

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)
Honorable Dana L. Christensen, District Judge

**BRIEF OF AMICI CURIAE PACIFIC LEGAL FOUNDATION AND
YOUNG AMERICANS FOR LIBERTY IN SUPPORT OF
DEFENDANTS-APPELLEES URGING AFFIRMANCE**

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DISCLOSURE STATEMENT

Pursuant to Ninth Circuit Rules 26.1-1 through 26.1-3, Amicus Curiae Pacific Legal Foundation adopts the Certificate of Interested Persons submitted in Brief of Appellees (filed February 26, 2026). Pacific Legal Foundation adds the following attorneys, persons, associations of persons, firms, partnerships, or corporations that may have an interest in the outcome of this case:

- Fry, Tyler – Counsel for Amici Curiae Pacific Legal Foundation and Young Americans for Liberty
- McDonald, David – Counsel for Amici Curiae Pacific Legal Foundation and Young Americans for Liberty

Pursuant to Rule 26.1-1, the undersigned counsel certifies that Amici Curiae Pacific Legal Foundation and Young Americans for Liberty do not have a parent corporation. Additionally, there are no publicly held corporations that hold 10% or more of Amici Curiae Pacific Legal Foundation's or Young Americans for Liberty's stock.

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IDENTITY AND INTERESTS OF AMICI CURIAE

Founded in 1973, Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt, California corporation established to litigate matters affecting the public interest. PLF provides a voice for Americans who believe in limited constitutional government, private property rights, and individual freedom. PLF is the most experienced public-interest legal organization defending the constitutional principle of separation of powers in the arena of administrative law. PLF has previously appeared in this Circuit and before the Supreme Court in cases involving environmental regulation, administrative law, and property rights, including: *Sackett v. EPA*, 598 U.S. 651 (2023); *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9 (2018); *Rapanos v. United States*, 547 U.S. 715 (2006); and as amici curiae in *Reges v. Cauce*, 162 F.4th 979 (9th Cir. 2025). PLF's Environment and Natural Resources Practice Group works to remove government barriers that prevent individuals from unlocking America's vast natural resources potential, advancing America's energy development free of unreasonable government restrictions, and using natural resources productively.

PLF submits this brief on behalf of Young Americans for Liberty. Youth from this organization represent a positive counter-voice to the Plaintiffs and desire a future with economic prosperity provided by energy innovation, affordable energy driven by abundant domestic production, and the freedom to pursue productive use

of our natural resources. Lighthiser and the Plaintiffs-Appellants, should they prevail, would make such productive activity legally and economically unfeasible.

Amici file this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure and all parties to the appeal have consented to the filing of this brief.

Amici curiae state that no counsel for any party authored this brief in whole or in part and that no entity or person other than PLF and its counsel made any monetary contribution toward the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Twenty-two youth Plaintiffs, represented by the climate activist organization “Our Children’s Trust,” seek to enjoin three presidential executive orders designed to unleash American energy production and remove regulatory barriers that have long constrained access to our nation’s abundant energy resources. Their constitutional claims rest on a causation theory so speculative and attenuated that it would fundamentally transform both tort law and constitutional jurisprudence. *See Juliana v. United States*, 947 F.3d 1159, 1171–75 (9th Cir. 2020) (rejecting similarly attenuated climate causation theory as exceeding judicial competence); *Washington Env’t Council v. Bellon*, 732 F.3d 1131, 1143–44 (9th Cir. 2013) (causal chain “too tenuous” where impacts are “scientifically indiscernible”). Moreover, if their theory was adopted, it would improperly erode the predictable legal framework that energy entrepreneurs and innovators require to develop America’s vast energy potential.

The Due Process Clause, understood according to its original meaning, requires that legal liability rest upon principles of proximate causation rooted in the common law tradition inherited by the founding generation. *See Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 277 (1856) (due process incorporates “settled usages and modes of proceeding” from English common law); *see also Hurtado v. California*, 110 U.S. 516, 535 (1884) (due process embodies “fundamental principles of liberty and justice”); *Burrage v. United States*, 571 U.S. 204, 210 (2014) (reaffirming but-for causation standard rooted in common law). From the Magna Carta through Blackstone’s *Commentaries* to early American jurisprudence, the legal system consistently required direct, foreseeable causal connections between individual conduct and legal consequences. *See* 1 William Blackstone, *Commentaries* 84 (1765) (discussing early, common law barriers to protect and secure the primary rights of “personal security, personal liberty, and private property”); *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339, 344 (1928) (liability limited to foreseeable consequences). This constitutional requirement protects individual liberty by ensuring predictable legal standards that require actual causation to be proven, thereby preventing courts from becoming roving deciders of liability without a connection between fault and the party charged with having caused the fault.

The elements essential to traditional causation—foreseeability, directness, proportionality, and individualized proof—cannot be satisfied by climate change litigation as Plaintiffs attempt here. The distance between individual energy policies and alleged climate harms erodes any meaningful causal connection under centuries of common law precedent. *Bellon*, 732 F.3d at 1143 (“it is not possible to quantify a causal link, in any generally accepted scientific way, between GHG emissions from any single oil refinery . . . and direct, indirect or cumulative effects on global climate change”); *Allen v. Wright*, 468 U.S. 737, 758–59 (1984) (no standing for parents suing over illegal granting of tax exemptions to racially discriminatory schools, because theory of causation relied upon speculation as to the independent decisions of multiple third parties who may or may not have been influenced by the government’s policy). Multiple intervening causes break any direct causal chain, even in the context of modern climate science. *Juliana*, 947 F.3d at 1169 (acknowledging difficulty of tracing climate harms to isolated government actions). The grossly disproportionate relationship between any individual defendant’s conduct and global climate phenomena also violates long recognized proportionality requirements. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574–75 (1996) (striking down punitive damages award that was “grossly excessive” compared to the defendant’s conduct and the plaintiff’s injury as a violation of due process). Plaintiffs’ reliance on statistical and aggregate causation abandons the individualized

proof requirements that the Constitution demands, improperly shifts the burden of proof, and imposes retroactive liability violating fair notice principles. *See Burrage*, 571 U.S. at 218–19 (rejecting theories that would expand liability beyond common law requirements).

The practical consequences of accepting Plaintiffs’ causation theory would devastate America’s energy abundance and individual economic opportunity. Limitless liability theories would make energy investment economically unfeasible, driving up costs for American families while increasing dependence on foreign suppliers. *See* W. Kip Viscusi, *The Dimensions of the Product Liability Crisis*, 20 J. Legal Stud. 147, 148–58 (1991) (product liability expansion caused market withdrawals and cost increase); Michelle J. White, *Asbestos and the Future of Mass Torts*, 18 J. Econ. Persp. 183, 184–87 (2004) (expanded liability theories in asbestos litigation created over \$200 billion in liabilities and bankrupted more than 100 companies despite limited evidence of individual causation in many cases.).

ARGUMENT

I. PLAINTIFFS’ CLIMATE CAUSATION THEORY VIOLATES DUE PROCESS REQUIREMENTS ROOTED IN COMMON LAW TRADITION

A. The Founding-Era Understanding of “Due Process of Law” Embedded Common Law Protections

The Due Process Clause protects more than criminal defendants. It embodies fundamental limitations on the government’s power to impose legal liability in any

proceeding that threatens life, liberty, or property. From its adoption, “due process of law” was understood to incorporate those settled principles of the common law that ensured liability was imposed only through fair, reliable, and non-arbitrary means. *See Murray’s Lessee*, 59 U.S. at 277 (due process incorporates “those settled usages and modes of proceeding existing in the common and statute law of England”); *Hurtado*, 110 U.S. at 535 (due process encompasses “fundamental principles of liberty and justice” lying at the base of the legal system). Among those fundamental principles is the common law requirement that legal liability rest on a direct causal connection between an individual’s conduct and the harm alleged. The Supreme Court has repeatedly confirmed that causation is not merely a policy choice, but a constitutional constraint rooted in the common law tradition that due process preserves. *See Burrage*, 571 U.S. at 210–11 (explaining that the requirement of but-for- causation is a “background principle[]” of our legal tradition incorporated into modern law); *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992) (legal causation requires “some direct relation between the injury asserted and the injurious conduct alleged.”). These cases make explicit what the founding-era understanding assumed: that due process forbids imposing liability based on speculative, attenuated, or aggregate theories of causation untethered from an individual defendant’s conduct.

When the Framers incorporated the phrase “due process of law” in the Fifth Amendment, they understood it as incorporating established common law protections that limited legal liability, including the causation principles essential to fairness in imposing legal consequences on individuals. *Murray’s Lessee*, 59 U.S. at 277 (due process incorporates “those settled usages and modes of proceeding existing in the common and statute law of England”) *see also* *Hurtado*, 110 U.S. at 535 (“Due process of law . . . refers to that law of the land . . . which derives its authority from the inherent and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.”). These “fundamental principles” necessarily include the causation requirements that English common law had always used to limit legal liability to consequences that could be fairly attributed to individual conduct. *See* Dan B. Dobbs, *The Law of Torts* § 180, at 25–29 (2000) (tracing causation requirements to common law foundations of due process).

This foundational understanding of due process was deeply influenced by established English common law, as espoused through the writings of Sir William Blackstone and Sir Francis Bacon, who established common threads that legal liability required a necessary connection between an act and its consequence. *See* 1 William Blackstone, *Commentaries*, 84 (1765) (“So great . . . is the regard of the law for private property, that it will not authorize the least violation of it; no, not even

for the general good of the whole community.”); *see also* John Phillip Reid, *Constitutional History of the American Revolution* 89–92 (1995) (discussing founding-era understanding of “law of the land”); Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 *Yale L.J.* 1672, 1683–1715 (2012) (tracing due process to English constitutional tradition). These principles required that legal consequences flow directly and foreseeably from individual conduct, establishing the causation requirements that became embedded in American due process jurisprudence. *See Francis Bacon, The Elements of the Common Lawes of England* (1630) (“it were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it content itself with the immediate cause”).

The Supreme Court has recognized that due process incorporates these substantive fairness principles rooted in common law tradition. *Hurtado*, 110 U.S. at 535 (due process includes “fundamental principles of liberty and justice”). In *Burrage*, 571 U.S. at 211, the Court emphasized that causation requires proof “that the harm would not have occurred” absent the defendant’s conduct, reaffirming a but-for causation standard. Further, the Court rejected “contributing cause” theories that would impose liability based merely on incremental contributions to a harm, holding instead that legal causation demands a direct causal link. *Id.* at 218–19. These principles show that causation requirements have always limited legal liability

to foreseeable, proximate consequences of individual conduct. *See* Francis Wharton, *A Treatise on the Law of Negligence* 11 (2d ed. 1878) (negligent injuries are those where the actor “may foresee a probable danger”).

Consistent with these foundational principles, the Supreme Court has consistently rejected causation theories that depart from common law requirements of directness and foreseeability. *See Holmes*, 503 U.S. at 268–69 (requiring “direct relation” between conduct and injury); *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 532–33 (1983) (applying directness and foreseeability requirements). Plaintiffs’ climate causation theory abandons these requirements entirely. Rather than demonstrating that executive orders directly and foreseeably cause specific harms to specific plaintiffs—the standard the founding generation understood as essential to due process—Plaintiffs advance a “butterfly effect” theory of causation. Indeed, Plaintiffs’ theory is a speculative, multi-step chain where executive orders *may* facilitate private energy production decisions, which *may* increase emissions, which *may* alter global climate systems, which *may* eventually harm Plaintiffs in unspecified ways. This is simply an untenable theory of liability. *See* William L. Prosser & W. Page Keeton, *The Law of Torts* § 42, at 264 (5th ed. 1984) (“any attempt to impose responsibility upon such a basis [a limitless chain of consequences] would result in infinite liability for all wrongful acts and would set society on edge and fill the courts with endless litigation”). This

attenuated chain would have been unrecognizable to the Framers as satisfying “due process of law” and contradicts the common law causation tradition that the Fifth Amendment’s Due Process Clause was understood to incorporate. *See Murray’s Lessee*, 59 U.S. at 277.

B. Climate Change Causation Theories Exceed Constitutional Limits

The separation of powers imposes fundamental limits on judicial authority to resolve policy disputes through expansive liability theories. For example, in *West Virginia v. EPA*, 597 U.S. 697, 724 (2022), the Supreme Court held that when confronted with questions of “vast economic and political significance,” courts must identify “clear congressional authorization” rather than blessing expansive interpretations of arguably ambiguous statutes. The Court emphasized that such decisions are for Congress to resolve. *Id.* at 735. This same fundamental principle applies here, where Plaintiffs seek to use causation theories to transform courts into forums for resolving broad policy debates about energy production, economic development, and environmental regulation. *See* Jonathan H. Adler, *Standing in the Hot Seat: Climate Change Litigation*, 8 Engage: J. Federalist Soc’y Prac. Groups No. 1 (2007) (discussing complex policy questions at the heart of climate litigation).

This Court has already recognized these institutional limits in the climate context. In *Juliana v. United States*, this Court acknowledged that while climate change raises serious concerns, “the plaintiffs’ case must be made to the political

branches or to the electorate at large” because accepting their claims would require courts to make “a host of complex policy decisions entrusted, for better or worse, to the wisdom and discretion of the executive and legislative branches.” 947 F.3d at 1175, 1171. The Court emphasized that ruling for plaintiffs would require evaluating the competing environmental and economic concerns and making decisions that “plainly require consideration of ‘competing social, political, and economic forces,’ which must be made by the People’s ‘elected representatives, rather than by federal judges.’” *Id.* at 1172 (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 128–29 (1992)).

These institutional constraints are not merely prudential—they reflect constitutional limits on judicial power. Courts cannot use expansive causation theories to assume responsibility for policy decisions that the Constitution assigns to democratically accountable branches. *See Vieth v. Jubelirer*, 541 U.S. 267, 310 (2004) (plurality opinion) (courts lack “judicially manageable standards” for certain policy questions); *Nixon v. United States*, 506 U.S. 224, 228 (1993) (some controversies “involves a political question” not subject to judicial review); *see also Massachusetts v. EPA*, 549 U.S. 497, 544–547 (2007) (Roberts, C.J., dissenting) (global warming involves a “complex web” of economic and physical factors, and should be subjected to “policy debates” rather than redressability decisions left up to the courts). When causation chains involve multiple speculative steps about

energy policy, economic impacts, and global environmental systems, accepting jurisdiction transforms courts from neutral avenues applying established legal principles, into policymakers weighing competing societal interests.

The Plaintiffs’ causation theory—that presidential executive orders will facilitate energy production that will contribute to climate change that will eventually harm Plaintiffs—represents precisely the type of speculative, multi-layered analysis that exceeds constitutional limits on judicial authority. *See Allen*, 468 U.S. at 759 (causal chain involving “numerous third parties” over whom plaintiff has no control is too speculative for Article III standing); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (similar causation principles apply to due process and standing). This causation chain involves at least four distinct causal steps, each involving complex policy and scientific determinations inappropriate for judicial resolution: (1) the executive orders will lead to increased energy production; (2) increased production will increase emissions; (3) increased emissions will cause climate change; and (4) climate change will cause cognizable harm to specific plaintiffs.

Each of these causal steps involves the type of policy judgment that the Framers understood as beyond judicial competence. *See Massachusetts v. EPA*, 549 U.S. at 534–35 (Roberts, C.J., dissenting) (“This Court’s standing jurisprudence simply recognizes that redress of grievances of the sort at issue here is the function

of Congress and the Chief Executive, not the federal courts.”); *West Virginia v. EPA*, 597 U.S. 697, 716 (2022) (decisions of “vast economic and political significance” require clear authorization). Courts cannot determine optimal levels of energy production, assess the relationship between emissions and global climate systems, or weigh the costs and benefits of economic activity affecting millions of Americans. Most fundamentally, accepting Plaintiffs’ causation theory would abandon the constitutional requirement that liability rest upon established legal principles rather than evolving policy judgments. *See Juliana*, 947 F.3d at 1170 (rejecting climate claims asking courts to “cease permitting, authorizing, and subsidizing fossil fuel use”). The causation standards Plaintiffs seek to impose in this litigation are not based on centuries of common law development but on recent policy decisions to expand liability theories to accommodate environmental activism. This abandonment of traditional legal principles violates the due process requirement that legal liability rest upon “settled usages and modes of proceeding” rather than judicial innovation. *Murray’s Lessee*, 59 U.S. at 277.

II. TRADITIONAL PROXIMATE CAUSE DOCTRINE NECESSARILY BARS PLAINTIFFS’ CLIMATE CHANGE CLAIMS

Traditional common law causation doctrine establishes clear limitations requiring foreseeability, directness, proportionality, and individualized proof which Plaintiff’s claims cannot satisfy.

A. Foreseeability Requirements Make Climate Change Causation Constitutionally Impermissible

Traditional common law causation doctrine requires that legal consequences be reasonably foreseeable to the defendant at the time of the allegedly wrongful conduct. This foreseeability requirement is essential in protecting individual liberty and enabling economic activity: it ensures that defendants can anticipate potential liability and adjust their conduct accordingly, and it prevents unlimited expansion of liability theories that would make productive activity economically unfeasible. As the Supreme Court has recognized, without foreseeability limits, “the judicial remedy cannot encompass every conceivable harm that can be traced to alleged wrongdoing.” *Associated Gen. Contractors*, 459 U.S. at 536.

Constitutional due process requires that liability be limited by foreseeability principles. The foundational case articulating this requirement, *Palsgraf*, 248 N.Y. at 344, famously held that liability extends only to those “within the range of apprehension.” Chief Judge Cardozo’s opinion established the enduring principle that defendants cannot be held liable for consequences they could not reasonably foresee: “The risk reasonably to be perceived defines the duty to be obeyed.” *Id.* The Supreme Court has consistently applied these foreseeability principles to constitutional and statutory liability. In *Holmes*, 503 U.S. at 268, the Court required “some direct relation between the injury asserted and the injurious conduct alleged.”

Most importantly, the Court emphasized that “a plaintiff who complained of harm flowing merely from the misfortunes visited upon a third person by the defendant’s acts was generally said to stand at too remote a distance to recover.” *Id.* at 268–69. This “third person” language is critical: when harm flows through the independent decisions and actions of intervening parties rather than directly from the defendant to the plaintiff, foreseeability disappears.

Lexmark Int’l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 132–33 (2014), further clarified how foreseeability limits apply in complex multi-step causation scenarios. There, the Court held that proximate cause “generally bars suits for alleged harm that is too remote from the defendant’s unlawful conduct.” *Id.* at 133 (quoting *Holmes*, 503 U.S. at 268–69). The Court explained that remoteness typically exists “if the harm is purely derivative of misfortunes visited upon a third person by the defendant’s acts.” *Id.* (quoting *Holmes*, 503 U.S. at 268–69). Critically, *Lexmark* recognized that even where the ultimate harm might be foreseeable in some general sense, the addition of intervening parties breaks the chain of proximate causation. The Court held that “when the deception produces injuries to a fellow commercial actor that in turn affect the plaintiff,” proximate causation fails. *Id.* at 134. In other words, the Court rejected causation theories where harm flows through a chain. The presence of an intermediate step, harm to a third party that then causes plaintiff’s injury, renders the causation too attenuated.

This principle applies with particular force where multiple intervening steps involve independent actors making autonomous decisions. In *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 10–11 (2010), the Court rejected a RICO claim where the causal chain required: (1) defendant’s failure to report cigarette sales; (2) state’s inability to collect information; (3) state’s failure to provide information to city; (4) customers’ decisions not to pay city taxes; and (5) city’s resulting revenue loss. The Court held this chain “too attenuated” because the “liability theory rests on the independent action of third parties and even fourth parties.” *Id.* at 11. The key principle from *Hemi* is that when the causal chain requires independent decisions by actors not controlled by the defendant, foreseeability evaporates—even if the general outcome might have been predictable.

Here, any relation between executive orders and Plaintiffs’ alleged harms is far from foreseeable. Plaintiffs’ theory requires: (1) executive orders to facilitate production decisions by private energy companies; (2) those private decisions to increase emissions; (3) those emissions to interact with complex global climate systems involving a multitude of intersecting variables; (4) those interactions to produce environmental changes; and (5) those changes to eventually harm specific plaintiffs. This multi-step chain involving “third persons” (such as energy producers, global emitters) whose independent decisions break any connection is precisely the type of “remote” causation *Holmes* held insufficient. Because Plaintiffs cannot show

a foreseeable chain of actions to harm, but instead rely on speculative chains involving countless intervening actors, their claims fail *Holmes's* constitutional minimum.

The Ninth Circuit has also recently responded to legal theories nearly identical to those here. In *Juliana*, 947 F.3d 1159, youth plaintiffs challenged government fossil fuel policies based on alleged climate change-induced constitutional violations. The Ninth Circuit acknowledged that “the federal government has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change.” *Id.* at 1164. Despite this acknowledgment, the Court held that even assuming the alleged constitutional right exists, federal courts lack the power to provide the requested redress, in part due to foreseeability hurdles. *Id.* at 1171–75. Here, Plaintiffs ask this Court to extend that chain even further by arguing that these three executive orders will facilitate energy production, which will increase emissions, which will cause climate change, which will eventually harm Plaintiffs. This represents a causation bridge too far that fails established foreseeability requirements and creates an even more speculative foreseeability theory than seen in *Juliana*.

Climate change represents precisely the type of unforeseeable consequence that traditional causation doctrine, as laid out in *Palsgraf*, was designed to exclude from legal liability. When Presidential executive orders facilitate energy production,

the officials charged with implementing those orders cannot reasonably foresee specific injuries to specific plaintiffs through the complex global climate system decades in the future. The causal chain is far too attenuated, involving too many intervening variables and independent actors to satisfy constitutional foreseeability requirements.

The distinction between general scientific knowledge and specific legal foreseeability is crucial for protecting individual liberty through predictable legal standards. While government officials may understand that fossil fuel use contributes to global emissions, this general knowledge does not create the specific, individualized foreseeability that due process requires for legal liability. *See Holmes*, 503 U.S. at 259 (foreseeability requires “some direct relation between the injury asserted and the injurious conduct alleged.”).

Abandoning foreseeability requirements for climate cases would destroy the constitutional protections that enable energy innovation and development. Energy producers, government officials, and individual Americans making energy-related decisions would face unlimited liability for global phenomena beyond their control or reasonable anticipation. This outcome would violate the due process principles designed to protect individual liberty through predictable legal frameworks.

B. Directness and Immediacy Standards Prohibit Multi-Layered Climate Causation

Traditional common law principles require direct and immediate causal connection between defendant’s conduct and plaintiff’s harm, along with proportionate responses to individual conduct. As Lord Francis Bacon observed, “it were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it content itself with the immediate cause, and judgeth of acts by that, without looking to any further degree.” Bacon, *The Elements of the Common Lawes of England*. This directness requirement prevents liability based on attenuated chains involving multiple actors and complex multilayered interactions precisely like those alleged in climate litigation.

The Supreme Court has applied directness requirements to protect constitutional due process in complex causation scenarios. In *Associated General Contractors*, 459 U.S. at 532–33, the Court emphasized that well accepted common law doctrines such as “foreseeability and proximate cause, directness of injury, [and] certainty of damages.” were “well-accepted common-law rules.” Further, the intervening causes doctrine, fundamental to due process causation requirements, prohibits liability when “[A]n intervening force supersedes prior negligence’ and thus breaks the chain of proximate causation required to impose liability on the original actor.” *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 835(1996). This

directness requirement is essential for maintaining the constitutional boundaries on legal liability that protect individual economic freedom.

The Ninth Circuit has similarly applied stringent directness requirements in climate change cases. In *Washington Environmental Council v. Bellon*, 732 F.3d 1131 (9th Cir. 2013), this Court held that the causal chain between local agencies' failure to regulate five oil refineries and plaintiffs' climate-change related injuries was "too tenuous" because the refineries had a "scientifically indiscernible" impact on climate change. *Id.* at 1143–44. The Court emphasized that a causal chain does not simply fail because of the number of links, but that those links may not be "hypothetical or tenuous" *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 867 (9th Cir. 2012) (Pro, J., concurring).

Plaintiffs' causation theory is exactly the type of tenuous chain theory rejected in *Bellon* and *Native Village of Kivalina* and fails to meet directness requirements at every level. Executive orders do not directly cause energy production but simply remove regulatory barriers that may facilitate private decisions to increase production. Increased production does not directly cause climate change—it contributes to global emissions that interact with complex climate systems involving countless variables. Climate change does not directly cause Plaintiffs these alleged injuries, and at most contributes to environmental conditions that may affect Plaintiffs through multiple intervening factors. The attenuation of causation becomes

even more pronounced when examining the nature of the claimed injury itself. A temperature increase of one to two degrees Fahrenheit does not directly cause cognizable legal harm to any specific plaintiff. Rather, the Plaintiffs' theory requires multiple additional causal steps beyond temperature change.

Each level of this causation chain involves numerous intervening causes that break any direct causal connection under traditional common law standards. Other nations' energy policies and emissions, natural climate variations, technological developments, market forces, and individual consumer choices all influence the global phenomena. Plaintiffs attribute to three specific executive orders. These independent variables, the uncertain scientific relationships between temperature and specific regional effects, and countless intervening factors sever any direct causal connection between Defendant's conduct and Plaintiff's alleged harm. The law does not recognize such attenuated, multi-step causation theories as sufficient to establish liability, particularly when each step involves substantial scientific uncertainty and the contributions of millions of independent actors.

C. Proportionality Requirements Prohibit Grossly Disproportionate Climate Liability

Legal responses must also be proportionate to individual conduct. The Supreme Court has recognized this proportionality as essential to constitutional due process as evidenced in punitive damages cases, establishing principles equally

applicable to liability theories. In *BMW v. Gore*, 517 U.S. at 575, the Court held that due process prohibits awards that are “grossly excessive” relative to the defendant’s conduct. The Court’s analysis emphasizes that constitutional due process requires reasonable proportionality between legal consequences and individual conduct.

This brand of climate litigation violates proportionality requirements by imposing massive potential liability for infinitesimal contributions to global emissions. Even if all three presidential executive orders resulted in significantly increased American energy production, the contribution to global emissions would represent a tiny percentage, 13%, of worldwide totals. *See* U.S. Energy Information Administration, *International Energy Statistics* (2024), <https://www.eia.gov/international/data/world>; *Juliana*, 947 F.3d at 1169 (noting approximately 25% of U.S. fossil fuels extracted from federal lands and waters). Subjecting these policies, or the energy production they might facilitate, to liability for global climate impacts violates the constitutional requirement of proportionate legal responses. When individual defendants contribute minute fractions to global phenomena, yet face liability for worldwide impacts, the legal response becomes grossly disproportionate to individual conduct—precisely what due process proportionality requirements prevent. *E. Enters. v. Apfel*, 524 U.S. 498, 528-529 (1998) (plurality opinion) (due process prevents “severe retroactive liability on a limited class of parties that could not have anticipated the liability” and striking

down statute imposing massive health-benefit costs on former coal companies for conduct decades earlier when no such obligation existed).

Abandoning directness and proportionality requirements would make energy development economically impossible by subjecting every participant in the energy sector to unlimited liability for global actions and involving countless intervening variables. Constitutional due process requires directness standards that enable individual Americans to pursue productive use of abundant energy resources without facing unlimited liability for remote, speculative consequences.

D. Aggregate Causation Theories Are Unsuitable in Holding Individuals Accountable

The Due Process Clause protects individual rights against collective liability theories that abandon traditional requirements for individualized proof of causation. Plaintiffs' reliance on aggregate and statistical causation fundamentally violates these constitutional protections by subjecting Defendants to liability based on collective activities rather than specific individual conduct that more likely than not caused Plaintiffs' particular harm. Even in *Juliana*, where the Court recognized that "the plaintiffs' evidence shows that federal subsidies and leases have increased . . . emissions" and that "[a]bout 25% of fossil fuels extracted in the United States come from federal waters and lands," the government contribution proved insufficient. *Juliana*, 947 F.3d at 1169.

The Supreme Court has consistently held that due process requires individualized determination of liability based on specific evidence connecting defendant's conduct to plaintiff's injury. *Burrage*, 571 U.S. 204 (rejection of aggregate causation theories and emphasizing that a direct causal connection is required rather than a contributing role in a broader set of factors).

Climate causation theories such as Plaintiffs' here, necessarily rely on statistical analysis and aggregate data rather than individualized proof. When Plaintiffs argue that executive orders contribute to global emissions that contribute to climate change that contributes to various environmental effects that may affect Plaintiffs in unspecified ways, they abandon the individualized causation proof that due process requires. In an ocean of actors, no plaintiff can demonstrate that any specific executive order more likely than not caused any specific injury to any particular plaintiff. *See Bellon*, 732 F.3d at 1144 ("Because a multitude of independent third parties are responsible for the changes contributing to [p]laintiffs' injuries," the Court concluded, "the causal chain is too tenuous to support standing.").

The Plaintiffs' legal theory also improperly shifts the burden of proof. The Supreme Court has held that "[t]he ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 177 (2009). Climate causation theories as applied here abandon this by shifting the

burden to Defendants to disprove causation within complex global systems where such disproof is impossible—requiring proof of a negative in a system with millions of variables across decades. *Cf. Schaffer v. Weast*, 546 U.S. 49, 56 (2005) (“The ordinary default rule is that plaintiffs bear the risk of failing to prove their claims”); *Gross*, 557 U.S. 167 (same). The constitutional problem becomes clear when applied to specific defendants: no statistical analysis can demonstrate that President Trump’s executive orders, rather than countless other contributing factors, more likely than not caused any specific Plaintiff’s particular injuries. The global climate system involves millions of variables and individual decisions across decades or centuries. *See* Jonathan H. Adler, *Warming Up to Climate Change Litigation*, 3 Va. L. Rev. 63, 67–69 (2007) (discussing challenges of establishing causation in climate litigation where harms result from cumulative effects of countless individual decisions and emission sources, and the global nature of emissions). Subjecting any individual defendant to liability based on statistical contribution to this global phenomenon abandons the individualized proof that due process requires. *See Juliana*, 947 F.3d at 1169–70 (acknowledging “many of the emissions causing climate change happened decades ago or come from foreign and non-governmental sources.”).

E. Advances in Climate Science Cannot Override Constitutional Causation Limits

Plaintiffs may contend that modern climate science now permits causal connections previously considered too speculative and some lower courts have allowed climate-related claims to proceed under state nuisance law. *See, e.g., California v. BP P.L.C.*, No. C 17-06011 WHA, 2018 WL 1064293 (N.D. Cal. Feb. 27, 2018) (allowing state-law nuisance claims to proceed); *Rhode Island v. Chevron Corp.*, 393 F. Supp. 3d 142 (D.R.I. 2019) (similar), *vacated on other grounds, Rhode Island v. Shell Oil Prods. Co.*, 979 F.3d 50 (1st Cir. 2020). Even if these decisions are correct, they are distinguishable and do not control the constitutional due process analysis and do not apply here.

First, even assuming broad scientific consensus on global climate trends, constitutional causation doctrine requires individualized proof that a specific Defendant's conduct caused specific Plaintiff's harm through a direct, foreseeable causal chain. Scientific correlation at a global level does not satisfy legal causation requirements at an individual level. The Supreme Court has consistently held that statistical evidence of aggregate trends cannot substitute for individualized proof of causation. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011) (rejecting statistical evidence as substitute for individualized determination); *Burrage*, 571 U.S. at 218–19 (rejecting “contributing cause” in favor of but-for causation requiring

direct link). While climate science may establish that increased emissions contribute to global temperature changes, it cannot demonstrate that these three specific executive orders more likely than not caused any particular plaintiff's alleged injuries. *See Holmes*, 503 U.S. at 268 (requiring “direct relation” between conduct and injury).

Secondly, these state-law nuisance cases involve different legal standards and different defendants. Those cases applied state tort law—which individual states may choose to expand—not constitutional due process limits which bind all courts. *See BMW v. Gore*, 517 U.S. at 572 (states have “flexibility” in tort law, but constitutional due process imposes outer limits). Moreover, those cases typically involved fossil fuel producers whose products directly emit greenhouse gases, not executive branch officials whose orders merely remove regulatory barriers to private production decisions. The additional causal steps from executive order to private production decisions to emissions to climate effects to Plaintiff injury all serve to compound the attenuation problem.

III. THE PRACTICAL CONSEQUENCES OF ABANDONING TRADITIONAL CAUSATION LIMITS WOULD PARALYZE AMERICAN ENERGY DEVELOPMENT THROUGH UNLIMITED CLIMATE BASED CLAIMS

The practical consequences of accepting Plaintiffs' causation theory further demonstrates why their legal theory violates separation-of-powers principles. When

a proposed legal rule would require courts to make “policy decisions entrusted . . . to the wisdom and discretion of the executive and legislative branches,” the impossibility of judicial administration reveals that the rule exceeds constitutional limits on judicial authority. *Juliana*, 947 F.3d at 1171. As the Supreme Court has recognized, courts must provide relief to claimants “who have suffered . . . actual harm” and not “shape the institutions of government.” *Lewis v. Casey*, 518 U.S. 343, 364 (1996). Here, the impossibility of judicially managing national energy policy through climate-causation litigation demonstrates that Plaintiffs seek to transform policy disputes into legal claims—precisely what *Juliana* rejected. 947 F.3d at 1175.

This Court’s decision in *Juliana* provides critical guidance on the practical consequences of accepting Plaintiffs’ causation theory. There, despite acknowledging “compelling evidence that climate change has brought [the] eve [of destruction] nearer,” this Court concluded that “the plaintiffs’ case must be made to the political branches or to the electorate at large.” *Id.* The Court’s reasoning applies with even greater force here, where Plaintiffs seek not just to enjoin specific government programs, but to challenge executive orders facilitating energy production generally.

If executive orders removing barriers to energy production create liability for global climate impacts, then similar liability theories could apply to all government policies affecting energy development: drilling permits, pipeline approvals, mining

leases, power plant licenses, and countless other regulatory decisions essential to American energy production. As this Court explained, accepting these types of climate causation theories would require courts to make “a host of complex policy decisions entrusted, for better or worse, to the wisdom and discretion of the executive and legislative branches.” *Id.* at 1171. These decisions “range, for example, from determining how much to invest in public transit to how quickly to transition to renewable energy,” and “plainly require consideration of ‘competing social, political, and economic forces,’ which must be made by the People’s ‘elected representatives, rather than by federal judges interpreting the basic charter of Government for the entire country.’” *Id.* at 1172 (quoting *Collins*, 503 U.S. at 128–29). State and local governments issuing similar permits and approvals would face identical liability theories, creating a comprehensive legal framework preventing all levels of government from facilitating energy development.

This expansion of liability illustrates why *Juliana* held climate causation theories require courts to make “complex policy decisions” beyond judicial competence. 947 F.3d at 1171. Determining which energy policies create impermissible climate risk requires weighing “competing social, political, and economic forces”—judgments the Constitution leaves for other branches of government to dictate.

Accepting Plaintiffs' causation theory would also open the floodgates to litigation and create unlimited liability for all participants in America's energy sector, making productive use of our abundant energy resources economically impossible and undermining the individual liberty that flows from affordable, abundant energy. The logical implications of climate causation extend far beyond the specific executive orders challenged here to encompass virtually all energy-related activity.

Private energy producers would face even more severe consequences. If government policies facilitating energy development create climate liability, then energy production itself necessarily creates greater liability. Every oil and gas producer, coal mining operation, power plant, and related facility would face unlimited liability for global climate phenomena based on their infinitesimal contributions to worldwide emissions. This would fundamentally alter the market structure around energy production for the worse.

The economic consequences would devastate American energy production and the individual liberty it enables. Energy investment would become economically unfeasible when potential liability is unlimited and uninsurable. Unlimited climate liability would prevent individual entrepreneurs and innovators from developing America's vast energy resources. Small producers and innovative companies, essential to energy abundance and technological advancement, cannot survive

unlimited liability exposure. The constitutional framework designed to protect individual liberty through productive economic activity would be replaced by a litigation regime that prevents access to America's abundant natural resources.

CONCLUSION

The Due Process Clause of the Fifth Amendment, understood according to its original meaning and purpose, requires adherence to traditional common law causation principles that protect individual liberty through predictable legal standards. Climate change causation theories abandon these constitutional requirements by subjecting Defendants to liability based on speculative, attenuated connections to global phenomena beyond their control or reasonable anticipation.

Plaintiffs' causation theory—that presidential executive orders will facilitate energy production that will contribute to climate change that will eventually harm Plaintiffs—fails every traditional requirement for constitutional causation. The theory lacks the foreseeability, directness, and proportionality that due process requires, while relying on aggregate and statistical analysis that violates individual proof requirements.

The practical consequences extend far beyond this particular case to threaten the individual liberty and economic opportunity that flow from America's abundant energy resources. If speculative climate causation theories create unlimited liability for energy-related activities, productive investment in domestic energy development

becomes economically impossible. If causation could indeed be constitutionally demonstrated, then perhaps that would be the reality these companies—or the President, as the signer of the Executive Orders at issue—would have to face. But liability cannot be lawfully proven, and for this reason the Plaintiffs’ theory must fail as violating basic due process.

For the foregoing reasons, this Court should reject Plaintiffs’ appeal and dismiss for Appellees.

DATED: March 5, 2026.

Respectfully submitted,

/s/ Tyler Fry

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CERTIFICATE OF COMPLIANCE

9th Cir. Case Number: 25-6714

I am the attorney or self-represented party.

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Dated: March 5, 2026.

/s/ Tyler Fry
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using ACMS system on March 5, 2026. Participants in the case who are registered ACMS users will be served by the ACMS system.

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