Nos. 14-1167 and 14-1217

IN THE

Supreme Court of the United States

ANADARKO PETROLEUM CORPORATION;
BP EXPLORATION & PRODUCTION INC.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, BUSINESS ROUNDTABLE, TEXAS OIL AND GAS ASSOCIATION, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, AND AMERICAN PETROLEUM INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONS FOR WRIT OF CERTIORARI

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, from every region of the country. The Chamber advocates for its members' interests before Congress, the Executive Branch, and the courts, and regularly files *amicus curiae* briefs in cases raising issues of concern to the Nation's business community.

The National Association of Manufacturers ("NAM") is the largest industrial trade association in the United States, representing over 12,000 small, medium, and large manufacturers in all 50 states. NAM is the leading voice in Washington, D.C., for the manufacturing economy, which provides millions of high-wage jobs in the United States and generates more than $1.6 trillion in GDP. In addition, two-thirds of NAM members are small businesses, which serve as the engine for job growth. NAM's mission is to

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici*, their members, or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2(a), counsel for *amici* represent that all parties were provided notice of *amici's* intention to file this brief at least 10 days before its due date. Pursuant to Rule 37.2(a), counsel for *amici* represent that all parties have consented to the filing of this brief. Petitioners have filed a letter granting blanket consent to the filing of *amici* briefs; written consent of respondent to the filing of this *amici* brief is being submitted contemporaneously with this brief.

enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth.

The Business Roundtable ("BRT") is an association of chief executive officers of leading U.S. companies that together have $7.4 trillion in annual revenues and more than 16 million employees. The BRT's member companies comprise more than a third of the total value of the U.S. stock market and pay more than $200 billion in dividends to shareholders. The BRT was founded on the belief that businesses should play an active and effective role in the formation of public policy, and participate in litigation as *amici curiae* where important business interests are at stake.

The Texas Oil and Gas Association ("TXOGA") is a non-profit corporation representing the interests of the oil and gas industry in the State of Texas. Founded in 1919, TXOGA is the largest and oldest petroleum organization in Texas, representing more than 5,000 members. The membership of TXOGA produces in excess of 90 percent of Texas's crude oil and natural gas, operates nearly 100 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines.

Since 1929, the Independent Petroleum Association of America ("IPAA") has served as a voice for the exploration and production segment of America's oil and natural gas industry, and advocates its members' views before the Congress, the Administration, and federal agencies. Today, IPAA represents more than 10,000 independent oil and natural gas producers and service companies across the United States. Independent producers develop 95 percent of the

nation's oil and natural gas wells, produce 54 percent of domestic oil, and produce 85 percent of domestic natural gas. The typical independent has been in business for twenty-three years and employs twelve full-time and two part-time employees. IPAA's members support more than two million direct jobs in the United States.

The American Petroleum Institute ("API") is a national trade association that represents all aspects of America's oil and natural gas industry. API's more than 600 corporate members, from the largest major oil company to the smallest of independents, come from all segments of the industry. They are producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry.

This case presents a question of vital importance to the Chamber, NAM, BRT, TXOGA, IPAA, and API (collectively "*amici*") and their members: under the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(7), when can a "vessel, onshore facility or offshore facility" be held strictly liable for a "discharge" of oil or hazardous substances into the environment.

The answer to this question has tremendous consequences for *amici's* members, the Nation's energy sector, and, as a result, the national economy. The six judges who dissented from the denial of rehearing en banc noted "the exceptional importance of the underlying issue." Anadarko Pet. App. 65a. The Fifth Circuit's erroneous interpretation of the CWA has introduced great uncertainty for investment in the Nation's critical energy infrastructure—a deeply troubling reality independent of the Government's request for a record-breaking $15 billion in civil

penalties from Petitioners based on the ruling. Indeed, in light of the Government's increasingly aggressive use of civil-penalty statutes across industries, the Fifth Circuit's flawed approach to interpreting the CWA penalty provision—especially its refusal to construe ambiguities against the Government as the rule of lenity requires—sets a dangerous precedent for the Nation's business community that extends far beyond the energy sector.

Amici have participated in many cases addressing the proper interpretation of the CWA. *See, e.g., Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009); *Sackett v. EPA*, 132 S. Ct. 1367 (2012); *Los Angeles Cnty. Flood Control Dist. v. NRDC*, 133 S. Ct. 710 (2013); *Decker v. Nw. Envtl. Def. Ctr.*, 133 S. Ct. 1326 (2013); *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). Amici have both a unique perspective on the question presented and a substantial interest in ensuring that the CWA is interpreted consistent with Congress' design.

INTRODUCTION AND SUMMARY

The economic impact of the decision below extends far beyond the companies involved in the *Deepwater Horizon* incident. The Fifth Circuit's erroneous interpretation of when an entity can be held *strictly* liable for a "discharge of oil or hazardous substances," 33 U.S.C. § 1321,[2] has significant implications for the Nation's energy sector and, by implication, the

[2] Only the CWA's strict-liability penalty provision, 33 U.S.C. § 1321(b)(7), is at issue here. Under Section 1319, the CWA also imposes civil and criminal penalties on "any person" who violates the no-discharge provision of Section 1321, but the severity of those penalties varies based on scienter and other factors. *See id.* § 1319(c).

entire national economy. The vast majority of energy operations that could be subject to Section 1321 in the offshore context are located within the Fifth Circuit's borders. *See* BP Pet. 17-18. Many CWA penalty actions, moreover, settle prior to judicial review. The Fifth Circuit's broad, confusing, and erroneous interpretation thus gives the Government substantially more negotiating power to obtain penalties that exceed what Congress intended under the CWA.

As *amici's* members have experienced firsthand, the Fifth Circuit's erroneous interpretation has introduced great confusion and uncertainty to our Nation's energy sector and substantially raised the risk of investing in the future of our national energy infrastructure. This tremendous confusion is magnified by the eye-popping and unprecedented penalties at stake in this case. Based on the Fifth Circuit's erroneous interpretation of the CWA, the Government seeks nearly $15 *billion* in civil penalties from Petitioners, which is in addition to over $1 *billion* already obtained via civil settlement from others involved in the *Deepwater Horizon* oil spill. *See* Anadarko Pet. 3; BP Pet. 1, 5, 10.[3] Prior to this incident, the largest civil penalty paid under the CWA was $34 *million*. By comparison, the largest civil penalty under the Clean Air Act was $100 *million*. And, in 2014, the total amount collected by the Government from civil suits brought on behalf of the EPA was $56 *million*. *See* BP Pet. 15-16.

[3] This $15-billion figure for CWA civil penalties should not be confused with the tens of billions already paid by Petitioners and others involved in the *Deepwater Horizon* incident. For instance, BP has paid over $35 billion, including $14 billion for clean-up efforts, nearly $17 billion in legal claims, and $4 billion as part of a criminal plea agreement. *See* BP Pet. 16-17.

The specter of unpredictable, break-the-bank civil penalties that are in addition to cleanup costs, damages from private civil suits, and criminal penalties, only serves to exacerbate the chilling effect that the Fifth Circuit's erroneous decision will have on energy investment. The Nation's business community thus needs a clear, certain, and correct interpretation of the CWA. Accordingly, this Court should grant the Petitions and reverse the decision below. *Amici* focus on two of the many reasons for reversal.

First, the lower courts' (and the Government's) approach to interpreting Section 1321 of the CWA contradicts this Court's settled guidance. Instead of applying traditional tools to interpret whether the statute applies to the conduct at issue, the courts bent over backward to rewrite the statute to hold Petitioners liable for penalties under the CWA. As the six-judge dissent noted, the Fifth Circuit panel's original opinion and its peculiar supplemental opinion advance different and conflicting interpretations of the statute. Anadarko Pet. App. 66a-67a. Not only does the panel's approach depart from the statutory text, but "it implicates a significantly broader swath of potentially liable actors" than Congress contemplated when enacting the CWA. *Id.* at 67a.

Second, while the Fifth Circuit's backwards approach to statutory interpretation should not be condoned generally, it is particularly inappropriate in the context of a penalty statute. As the six-judge dissent observed, the panel's opinions make clear that the panel believed the statute was ambiguous, and thus it should have followed the "clear line of precedent . . . holding that ambiguities in civil-penalty statutes should be resolved in favor of the defendant."

Anadarko Pet. App. 66a (citing cases). This rule of lenity is particularly important in contexts such as the CWA where many actions settle (or plead out in the criminal context), so as to properly constrain the Government's leverage in such negotiations to force settlements or pleas that are not within the clear bounds of its statutory authority.

The Fifth Circuit's decision turns statutory interpretation on its head. Without further review, the confusion and uncertainty created by the decision below will continue to raise the risk of investing in the Nation's critical energy infrastructure. And the Fifth Circuit's flawed approach of interpreting penalty statutes in favor of the Government poses a serious threat to the Nation's business community by giving the Government even more power to seek penalties that exceed any clear grant of statutory authority. The economic repercussions of the Fifth Circuit's erroneous interpretation of the CWA make these Petitions particularly worthy of this Court's attention.[4]

[4] No doubt the Government will emphasize the interlocutory posture of the case that may ordinarily counsel against review. Further percolation, however, is not warranted, as the question is one of statutory interpretation that the ongoing proceeding will not alter. *See* Anadarko Pet. 21 n.5, 22-24; BP Pet. 15 n.*. Moreover, because the Fifth Circuit geographically covers—and thus legally binds—the vast majority of energy operations where Section 1321 penalties could arise in the offshore context and such penalties are often settled before judicial review, *see* BP Pet. 17-18, it would be unwise to wait for even more confusion to develop among the lower courts. The stakes are too high for the national economy to delay further review.

ARGUMENT

I. The Fifth Circuit's Interpretation of the Clean Water Act Is Confusing, Overbroad, and Internally Inconsistent

As the six judges dissenting from denial of rehearing en banc asserted, this case merits further review not only because of "the exceptional importance of the underlying issue," Anadarko Pet. App. 65a, but also because of the panel's exceptionally poor interpretation of the CWA. In particular, the Fifth Circuit panel's interpretation "does not follow from the text of the CWA," and "the panel's supplementary opinion conflicts with the panel opinion." *Id.*

Indeed, the dissent only scratches the surface of the "interpretation" mischief in which the Government and lower courts have engaged in this case. In total, four different and conflicting interpretations were advanced in the proceedings below in an effort to rewrite the statute to find Petitioners (and others) liable for the *Deepwater Horizon* incident.[5]

Before turning to those shifting interpretations, it is important to start with the text of the statute. Section 1321 of the CWA provides:

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[5] This brief presents a 10,000-foot view of the statutory framework and the various interpretations advanced below. For a comprehensive account, see BP Pet. 1-13 and Anadarko Pet. 4-10. *Amici* take no position on the correct interpretation of Section 1321. For purposes of this brief, it is sufficient to highlight the plain errors in the interpretations advanced by the Government and lower courts.

> Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or off-shore facility *from which* oil or a hazardous substance is *discharged* in violation of [33 U.S.C. § 1321(b)(3)], shall be subject to a civil penalty in an amount up to $25,000 per day of violation or an amount up to $1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

33 U.S.C. § 1321(b)(7)(A) (emphases added). The CWA further defines "discharge" as used in Section 1321: the term "includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping . . . ." *Id.* § 1321(a)(2).

1. The Government's Interpretation. In filing suit for civil penalties against Petitioners and others for the *Deepwater Horizon* incident, the Government argued that the same oil should be regarded as "discharged" "from" both the *Deepwater Horizon* Vessel (owned by Transocean) and the Macondo Well (owned by Petitioners). *See* Anadarko Pet. App. 52a-53a. The Government argued that the Well owners should be held strictly liable because the oil the Vessel discharged first passed through the Well and, thus, "discharged" "from" the Well (in addition to from the Vessel). *See id.* at 39a, 52a-53a.

2. The District Court's Interpretation. The District Court rejected the Government's sweeping interpretation that would have allowed multiple entities to be held strictly liable for a single discharge of oil. Instead, the District Court concluded that oil "discharged" "from" the Well alone because the Well was the "source of the uncontrolled movement of oil." *Id.* at 56a & n.28. This interpretation of "discharged" "from" seemed to rewrite the statute to include, among

other things, a "profit directly" standard. *See id.* at 58a (noting that Petitioners as Well owners "stood to profit directly from the oil it produced," whereas the Vessel owner "did not stand to profit directly from the oil").

3. The Panel's First Interpretation. The Fifth Circuit did not adopt the District Court's novel interpretation. Instead, the court interpreted Section 1321 such that "a vessel or facility is a point 'from which oil or a hazardous substance is discharged' if it is a point at which controlled confinement is lost." *Id.* at 7a. The court found Petitioners liable as Well owners because it erroneously believed there was "no genuine dispute that controlled confinement was lost when this cement [that was intended to seal the Well] failed." *Id.*

As the six-judge dissent properly noted, the "'loss of controlled confinement' test is inconsistent with the text of the CWA" because it expands "discharge" beyond the statutory definition of " 'spilling, leaking, pumping, pouring, emitting, emptying or dumping.' " *Id.* at 65a (quoting 33 U.S.C. § 1321(a)(2)).[6] And, as Petitioners further detail, the panel's definition of "discharge" departs from the term's ordinary meaning and conflicts with how this Court and other circuits have interpreted "discharge" in other CWA contexts. *See, e.g.*, Anadarko Pet. 10-12.

It is thus reasonable to conclude that the Fifth Circuit panel did not engage in traditional statutory

[6] To be sure, the statutory definition of discharge under Section 1321 is inclusive—not exclusive—but none of the terms listed in the definitional section is remotely similar to the panel's "loss of controlled confinement" approach. *See generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 195-198 (2012) (discussing the venerable *noscitur a sociis* canon, which instructs that "associated words bear on one another's meaning").

interpretation but, instead, attempted to find some way to rewrite the statute to hold Petitioners strictly liable for the *Deepwater Horizon* oil discharge.

4. The Panel's Supplemental Interpretation. The panel's subsequent interpretation reinforces this conclusion that the panel did not engage in conventional statutory interpretation.

In their petition for rehearing en banc, Petitioners raised a critical—indeed, dispositive—factual error in the panel's opinion. Contrary to the panel's assumption that controlled confinement was lost when the cement failed, it is undisputed that the Well was never sealed by cement, so no cement seal could have "failed." Anadarko Pet. App. 16a. As the six-judge dissent concluded, under the panel's "loss of controlled confinement" test, "the Well—which was not designed to confine hydrocarbons—never confined hydrocarbons at all," so there could not have been a loss of controlled confinement in the Well. *Id.* at 66a.

Instead of confessing error at that point and concluding that Petitioners could not be held strictly liable under the panel's already novel interpretation of the CWA, the Fifth Circuit panel issued a supplemental opinion in which the panel boldly declared that its admitted error was "immaterial": control was lost in the Well because "the cement in the Well ultimately failed to stop the flow of oil." *Id.* at 16a-17a.

The six-judge dissent aptly summarized the fatal flaw in the panel's new interpretation:

> The supplemental opinion attempts to overcome the fact that there was never confinement in the well. In the process, however, the supplementary opinion suggests that discharge is not defined as a *loss* of controlled

> confinement—as the panel opinion holds—but an *absence* of controlled confinement. This is no abstruse, metaphysical distinction. An absence of confinement test is not only further from the text of the CWA, it implicates a significantly broader swath of potentially liable actors.

Id. at 66a-67a (emphases added).

In other words, a "loss of controlled confinement" is already a stark departure from the meaning of "discharge" under the CWA, but an "absence of controlled confinement" is an even broader and less faithful interpretation of Section 1321. For example, it would apparently place no limits on which part of a pipeline system could be found strictly liable for a discharge to the environment that actually occurred from a loss of controlled confinement in another part of the pipeline. Nor does the Fifth Circuit's new interpretation limit liability to parts of the system that were intended to control confinement. Instead, every part of the pipeline system appears to be potentially liable when oil ultimately leaves the system and enters jurisdictional waters or adjoining shorelines.

The confusion and uncertainty created by the Fifth Circuit's panel opinions are exacerbated by the panel's apparent approval of holding more than one vessel or facility strictly liable for a single discharge of oil. The problems with this unprecedented multisource approach are extensively discussed in Anadarko's Petition, *see* Anadarko Pet. 13-19, and thus will not be repeated here.

But to appreciate the uncertainty the decision below has created for the Nation's energy sector (and for

investment in the national energy infrastructure), it is worth excerpting part of the Petition:

> Consider a complex, interconnected system where 24 separately owned and operated offshore wells connect to a vessel, which connects to a pipeline, which connects to a floating platform, which interconnects with an interstate pipeline, which interconnects with an onshore facility dozens of miles away. Consider further that oil flows through the entire system based solely on pressure from the underground reservoir. These are the facts of an actual case, *E.P. Operating Co. v. F.E.R.C.*, 876 F.2d 46, 47–48 (CA5 1989), although not one involving a discharge. Under the standards announced below, how could a fact-finder determine the precise point where "controlled confinement is lost" within that system, much less determine how many distinct vessels or facilities up-stream from that point should also be considered a source of the discharge?

Anadarko Pet. 22-23.

As this example illustrates, the decision below has introduced great uncertainty for investment in the Nation's critical energy infrastructure. It is imperative that the Court intervene to provide a clear, faithful, and administrable interpretation of Section 1321 of the CWA.

II. Ambiguities in Civil Penalty Statutes Must Be Resolved in Defendant's Favor

The Fifth Circuit panel's backwards approach to statutory interpretation is all the more egregious when one considers that the court is interpreting a

penalty statute. One fundamental canon of interpretation, which the Fifth Circuit refused to follow, is that "[a]mbiguity in a statute defining a crime or imposing a penalty should be resolved in the defendant's favor." Scalia & Garner, *supra*, at 296.

This rule of lenity—which applies to statutes that impose criminal or civil penalties[7]—"originally rested on the interpretive reality that a just legislature will not decree punishment without making clear what conduct incurs the punishment and what the extent of the punishment will be; or at least on the judge-made policy that a legislature *ought* not do so." *Id.*; accord *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (per Marshall, C.J.) (explaining that the rule of lenity "is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislature, not in the judicial department").

As the six-judge dissent noted, the panel's opinions make clear that the panel believed the statute was ambiguous, and thus it should have followed the "clear line of precedent . . . holding that ambiguities in civil-penalty statutes should be resolved in favor of the defendant." Anadarko Pet. App. 66a (citing cases). For instance, the Fifth Circuit panel noted in its original opinion that "[t]he Clean Water Act is not a model of clarity." Anadarko Pet. App. 5a (internal quotations omitted). Indeed, one of the judges at oral argument compared the term "from" in Section 1321 to "a Rorschach inkblot": "you can put any definition of

[7] Although this case involves a civil penalty sought under Section 1321 of the CWA, Section 1321's no-discharge provision also triggers criminal penalties where scienter and other factors are present. *See* note 2 *supra* (discussing 33 U.S.C. § 1319(c)).

several on top of that, and you can make it go right back down under the ground to the good Lord himself who forced this kick." Oral Arg. Audio at 29:31-:46, *available at* http://www.ca5.uscourts.gov/OralArgRecordings/12/12-30883_12-4-2013.wma.

To be sure, although the panel did not address the rule of lenity in its first opinion, its supplemental opinion rejected the rule because the panel asserted that there was no ambiguity in Section 1321. Anadarko Pet. App. 27a. Apparently "from" was no longer "a Rorschach inkblot" that is susceptible to more than one meaning. And, it seems, the two conflicting judge-made additions to Section 1321's definition of "discharge"—"loss of controlled confinement" and "absence of controlled confinement"—were unambiguously spelled out in text of the CWA, or at least clearly derived from the ordinary meaning of "discharge." As discussed in Part I, there is no way to explain the lower courts' shifting interpretations of Section 1321 except that the courts recognized that the statute, as applied to Petitioners, was susceptible to multiple interpretations. Choosing among those multiple interpretations, the Fifth Circuit panel then adopted a broader definition of "discharge" "from" in order to rule in the Government's favor.

When interpreting an ambiguous statute that imposes a penalty, however, the proper approach to statutory interpretation is the opposite. The court should construe ambiguities in favor of the defendant, not the Government seeking to impose the penalty. That is because "when the government means to punish, its commands must be reasonably clear. When they are not clear, the consequences should be visited on the party more able to avoid and correct the effects of shoddy legislative drafting—namely the

federal Department of Justice . . . .” Scalia & Garner, *supra*, at 299.

The ample reasons for application of the rule of lenity here—and how the decision below conflicts with how this Court and others circuits have applied the rule of lenity—are explored at great length in the Petitions. *See* BP Pet. 20-32; *accord* Anadarko Pet. 19-21. *Amici* would merely add that the Fifth Circuit's failure to construe any ambiguity in Section 1321 of the CWA against the Government has troubling implications—for commerce and industry as well as for the national economy more generally—that extend far beyond this case.

Although the rule of lenity is sometimes framed as motivated by concerns of due process and fair notice, the rule's application long antedates such constitutional requirements. *See* Scalia & Garner, *supra*, at 296-97. The rule of lenity does not necessarily exist just to give individuals and businesses fair notice of criminal or civil penalties, but also to ensure that Congress—not courts, much less the Executive—makes the important policy decisions about when the Government can punish. Earlier this Term the Court reaffirmed this rationale for the rule of lenity, holding that when a penalty statute is ambiguous, “it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.” *Yates v. United States*, 135 S. Ct. 1074, 1088 (2015) (internal quotations omitted). In other words, the rule of lenity is a penalty-default rule that forces Congress to be clear about the outer limits of its penalty statutes.

Moreover, by only allowing punishment when Congress has “spoken in language that is clear and definite,” *id.*, the rule of lenity plays a critical role

in providing more certainty for the individuals, businesses, and industries regulated by such laws. As noted above, clear, predictable rules are vital for investment in the Nation's critical energy infrastructure, and uncertainty in the law increases the risk of such investment. The Government's ability to leverage ambiguities in civil and criminal penalty provisions in the CWA and elsewhere introduces great and unwarranted uncertainty.

Again, this case provides a vivid example: The Government sought billions of dollars in civil penalties from every company involved in the *Deepwater Horizon* incident based on an illogical and extra-textual interpretation of "discharge" "from" that would hold multiple entities strictly liable for a singular discharge of oil. *See* Part I *supra*. Two of those companies settled for over one billion dollars combined. *See* BP Pet. 5, 10. (And courts then offered three different and conflicting interpretations of the same statutory text. *See* Part I *supra*.)

Much of this zealous government overreach and accompanying uncertainty could have been prevented if the Government felt compelled to follow the rule of lenity when determining when and how to impose civil and criminal penalties. Because many penalty cases settle (or plead out in the criminal context), it is critical that courts reinforce the rule of lenity when such enforcement actions are challenged in court. The rule of lenity helps cabin the Government's leverage in settlement or plea negotiations such that punishment does not exceed the clear bounds that Congress has set forth by statute.

The Court sent a strong message this Term about government overreach and the rule of lenity in the criminal context. *See Yates*, 135 S. Ct. at 1088-89. This

case presents the Court with a similar opportunity in the civil-penalty context, in a case that involves historic economic stakes with a potential penalty of nearly $15 billion to Petitioners in addition to great economic uncertainty and cost to the Nation's critical energy infrastructure. The Court should seize this opportunity and grant the Petitions.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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