

**ORAL ARGUMENT NOT YET SCHEDULED**

No. 21-1251 and consolidated cases

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

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HEATING, AIR-CONDITIONING, & REFRIGERATION  
DISTRIBUTORS INTERNATIONAL, *et al.*,

*Petitioners,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

*Respondents.*

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On Petition for Review of Final Action by the  
United States Environmental Protection Agency

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**MOTION OF NATURAL RESOURCES DEFENSE COUNCIL  
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE  
IN SUPPORT OF RESPONDENTS**

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Dated: June 9, 2022

Pursuant to Federal Rule of Appellate Procedure 29(b) and Circuit Rule 29(b), the Natural Resources Defense Council (“NRDC”) respectfully moves for leave to participate as *amicus curiae* in support of Respondent Environmental Protection Agency (“EPA”) and to file the attached brief. The petitions at issue challenge EPA’s Framework Rule to establish an allowance and trading program to implement a phasedown of hydrofluorocarbons, powerful greenhouse gases that contribute to climate change. 86 Fed. Reg. 55,116 (Oct. 5, 2021).

Counsel for NRDC consulted with the parties on June 9, 2022, to seek their positions on NRDC’s proposed participation.<sup>1</sup> Counsel for Respondent EPA consented to movant’s participation as *amicus*. Counsel for Petitioner RMS of Georgia stated that their client “will take no position if NRDC is addressing issues other than those raised in 21-1253.” Counsel for Petitioners HARDI et al. and Worthington had not yet responded at the time of filing.

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<sup>1</sup> Counsel for NRDC contacted Petitioners’ counsel via email on the afternoon of June 9, 2022, explained that counsel had miscalculated the filing deadline, sought a response if possible by the end of the day, and apologized for the last-minute nature of the request. Counsel had mistakenly planned to file on June 13, seven days after the June 6 deadline for Respondents’ brief. Today’s filing is within seven days of Respondents’ actual filing on June 2, 2022.

## MOVANT'S INTEREST

NRDC is a non-profit organization that works to protect public health and the environment. Since its founding in 1970, NRDC has worked to ensure enforcement of the Clean Air Act and other federal and state laws to address major environmental challenges, including climate change. NRDC has a significant interest in reducing greenhouse gas pollution, including short-lived but potent climate pollutants like hydrofluorocarbons, in order to protect the health, welfare, economic, and aesthetic interests of its members. *See Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 77–78 (D.C. Cir. 2020).

NRDC has particular interest and expertise in federal efforts to reduce emissions of hydrofluorocarbons. NRDC has participated extensively in regulatory and legal proceedings regarding the Environmental Protection Agency's regulation of hydrofluorocarbons under Title VI of the Clean Air Act, *see id.*, as well as in recent regulatory proceedings to implement the hydrofluorocarbon phasedown mandated by the newly-enacted American Innovation in Manufacturing Act of 2020, *see* U.S. EPA, Response to Comments, EPA-HQ-OAR-2021-0044-0027-3. NRDC is committed to the timely, transparent, and

ambitious implementation of the hydrofluorocarbon phasedown, which is at issue in this case.

### **DESIRABILITY AND RELEVANCE OF BRIEFING**

NRDC has a unique perspective that will aid the Court's deliberations while not duplicating the current parties' briefing. NRDC agrees with EPA's explication of the agency's authority and rationale for prohibiting use of disposable cylinders as part of the Framework Rule to establish an allowance and trading program to implement a phasedown of hydrofluorocarbons. NRDC seeks to participate as *amicus* only to present one further point concerning the ancillary environmental protection that will be achieved through EPA's disposable cylinder ban.

As the attached brief explains, the hydrofluorocarbon "heel" that remains in a disposable cylinder after its use is released to the atmosphere when those tanks are crushed for scrap metal recycling or disposed of in landfills. Allowing continued use of disposable cylinders wastes a large quantity of a limited refrigerant resource that should be conserved for productive use, not released into the air to worsen climate change.

The attached brief offers a single, distinct argument that will enable NRDC's particular interests in this case to be presented and will contribute to this Court's consideration of the petitions for review.

### CONCLUSION

*Amicus* NRDC respectfully requests that this motion be granted and the attached brief be filed.

Respectfully submitted,

/s/ Melissa J. Lynch

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**CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES**

All parties, rulings under review, and related cases are set forth in the initial opening briefs for Petitioners and the initial brief for Respondents, with the exception of *Amicus Curiae* Natural Resources Defense Council in support of Respondents.

## **RULE 26.1 DISCLOSURE**

Natural Resources Defense Council (“NRDC”), a corporation organized and existing under the laws of the State of New York, is a national non-profit organization dedicated to improving the quality of the human environment and protecting the nation’s endangered natural resources. NRDC does not have any parent corporations and no publicly held corporation has a ten percent or greater ownership in it.

**CERTIFICATE OF SERVICE**

I certify that, on June 9, 2022, I electronically filed the foregoing motion using the appellate CM/ECF system, which served a copy of the document on all counsel of record in the case.

Dated: June 9, 2022

/s/ Melissa J. Lynch