

**ORAL ARGUMENT NOT YET SCHEDULED**Nos. 24-1023 & 24-1024 (Consolidated)

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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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AMERICAN PETROLEUM INSTITUTE,  
*Petitioner,*

v.

UNITED STATES DEPARTMENT OF INTERIOR, *et al.*,  
*Respondents,*

and

ALASKA COMMUNITY ACTION ON TOXICS, *et al.*,  
*Intervenors.*

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On Petition for Review of the United States Department of Interior's Record of  
Decision and Approval of the 2024-2029 National Outer Continental Shelf Oil and  
Gas Leasing Proposed Final Program

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**BRIEF OF GREATER NEW ORLEANS INTERFAITH CLIMATE  
COALITION AS AMICUS CURIAE IN SUPPORT OF ENVIRONMENTAL  
PETITIONERS**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

**A. Parties and Amici.** All parties, intervenors, and amici appearing in this Court are listed in the Opening Brief of Environmental Petitioners, except for *amicus* in this brief, the Greater New Orleans Interfaith Climate Coalition (GNOICC), and any other *amici* who have not yet entered an appearance.

**B. Rulings Under Review.** References to the rulings at issue appear in the Opening Brief of Environmental Petitioners.

**C. Related Cases.** This case has not previously been before this Court, and counsel is not aware of any related cases within the meaning of Circuit Rule 28(a)(1)(C).

**RULE 26.1 DISCLOSURE STATEMENT**

The Greater New Orleans Interfaith Climate Coalition states that it is a non-profit, tax-exempt organization that has no parent company. No publicly owned corporation owns 10% or more of the stocks of GNOICC.

**RULE 29(d) CERTIFICATION**

All parties have consented to the filing of this *amicus* brief. Pursuant to Circuit Rule 29(d), *amicus* Greater New Orleans Interfaith Climate Coalition certifies that a separate brief is necessary because GNOICC offers a unique perspective on the disparate and detrimental impacts of climate change and oil and gas activities on coastal communities in the Gulf Coast, in particular communities of color and indigenous and low-income communities, and on the need for federal policymakers to take these interests and impacts into consideration in their decision-making process. Because *amicus* is not aware of any other *amicus* brief addressing these issues, it certifies pursuant to Circuit Rule 29(d) that joinder in a single brief with other *amici* would be impracticable.

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## **GLOSSARY**

Bureau	Bureau of Ocean Energy Management
CH <sub>4</sub>	Methane
CO <sub>2</sub>	Carbon dioxide
Department	United States Department of Interior
EPA	Environmental Protection Agency
GNOICC	Greater New Orleans Interfaith Climate Coalition
GHG	Greenhouse gas(es)
N <sub>2</sub> O	Nitrous oxide
Program	Final Proposed 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Program

## **STATUTES AND REGULATIONS**

The relevant statutes and regulations are appended to the brief of Environmental Petitioners.

## INTEREST OF AMICUS CURIAE<sup>1</sup>

The mission of the Greater New Orleans Interfaith Climate Coalition (GNOICC) is to act as a catalyst to educate, empower, engage, and equip faith leaders and communities to meet their moral, ethical, and spiritual responsibility to establish climate justice and promote care of the Earth, and all that dwell here, through a perspective based on faith and reason for a healthy world. To effectuate that mission, GNOICC has organized tours of fossil fuel and chemical plant sites for groups including other environmental and social justice organizations, advocated at the federal level for communities of color and indigenous and low-income communities in the Gulf Coast, and organized the distribution of disaster kits to low-income residents in low-lying parts of the greater New Orleans area.

GNOICC is extremely concerned that significant harm will occur as a result of the Record of Decision approving the 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Program, including broader harms that implementation of the Program will cause by exacerbating climate change and harms particular to the environment and communities in the Gulf Coast.

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<sup>1</sup> Pursuant to Fed. R. App. P. 29(a)(4)(E), GNOICC certifies that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund this brief, and no person other than amicus, its members, and its counsel contributed money intended to fund this brief. All parties have consented to the filing of this brief.

## SUMMARY OF ARGUMENT

Offshore oil and gas activities exacerbate climate change. Climate change, in turn, disproportionately burdens communities of color and indigenous and low-income communities. The Gulf Coast is no exception: climate change poses significant public health risks to communities of color and indigenous and low-income communities in the Gulf, and the associated rise in sea levels has permanently displaced indigenous people there as well. In addition to fueling climate change, oil and gas activities harm the environment in myriad ways, including through air and water pollution and oil spills. Those harms also disproportionately affect communities of color and indigenous and low-income communities in the Gulf.

The Department of Interior (Department) neglected to give due weight to the impacts of the proposed 2024–2029 National Outer Continental Shelf Oil and Gas Leasing Program (Program) on communities of color and indigenous and low-income communities in the Gulf Coast, as required by statute. In managing the Outer Continental Shelf, the Department is obligated to consider, specifically, the potential impact of oil and gas leases on “*human* environments.” 43 U.S.C. § 1344(a)(1) (emphasis added). In overseeing exploration, development, and production of oil and gas on the Outer Continental Shelf, the Department must additionally consider the “equitable sharing of developmental benefits and environmental risks” among the

regions along the Outer Continental Shelf. *Id.* § 1344(a)(2)(B). And in selecting the timing and location of oil and gas leases, the Department is required to properly “balance . . . the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for *adverse impact on the coastal zone.*” *Id.* § 1344(a)(3) (emphasis added). The Department did not do so.

Although the Department acknowledged there may be harm to communities in the Gulf, it failed to fully consider communities of color and indigenous and low-income communities in accounting for equitable sharing and balancing the enumerated interests, as required by statute. As such, this Court should vacate the Record of Decision and the related Program.

## ARGUMENT

### **I. Climate change, fueled by oil and gas activities, threatens communities of color and indigenous and low-income communities in the Gulf Coast.**

#### **A. Oil and gas production drives global climate change.**

Oil and gas production and consumption are a leading cause of climate change. “Each stage of the life cycles of fossil fuels—extraction, processing, transport, and combustion—generates toxic air and water pollution, as well as greenhouse gas (GHG) emissions that drive the global climate crisis.”<sup>2</sup> As the

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<sup>2</sup> Tim Donaghy & Charlie Jiang, *Fossil Fuel Racism: How Phasing Out Oil, Gas, and Coal Can Protect Communities* 1 (Apr. 13, 2021), <https://www.greenpeace.org/usa/wp-content/uploads/2021/04/Fossil-Fuel-Racism.pdf>.

Bureau of Ocean Energy Management (Bureau) notes, “[k]ey drivers of climate change are increasing atmospheric concentrations of carbon dioxide (CO<sub>2</sub>) and other GHGs, such as methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O).”<sup>3</sup> The United States’ contributions to GHGs “largely come from the consumption of fossil fuels including oil, natural gas, and coal.”<sup>4</sup>

Increased GHG emissions lead to altered temperature, humidity, wind, and precipitation patterns globally.<sup>5</sup> For instance, average temperatures in the United States have increased from 1.3°F to 1.9°F since 1895, with the largest increase occurring over the course of the last fifty years.<sup>6</sup> “Across the United States, temperatures are generally projected to rise another 1.1 to 2.2°C (2 to 4°F) over the next few decades.”<sup>7</sup>

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<sup>3</sup> Bureau of Ocean Energy Mgmt., 2023-054, 2024-2029 National OCS Oil and Gas Leasing Program: Final Programmatic Environmental Impact Statement 26 (2023), [https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029NatOCSoilGasLeasing\\_FinalPEISVol1\\_0.pdf](https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029NatOCSoilGasLeasing_FinalPEISVol1_0.pdf).

<sup>4</sup> Bureau of Ocean Energy Mgmt., 2016-065, OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon 4 (2016), [https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/ocs\\_oil\\_and\\_natural\\_gas.pdf](https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/ocs_oil_and_natural_gas.pdf).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.*

<sup>7</sup> Bureau of Ocean Energy Mgmt., 2016-060, Outer Continental Shelf Oil and Gas Leasing Program: 2017-2022 Final Programmatic Environmental Impact Statement 4-4 (2016), [https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/fpeis\\_volume1.pdf](https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/fpeis_volume1.pdf).

Increased temperatures pose dire consequences for the environment and communities across the globe. Warming temperatures have diminished glacial coverage and interfered with the extent of ice formation in high latitudes, contributing to a rise in sea levels. These conditions are already contributing to, and are predicted to continue contributing to, the increased intensity of storms, more frequent coastal flooding and erosion, and the degradation of coastal habitats, among other unequivocally negative consequences.<sup>8</sup>

**B. Climate change poses disproportionate public health risks to communities of color and indigenous and low-income communities, including those in the Gulf Coast.**

Climate change disproportionately harms communities of color and indigenous and low-income communities. The “shifting precipitation, temperatures, and coastlines” resulting from climate change stand to fundamentally and adversely affect the nation’s air quality, public health systems, energy grid, ecosystems, transportation systems, and public and private infrastructure. This negatively impacts the lives of tens of millions of Americans.<sup>9</sup> And yet, “[a]dapt[ing] to these changes will be more difficult for those who have fewer resources such as poor, indigenous, and minority communities.”<sup>10</sup>

Public health risks are one of the most well-recognized examples of climate

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<sup>8</sup> Bureau, *supra* note 3, at 41.

<sup>9</sup> Bureau, *supra* note 4, at 3.

<sup>10</sup> Bureau, *supra* note 4, at 3.



change's disproportionate impact on communities of color and indigenous and low-income communities. Climate change "may exacerbate existing public health issues" and "create new health hazards," including "heat-related morbidity/mortality, drought-related malnutrition, flood-related injuries and death, increases in vector-borne diseases, and large-scale migrations."<sup>11</sup> Indeed, the Environmental Protection Agency (EPA) analyzed projected climate change impacts on socially vulnerable communities in the United States<sup>12</sup> and found a 2°C global warming increase or 50cm sea level rise would disproportionately and adversely affect people of color and low-income people, who are more likely to live in areas with the highest levels of climate change impacts.<sup>13</sup> For example, Black people are forty percent more likely than non-Black individuals to live in areas with the highest projected mortality rates

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<sup>11</sup> Bureau of Ocean Mgmt., 2017-009, Gulf of Mexico OCS Oil and Gas Lease Sales: 2017-2022 Final Multisale Environmental Impact Statement, Volume II: Chapters 4-8, 4-482 (2017), <https://www.boem.gov/sites/default/files/environmental-stewardship/Environmental-Assessment/NEPA/BOEM-EIS-2017-009-v2.pdf>; *see also* Kevin Kloesel et al., Program, Fourth National Climate Assessment, U.S. Global Change Rsch, 1012 (2018), [https://nca2018.globalchange.gov/downloads/NCA4\\_Ch23\\_Southern-Great-Plains\\_Full.pdf](https://nca2018.globalchange.gov/downloads/NCA4_Ch23_Southern-Great-Plains_Full.pdf).

<sup>12</sup> Env't Prot. Agency, Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts (2021), [https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability\\_september-2021\\_508.pdf](https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf) (reviewing the following factors: air quality and health, extreme temperature and its impacts on both health and labor, coastal flooding and its impact on traffic and property, and inland flooding and property).

<sup>13</sup> *Id.* at 6–7.

due to climate-driven extreme temperatures; Black people are also thirty-four percent more likely to live in areas with the highest projected incidents of increased child asthma due to climate-driven air pollution.<sup>14</sup> EPA’s study revealed that the disparities are even higher for American Indians and Alaska Natives. They are forty-eight percent more likely to live in areas with the highest projected percentage of land loss due to inundation caused by sea level rise.<sup>15</sup> The study also found that those with low income or no high school diploma are fifteen percent more likely to “live in areas with the highest projected increases in childhood asthma diagnoses due to climate-driven increases in particulate air pollution, and in areas where the highest percentage of land is projected to be inundated due to sea level rise.”<sup>16</sup>

These health risk disparities are prevalent in the Gulf Coast, where many communities of color and indigenous and low-income communities reside. The Bureau reported that residents of the Western and Central Gulf of Mexico areas have a higher poverty rate than the national average and higher rate of “minority population” than the national average.<sup>17</sup> It is thus unsurprising that climate change “ha[s] had disproportionate effects on minority and low-income populations, especially in coastal areas and zones in Louisiana outside levee protection, . . . and

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 7.

<sup>17</sup> Bureau, *supra* note 3, at 120.

these groups are more vulnerable to any new hazards or natural disasters.”<sup>18</sup>

**C. Rising sea levels, caused and exacerbated by climate change, disproportionately jeopardize communities in the Gulf Coast, including indigenous communities.**

Gulf communities face the acute effects of climate change in the form of rising sea levels and consequential land loss. Over the course of the last fifty years, sea levels in parts of the Gulf and Atlantic coasts have risen up to eight inches.<sup>19</sup> According to the State of Louisiana, it is estimated that up to 3,000 square miles of land within the state will be lost in the next fifty years.<sup>20</sup>

Coastal erosion, subsidence, sea level rise, and storm surge damage “can increase community vulnerability to future hazards and can also threaten traditional ways of life.”<sup>21</sup> In the United States, between four and thirteen million people are projected to be exposed to inundation by the year 2100 as a result of global sea level

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<sup>18</sup> *Id.*

<sup>19</sup> Bureau of Ocean Energy Mgmt., 2017-009, Gulf of Mexico OCS Oil and Gas Lease Sales, Final Multisale Environmental Impact Statement 3-194 (2017), <https://www.boem.gov/sites/default/files/environmental-stewardship/Environmental-Assessment/NEPA/BOEM-EIS-2017-009-v1.pdf>. And the rate of global sea levels rising is increasing. *See id.*

<sup>20</sup> La. Coastal Prot. and Restoration Auth., *A Changing Landscape*, <https://coastal.la.gov/whats-at-stake/a-changing-landscape/> (last visited May 9, 2024).

<sup>21</sup> Bureau, *supra* note 11, at 4-480.

rise, population growth, and land use change.<sup>22</sup>

In the Gulf of Mexico, coastal erosion occurs most rapidly in Louisiana, “which is sinking faster than any place in the world.”<sup>23</sup> Few have felt these effects along Louisiana’s coast more profoundly than members of the Jean Charles Choctaw Nation,<sup>24</sup> who have become Louisiana’s first climate refugees.<sup>25</sup> The Isle de Jean Charles, once a 22,000-acre island, has shrunk nearly ninety-eight percent since 1955<sup>26</sup> and is today only 320 acres.<sup>27</sup> The island was the tribe’s homeland for nearly 200 years, but erosion resulting from climate change and “land subsidence accelerated by the fossil fuel industry” has forced most inhabitants of the Isle de Jean Charles to relocate.<sup>28</sup> In fact, the situation is so dire that the U.S. Department of

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<sup>22</sup> Kristina A. Dahl et al., *Effective inundation of continental United States communities with 21st century sea level rise*, 5 *Elementa: Sci. Anthropocene* 1 (2017), <https://doi.org/10.1525/elementa.234>.

<sup>23</sup> Bureau, *supra* note 11, at 4-434.

<sup>24</sup> Formerly known as the Isle de Jean Charles Biloxi-Chitimacha-Choctaw Indians Tribal Community.

<sup>25</sup> Robynne Boyd, *The People of the Isle de Jean Charles Are Louisiana’s First Climate Refugees—but They Won’t Be the Last*, NRDC (Sept. 23, 2019), <https://www.nrdc.org/stories/people-isle-jean-charles-are-louisianas-first-climate-refugees-they-wont-be-last>.

<sup>26</sup> *Id.*

<sup>27</sup> La. Off. of Cmty. Dev., *The Story of Isle de Jean Charles*, <https://www.isledejeancharles.la.gov/> (last visited May 9, 2024).

<sup>28</sup> Boyd, *supra* note 25; see also Amali Tower, *Preserving Our Place: Isle de Jean Charles*, Climate Refugees (Oct. 20, 2020), <https://www.climate-refugees.org/spotlight/2020/10/20/isle-de-jean-charles> (“The Island is now unable to sustain life for the entire IDJC Tribe, because of climate change . . . impacts like sea level rise, environmental disasters and gradual sinking of the land . . .”).

Housing and Urban Development awarded the State of Louisiana Office of Community Development \$48.3 million in a Community Development Block Grant through the National Disaster Resilience Competition. The grant provides for the voluntary relocation of Isle de Jean Charles residents to “The New Isle” on 515 acres of rural land approximately forty miles northwest of the island.<sup>29</sup>

More broadly, one study concluded that if measures are not taken to mitigate and manage increased flooding, widespread effective inundation of coastal communities could occur within the next forty years and “encompass much of the coast by the end of the century.”<sup>30</sup> Thus, if more is not done to temper the pace of climate change, more communities will face the same “stark choices” now facing the Jean Charles Choctaw Nation “about their ways of life in the decades to come.”<sup>31</sup>

**D. Oil and gas production also harms the environment in other ways that disproportionately hurt communities of color and indigenous and low-income communities in the Gulf Coast.**

In addition to land loss resulting from rising sea levels, oil and gas activities cause other significant environmental harms. Direct and downstream adverse impacts of oil and gas activities result from oil spills, air emissions, wastewater

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<sup>29</sup> La. Off. of Cmty. Dev., *Isle de Jean Charles Resettlement Program: Homebuyer Assistance Program Policies* (Nov. 10, 2020), [https://isledejeancharles.la.gov/sites/default/files/public/IDJC%20Policies\\_For%20Publishing\\_20201110v2.pdf](https://isledejeancharles.la.gov/sites/default/files/public/IDJC%20Policies_For%20Publishing_20201110v2.pdf).

<sup>30</sup> Dahl, *supra* note 22, at 16; *see also id.* at 1 (defining “effective inundation” as “having 10% or more of livable land area flooded at least 26 times per year”).

<sup>31</sup> *Id.*

discharges, and increased infrastructure and vessel activities.<sup>32</sup> These, in turn, lead to wetlands losses and water quality degradation, and adversely impact coastal habitats, live bottom habitats, birds and marine animals, and commercial fisheries, as well as recreational access to fishing and beaches.<sup>33</sup> For decades, oil and gas activities have polluted the air, land, and waters of the Gulf Coast region in ways that have negatively impacted the health and lives of members of the community. A growing body of evidence demonstrates that many environmental harms relating to oil and gas activity, especially as they relate to fossil fuel pollution, unequally impact Black, Brown, Indigenous, and other communities of color, as well as low-income and rural communities.<sup>34</sup>

Oil refineries and petrochemical manufacturing “are among the sectors which impose the most disproportionate toxic burden” on communities of color and indigenous and low-income communities.<sup>35</sup> An area along the lower Mississippi River between Baton Rouge and New Orleans, which houses over 150 petrochemical plants and refineries, has become known as “Cancer Alley,” due to high rates of cancer that are attributable to exposure to air toxins in many surrounding

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<sup>32</sup> See Bureau, *supra* note 3, at 109–23.

<sup>33</sup> See *id.*

<sup>34</sup> Donaghy & Jiang, *supra* note 2.

<sup>35</sup> *Id.* at 22.

communities.<sup>36</sup> Most of the residents living near the facilities are low-income Black communities.<sup>37</sup> In 2020, a report found that five oil refineries in Louisiana and three in Texas had annual levels of benzene—“a potent carcinogen”—that exceeded EPA’s actionable levels by up to over two hundred percent under the Clean Air Act.<sup>38</sup>

Similarly, another study found that the release of hazardous chemicals from petrochemical facilities resulting from flooding from 2017’s Hurricane Harvey fell in “higher proportions of Hispanic, disabled, or young residents.”<sup>39</sup> This finding is further bolstered by the fact that industrial facilities are more likely to be located in the first place in neighborhoods with higher poverty rates and larger proportions of

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<sup>36</sup> See Kimberly A. Terrel & Gianna St. Julien, *Discriminatory outcomes of industrial air permitting in Louisiana, United States*, 10 *Env’t Challenges* 1, 1(2023), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4276748](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4276748); Idna G. Castellón, *Cancer Alley and the Fight Against Environmental Racism*, 32 *Vill. Env’t L. J.* 15, 15–16 (2021), <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1440&context=elj>; Wesley James, et al., *Uneven Magnitude of Disparities in Cancer Risks from Air Toxics*, 9 *Int’l J. Env’t Rsch. & Pub. Health* 4365, 4365 (Dec. 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3546767/>.

<sup>37</sup> Castellón, *supra* note 36, at 16.

<sup>38</sup> Ben Kunstman et al., *Environmental Justice and Refinery Pollution: Benzene Monitoring Around Oil Refineries Showed More Communities at Risk in 2020*, *Env’t Integrity Project*, 5, 9 (Apr. 28, 2021), <https://environmentalintegrity.org/wp-content/uploads/2021/04/Benzene-report-4.28.21.pdf>.

<sup>39</sup> Aaron B. Flores et al., *Petrochemical releases disproportionately affected socially vulnerable populations along the Texas Gulf Coast after Hurricane Harvey*, 42 *Population and Env’t* 279, 279 (2021), <https://link.springer.com/article/10.1007/s11111-020-00362-6>.

people of color.<sup>40</sup>

Additionally, Hurricane Ida, a Category 4 hurricane that made landfall in Louisiana in August 2021, has resulted in long-term and ongoing disruption to impacted communities.<sup>41</sup> A data assessment report shows that the “storm’s impact on the region was exacerbated by the intensity and extent of fossil fuel industrial development in coastal Louisiana and offshore.”<sup>42</sup> In total, the report found that there were 2,230 pollution events resulting from the hurricane, including “171 oil spills involving at least 5,436 barrels (229,633 gallons) cumulatively.”<sup>43</sup> The report also notes that increasing exposure of fossil fuel facilities to storm events like Hurricane Ida poses risks of pollution to vulnerable communities in the Gulf, including historically Black towns located in southeastern Louisiana, indigenous tribes and communities, as well as “Creoles, Vietnamese Americans, and Hispanic people.”<sup>44</sup>

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<sup>40</sup> Kunstman et al., *supra* note 38, at 16; *see also* Lesley Fleischman & Marcus Franklin, *Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities*, NAACP, 4 (Nov. 2017), <https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american>.

<sup>41</sup> Daniel Arkin, *In one Louisiana bayou city, Hurricane Ida is still wreaking havoc*, NBC News (Aug. 27, 2022), <https://www.nbcnews.com/news/us-news/one-louisiana-bayou-city-hurricane-ida-still-wreaking-havoc-rcna44186>.

<sup>42</sup> Naomi Yoder & Sheehan Moore, *Murky Waters: An Analysis of Hurricane Ida Pollution Reports*, Healthy Gulf 4 (June 2022), <https://healthygulf.org/wp-content/uploads/2022/06/Hurricane-Ida-Pollution-Report-Final.pdf>.

<sup>43</sup> *Id.* at 2.

<sup>44</sup> *Id.* at 11.



Consistent with the evidence, the Department itself has acknowledged that the impacts associated with oil and gas development on the environment and “the health and security of communities—particularly communities of color, who bear a disproportionate burden of pollution—*merit a fundamental rebalancing of the Federal oil and gas program.*”<sup>45</sup>

**II. In effectuating the Program, the Department failed to give due weight to the disparate impact on communities of color and indigenous and low-income communities in the Gulf Coast, as required by law.**

The statute governing the Outer Continental Shelf Leasing Program includes several mandates requiring the Department to consider the consequences of programmatic decisions on the people living along the Outer Continental Shelf, *see* 43 U.S.C. §§ 1344(a)(1), (a)(2)(B), (a)(3), such as communities of color and indigenous and low-income communities. For example, in managing the Outer Continental Shelf, the Department must consider the potential impact of oil and gas leases on “*human environments,*” *id.* at 1344(a)(1) (emphasis added), defined elsewhere as “the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf,” 43 U.S.C. § 1331(i). In

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<sup>45</sup> U.S. Dep’t of Interior, Report on the Federal Oil and Gas Leasing Program 6 (Nov. 2021), <https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf> (emphasis added).

overseeing exploration, development, and production of oil and gas on the Outer Continental Shelf, the Department must additionally consider “an equitable sharing of developmental benefits and environmental risks” among the regions along the Outer Continental Shelf. 43 U.S.C. § 1344(a)(2)(B); *see also California v. Watt*, 668 F.2d 1290, 1305 (D.C. Cir. 1981) (affirming that this statutory provision constrains the Department of Interior in developing and planning programs). And in selecting the timing and location of oil and gas leases, the Department has the statutory obligation to properly “balance . . . the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for *adverse impact on the coastal zone*.” 43 U.S.C. § 1344 (a)(3) (emphasis added).

These mandates require the Department to give due weight to the impacts that prospective offshore oil and gas leases will have on communities such as communities of color and indigenous and low-income communities in the Gulf Coast when considering the “equitable sharing of developmental benefits and environmental risks” under Section 18(a)(2)(B), *id.* § 1344 (a)(2)(B), and the “potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone” under Section 18(a)(3), *id.* § 1344 (a)(3). That is especially so, as recognized by the Department,<sup>46</sup> in light of the long-standing and more recent executive orders establishing and affirming

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<sup>46</sup> Bureau, *supra* note 3, at 66.

Federal agency responsibilities for environmental justice.<sup>47</sup> Despite the Department's acknowledgment of the Program's potential impact on vulnerable communities in the Gulf Coast in its impact report<sup>48</sup> and in the Program,<sup>49</sup> it did not adequately perform the required analyses.

In assessing the “equitable sharing” of environmental risks under Section 18(a)(2)(B), 43 U.S.C. § 1344(a)(2)(B), the Department did not sufficiently “engage in a comparative analysis” of those risks across geographic areas, as this Court has required, *see Watt*, 668 F.2d at 1306. The Department stated that the Gulf and adjacent states “bear most of the risks to the human and natural environment.”<sup>50</sup> However, it did not engage in analysis across geographic areas covered by the Outer

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<sup>47</sup> *See* Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023). This Court, in interpreting a different environmental statute, has understood “environmental justice” to “encourage[] agencies to consider whether the projects they sanction will have a ‘disproportionately high and adverse’ impact on low-income and predominantly minority communities.” *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017) (assessing the Federal Energy Regulatory Commission’s obligations under the National Environmental Policy Act of 1969).

<sup>48</sup> *See, e.g.*, Bureau, *supra* note 3, at 120–21; *see also id.* at 202–09.

<sup>49</sup> *See, e.g.*, Bureau of Ocean Energy Mgmt., 2023-058, 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program 9-20 (2023), [https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029\\_NationalOCSTProgram\\_PFP\\_Sept\\_2023.pdf](https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/2024-2029_NationalOCSTProgram_PFP_Sept_2023.pdf) (adopted by the Secretary of the Interior in the Record of Decision); *see also* Bureau of Ocean Energy Mgmt., Record of Decision and Approval of the 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Program (Dec. 14, 2023), <https://www.boem.gov/oil-gas-energy/decision-memo-national-program-signed>.

<sup>50</sup> Bureau, *supra* note 49, at 9-20.

Continental Shelf Lands Act,<sup>51</sup> particularly with regard to the impact on communities of color and indigenous and low-income communities in the Gulf.

Nor did the Department sufficiently balance “the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for *adverse impact on the coastal zone*” as required under Section 18(a)(3). 43 U.S.C. § 1344(a)(3) (emphasis added).<sup>52</sup> This requires the Department to expressly “evaluate oil and gas potential, which can be quantified in monetary terms, in conjunction with environmental and social costs, which do not always lend themselves to direct measurement.” *Watt*, 668 F.2d at 1317. This requirement arises from the congressional purpose to “encourage development of . . . technology for energy resource production which will eliminate or minimize risk of damage to the human, marine, and coastal environments” as well as “assure adequate protection of the human environment,” among others. *Id.* at 1315–16. But none of the six categories used by the Department in assessing the environmental and social costs

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<sup>51</sup> See Bureau, *supra* note 3, at 66–67 (noting that the Department would undertake such an analysis at “later stages”).

<sup>52</sup> These factors “are, in large part, a condensation of the factors [including equitable sharing] specified in section 18(a)(2).” *Watt*, 668 F.2d at 1315. Indeed, “a flawed consideration of Section 18(a)(2) factors hinders [the Department’s] ability to obtain a proper balance of the factors under Section 18(a)(3).” *Ctr. for Biological Diversity v. U.S. Dep’t of Interior*, 563 F.3d 466, 488 (D.C. Cir. 2009).

of the lease Program<sup>53</sup> explicitly measures, addresses, or assesses the impacts on “low-income and minority communities” that the Department itself acknowledged are real and significant in its environmental impact statement.<sup>54</sup>

The Department’s failure to consider the impact of its lease Program on communities of color and indigenous and low-income communities in the Gulf is both harmful and, given the legal requirements, fatal.

### **CONCLUSION**

For the reasons above, this Court should vacate the Department of Interior’s Record of Decision and approval of the 2024-2029 National Outer Continental Shelf Oil and Gas Leasing Proposed Final Program.

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<sup>53</sup> Bureau, *supra* note 49, at 5-21 (“Costs are calculated for six categories: (1) recreation; (2) air quality; (3) property values; (4) subsistence harvests; (5) commercial fishing; and (6) ecological impacts.”).

<sup>54</sup> Bureau, *supra* note 4, at 120–21.

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), the undersigned counsel for *amicus curiae* certifies that this brief:

(i) complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,056 words, including footnotes and excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word and is set in Times New Roman font in a size equivalent to 14 points or larger.

Dated: July 19, 2024

/s/ Emma R. Leibowitz  
Emma R. Leibowitz

**CERTIFICATE OF SERVICE**

The undersigned counsel for *amicus curiae* certifies that on July 19, 2024, a true and accurate copy of the foregoing Brief of Greater New Orleans Interfaith Climate Coalition as *amicus curiae* in support of Environmental Petitioners was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

Dated: July 19, 2024

/s/ Emma R. Leibowitz  
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