the cited cases speaks to the standing facts and requested traditional injunctive relief actually presented here.

[7] While the district court's concern on decades-long supervision does not hold up to the facts of Plaintiffs' case—which only deals with actions of this administration since January 2025—it is worth noting that some supervision following injunctive relief is standard. *Sys. Fed'n No. 91, Ry. Emp. Dep't, AFL-CIO v. Wright*, 364 U.S. 642, 647 (1961) ("an injunction often requires continuing supervision by the issuing court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained that equitable relief"). The monitoring for new actions that may contravene an injunction does not fall onto the court's shoulders; it is up to Plaintiffs to monitor and review, and, if appropriate, seek enforcement. *See, e.g.*, *New York v. Trump*, 777 F. Supp. 3d 112, 118–20 (D.R.I. 2025) (granting motion to enforce preliminary injunction based on evidence of defendants' actions after relief was issued).

There are also no specificity concerns with Plaintiffs' requested injunctive relief. 1-ER-32–33. Plaintiffs' Complaint requested a "permanent injunction enjoining Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing Executive Orders 14154 §§ 1–3, 5, 7; 14156; and 14261 §§ 2–3, 5–7." 6-ER-1338. This type of language has been used by courts across the nation in 2025 to enjoin actions and executive orders of the administration, even without a set definition of "implementation" or "enforcement." *See, e.g.*, *California v. Trump*, 786 F. Supp. 3d 359, 396–97 (D. Mass. 2025); *Washington v. Trump*, 768 F. Supp. 3d 1239, 1282 (W.D. Wash. 2025); *N.H. Indonesian Cmty. Support v. Trump*, 765 F. Supp. 3d 102, 112 (D.N.H. 2025), *aff'd in part*, 157 F.4th 29, 36 (1st Cir. 2025); *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 225 (D.D.C. 2025) (preliminary injunction); *League of United Latin Am. Citizens v. Exec. Off. of President*, No. CV 25-0946, 2025 WL 3042704, at *38 (D.D.C. Oct. 31, 2025) (permanent injunction); *Doe v. Trump*, 766 F. Supp. 3d 266, 290 (D. Mass. 2025), *aff'd* 157 F.4th 36 (1st Cir. 2025); *City of Seattle v. Trump*, No. 2:25-cv-01435, 2025 WL 3041905, at *12 (W.D. Wash. Oct. 31, 2025). As the Supreme Court has long held, enjoining unlawful practices under general language is "often necessary to prevent further violations where a proclivity for unlawful conduct has been shown." *McComb v. Jacksonville*, 336 U.S. 187, 192 (1949). If the general injunction

language subsequently proves too unwieldy, there is always a solution: defendants can petition the district court "for a modification, clarification or construction of the order." *Id.* And as this Court recently confirmed, "[t]he ultimate scope of an injunction is reviewed for abuse of discretion and is based on the merits—'not redressability.'" *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 958 (9th Cir. 2025).

Plaintiffs' Complaint separately requests a "permanent injunction mandating that Defendants rescind all agency-wide directives applying, implementing, and effectuating Executive Orders 14154 §§ 1–3, 5, 7; 14156; and 14261 §§ 2–3, 5–7 prior to this injunction." 6-ER-1338. Courts across the country have also used similar language to enjoin actions of the Administration. *Elev8 Baltimore*, Dkt. 46, Order at 1 (injunction requiring defendants to "rescind any reduction-in-force (RIF) notices issued to [] employees since April 15, 2025"); *Martin Luther King, Jr. Cnty. v. Turner*, 785 F. Supp. 3d 863, 893–94 (W.D. Wash. 2025) (injunction requiring defendants to "treat any actions taken to implement or enforce the CoC Grant Conditions of any materially similar terms . . . as null, void, and rescinded"); *Colorado v. U.S. Dep't of Health & Hum. Servs.*, 788 F. Supp. 3d 277, 315 (D.R.I. 2025) ("The Enjoined Parties shall immediately treat any actions taken to implement or enforce the Public Health Funding Decision, including any funding terminations, as null and void and rescinded."); *Rhode Island v. Trump*, No. 1:25-cv-00128,

Preliminary Injunction at 2 (D.R.I. May 13, 2025) ("The Agency Defendants must promptly take all necessary steps to reverse any policies, memoranda, directives, or actions issued before this Order that were designed or intended, in whole or in part, to implement, give effect to, comply with, or carry out the directives contained in Executive Order 14238"), *permanent injunction granted*, 2025 WL 3251113, at *19 (D.R.I. Nov. 21, 2025); *City of Seattle*, 2025 WL 3041905, at *12 (enjoining defendants to "immediately treat any actions taken to implement or enforce Section 3(b)(iv) of the Anti-Diversity Order and Section 3(g) of the Gender Order against Seattle as null, void, and rescinded").

The district court also neglected the fact that Plaintiffs' "proposed injunction does not control whether [their] claims are redressable." *Kirola v. City & Cnty. of S.F.*, 860 F.3d 1164, 1176 (9th Cir. 2017). This is because "the district court was not limited to Plaintiffs' suggestions and had the authority to create its own remedy," based on the evidence presented. *Day*, 152 F.4th at 968. It is well-established that the district court "need not grant the total relief sought by the applicant but may mold its decree to meet the exigencies of the particular case." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017); *see also, e.g.*, *New York v. Trump*, 767 F. Supp. 3d 44, 84–85 (S.D. N.Y. 2025) (refusing to award plaintiffs requested injunction against this administration's actions, instead granting a narrower injunction).

Instead of following these principles, the district court analyzed the broadest potential injunction (one that Plaintiffs did not seek), and treated that potential injunction as dispositive of whether Plaintiffs' claims are redressable. *Compare* 1-ER-29–30 (court's analysis untethered to the EOs) *with* 6-ER-1338 (Plaintiffs' requested injunctive relief tied to EOs); *see also* 5-ER-1211. Indeed, the district court's redressability analysis was divorced from the Complaint's actual request for relief. 1-ER-27, 1-ER-30. The district court did not examine if other, narrower forms of injunctive relief could be awarded, such as a prospective injunction barring future implementation of the Challenged EOs, an injunction targeted at specific EO subsections, or an injunction stopping specific implementation actions shown to be particularly injurious to the Plaintiffs.

The district court was "troubled" that invalidating the Challenged EOs would "order the United States to return to the environmental policy of the previous administration," something Plaintiffs did not seek. 1-ER-30; *compare* 6-ER-1338. Enjoining any administration's EOs on constitutional grounds does, of course, alter the legal landscape in which the administration operates—that is what courts do in resolving constitutional disputes. But that does not mean that the enjoining court is choosing the specific policy of the Nation. It is simply exercising judicial power to tell the Executive what it may *not* do under the Constitution. *See, e.g.*, *Washington*, 768 F. Supp. 3d at 1280 (rejecting argument that injunction should not issue because

it would "effectively disable the President and federal agencies from effectuating the President's agenda" (quotation omitted)); *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1330 (Fed. Cir. 2025) ("We are not addressing whether the President's actions should have been taken as a matter of policy . . . the only issue we resolve . . . is whether the Trafficking Tariffs and Reciprocal Tariffs imposed by the Challenged Executive Orders are authorized").

Hypothetical future lawful actions the administration may take should not affect the redressability analysis, and do not legalize ongoing actions that are unconstitutional. The district court speculated that because the Administration may subsequently choose to rely on different lawful "considerations" to take actions which prioritize fossil fuels, the district court would be required to "pass judgment on the sufficiency of the government's response to [its] order" and engage in policymaking. 1-ER-30. Not so. Even if the Administration subsequently chose to promote fossil fuels by relying on authorities other than the Challenged EOs, those hypothetical actions are not at issue in this suit. For purposes of analyzing redressability in *this* case, the court must take as true that Defendants are expressly using the EO directives as the legal basis to unleash fossil fuels. *See, e.g.*, 6-ER-1274, 6-ER-1276–77, 6-ER-1281–82, 6-ER-1297; 5-ER-1148, 5-ER-1159.

The district court's exact reasoning has already been rejected by the Supreme Court, which held a plaintiff has standing to assert that the defendant "based its

decision upon an improper legal ground" even if the defendant "might later, in the exercise of its lawful discretion, reach the same result for a different reason." *Gutierrez*, 606 U.S. at 320 (quoting *FEC v. Akins*, 524 U.S. 11, 25 (1998)); *see also S.F. AIDS Found. v. Trump*, 786 F. Supp. 3d 1184, 1210–11 (N.D. Cal. 2025) ("speculation that the Defendant agencies might nevertheless still terminate Plaintiffs' funding for other reasons does not defeat redressability at this stage"); *Climate United Fund v. Citibank, N.A.*, 778 F. Supp. 3d 90, 106 (D.D.C. 2025) (rejecting defendant's redressability argument that EPA could withhold funds under other lawful means because such a "hypothetical possibility has no bearing on redressability"), *administratively stayed pending reh'g en banc*, No. 25-5122, 2025 WL 3663661 (D.C. Cir. Dec. 17, 2025).[8]

Because the district court did not confine its analysis to the Complaint's requested relief and did not consider any forms of partial relief, the district court could not accurately hold that Plaintiffs' injuries are not redressable. Solutions exist for every workability, policymaking, and specificity concern raised by the district court. The district court simply did not address them.

[8] Some courts have found a way around this hypothetical through specific injunction terms. *See, e.g.*, *PFLAG, Inc. v. Trump*, 769 F. Supp. 3d 405, 455 (D. Md. 2025) (enjoining defendants from, among other things, taking "any steps to implement, give effect to, or *reinstate under a different name* the directives in Section 3(g) of Executive Order 14,168 or Section 4 of Executive Order 14,187" (emphasis added)).

IV. Alternatively, Plaintiffs Should be Granted Leave to Amend the Complaint to Cure Any Possible Redressability Defects

The district court erred by dismissing the Complaint without leave to amend. 1-ER-34. A "court should freely give leave [to amend the complaint] when justice so requires." Fed. R. Civ. P. 15(a). "Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment." *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991). The black-letter law summarized in Sections II and III, *supra*, shows that courts have the power to issue declarations and injunctions against unconstitutional executive orders, so long as such relief does not invade the executive branch's lawful discretion or otherwise exceed jurisdictional constraints. Accordingly, there must be *some* declaration or injunction against the unconstitutional EOs capable of providing even partial redress to Plaintiffs' injuries that the district court found traceable to Defendants' ongoing implementation of the Challenged EOs. *See* 1-ER-19, 1-ER-22–23. Even relief that equates to a single dollar in benefit suffices for standing. Because such a declaration or injunction must exist, amendment here cannot be futile. Leave to amend "should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962).

CONCLUSION

The order of dismissal should be reversed. In this case about Executive Orders depriving children of their right to life, at minimum, a "court declaration delineates

important rights and responsibilities and can be 'a message not only to the parties but also to the public and has significant educational and lasting importance.'" *Nat. Res. Def. Council*, 966 F.2d at 1299 (quoting *Bilbrey by Bilbrey v. Brown,* 738 F.2d 1462, 1471 (9th Cir. 1984)). Respectfully, this Court should take the district court up on its invitation to "return . . . this case [to it] to decide it on the merits." 1-ER-34.

Date: January 12, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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The undersigned attorney or self-represented party states the following:

- (•) I am unaware of any related cases currently pending in this court.
- ( ) I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.
- ( ) I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Signature s/ Julia Olson **Date** Jan 12, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-6714

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This brief contains 13994 **words,** including _____ words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

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