



February 6, 2024

*Submitted via email*

President Joseph R. Biden, Jr.  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

The Honorable Jennifer M. Granholm  
Secretary, U.S. Department of Energy  
100 Independence Avenue, SW  
Washington, D.C. 20585

Re: **Objections to the Liquefied Natural Gas Export Pause**

Dear President Biden and Secretary Granholm:

We, the Attorneys General for Kansas, Indiana, Louisiana, West Virginia, Alabama, Alaska, Arkansas, Georgia, Idaho, Kentucky, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming urge you to end the “pause” on exports of liquefied natural gas (LNG). Instead of addressing America’s real energy challenges, your administration has decided to double down on a reckless environmental agenda through this TikTok-inspired “pause.” But this surprise freeze is (1) unlawful, (2) harmful to our economy, and (3) detrimental to our national security. It emboldens and empowers Iran and Russia, while further hampering our ability to protect ourselves.

### **The Liquefied Natural Gas Export “Pause” is Unlawful**

Your administration’s planned “pause”—which we might more accurately call a series of constructive denials—of most American LNG exports is unlawful for several reasons.

First, the Department of Energy has identified no authority to issue blanket denials of export permits. As you should know, the Department “literally has no power to act—including under its regulations—unless and until **Congress** authorizes it to do so by statute.”<sup>1</sup> Yet neither the White House nor the Department cited any statutory authority when announcing the pause. Instead, the White House merely referred to President Biden’s executive order commanding federal agencies to reorder federal operations around single-minded and fears about climate

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<sup>1</sup> *Fed. Election Comm’n v. Cruz*, 596 U.S. 289, 301 (2022) (cleaned up) (emphasis added).

change. But that order is not sufficient, as “a President may only confer by Executive Order rights that Congress has authorized the President to confer.”<sup>2</sup>

If you intended to rely on Section 3 of the Natural Gas Act (NGA), then you were mistaken. That statute **requires** the Department to approve applications to export LNG to non-Free Trade Agreement countries “unless, after opportunity for hearing, it finds that the proposed exportation ... will not be consistent with the public interest.”<sup>3</sup> It creates a “general presumption favoring [export] authorization.”<sup>4</sup> The Department would need to make “an affirmative showing of inconsistency with the public interest” to deny the application.<sup>5</sup>

Here, you have signaled every intention to deny a sweeping category of exports based on allusions to environmental harms.<sup>6</sup> Your administration and its allies appear to be “seizing on regulatory loopholes and prejudging the outcomes of complicated policy analysis.”<sup>7</sup> Agency predetermination is bad enough,<sup>8</sup> but it’s doubly wrong when it conflicts with Congress’s express purpose in enacting the statute. Indeed, some suggest this pause is an effort to obstruct ongoing litigation concerning related export approvals.<sup>9</sup>

The Department’s defiance of statutory requirements is even more remarkable because LNG exports are of vast “economic and political significance.”<sup>10</sup> As discussed below, our allies rely on LNG exports for their energy needs.<sup>11</sup> And meeting this demand requires new export terminals leading to billions of dollars in capital expenditures and tens of thousands of new jobs.<sup>12</sup> The Department’s pause jeopardizes all this work<sup>13</sup>—all without the Department pointing to any “clear congressional authorization” to issue this pause in the first place.<sup>14</sup> Congress is

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<sup>2</sup> *Karuk Tribe of Cal. v. Ammon*, 209 F.3d 1366, 1375 (Fed. Cir. 2000).

<sup>3</sup> 15 U.S.C. § 717b(a).

<sup>4</sup> *W. Va. Pub. Servs. Comm’n v. U.S. Dep’t of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982).

<sup>5</sup> *Panhandle Producers & Royalty Owners Ass’n v. Econ. Regul. Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987).

<sup>6</sup> *Contra* Elizabeth Urrutia, *The Bear, the Boom, and the Barriers to Liquefied Natural Gas Exports*, 39 *Environ. L. & Pol’y J.* 19, 31 (2015) (“DOE policy itself suggests that the public interest determination should be limited and should exclude environmental considerations.”).

<sup>7</sup> Matthew Yglesias, *Banning Natural Gas Exports*, *Slow Boring* (Jan. 29, 2024), <https://bit.ly/48SoQJu>; *see also* Ben Cahill & Joseph Majkut, *Biden Administration Pauses New LNG Approvals*, *Center for Strategic & International Strategies* (Jan. 26, 2024), <https://bit.ly/49dACHb> (explaining how the pause resulted from “environmental campaigners”).

<sup>8</sup> *Cf. Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 714 (10th Cir. 2010).

<sup>9</sup> *See* Niina H. Farah, *Biden’s gas export pause could ripple through LNG lawsuits*, *E&E News* (Jan. 29, 2024), <https://bit.ly/3OorMVQ>.

<sup>10</sup> *Biden v. Nebraska*, 143 S. Ct. 2355, 2372 (2023) (internal quotation marks omitted).

<sup>11</sup> *See* C. Thomas Kruse, *Mitigating Risk in U.S. Liquefied Natural Gas Contracts*, *Law360* (Aug. 14, 2023), <http://tinyurl.com/3fpfuj9k>.

<sup>12</sup> *See Studies of Infrastructure Need to Expand US LNG Exports to European and Asian Allies* at 27, <http://tinyurl.com/4wwjchz3>.

<sup>13</sup> *See* Brian Dabbs, *Biden Administration Freezes Gas Export Approvals*, *E&E News* (Jan. 26, 2024), <http://tinyurl.com/4wmcaepd>.

<sup>14</sup> *W. Virginia v. EPA*, 597 U.S. 697, 732 (2022).

aware of the economic and environmental impacts that LNG exports may have, but it has declined to act.

In short, you are reconstructing the NGA’s regulatory structures. “[W]hen Congress wishes to alter the fundamental details of a regulatory scheme, as [the Department] contend[s] it did here through delegation, [courts] would expect it to speak with the requisite clarity to place that intent beyond dispute.”<sup>15</sup>

Second, we anticipate that your action will give rise to liability under the Administrative Procedure Act for unreasonable delay. “To state a claim for unreasonable delay,” a plaintiff need only “allege that the agency failed to take a discrete agency action that it is required to take,” and show “that the delay was unreasonable.”<sup>16</sup> Courts consider several factors in evaluating reasonableness, including whether the delay “may be undermining the statutory scheme, either by frustrating the statutory goal or by creating a situation in which the agency is losing its ability to effectively regulate at all.”<sup>17</sup>

The elements of a delay claim are here. The NGA requires the Department to address these export applications. As for unreasonableness, several things confirm that the “pause” will fail that standard. Among other things, this delay will only further lengthen what is already a “lengthy, cumbersome process” in an industry where competition is fierce and time is of the essence.<sup>18</sup> Further environmental review will unreasonably duplicate the “extensive environmental regulatory process” that applicants must already undergo.<sup>19</sup> And this situation is not one where the Department has limited resources and competing obligations that compel delay;<sup>20</sup> the Department is creating this problem all on its own considering how the process could take up to 15 months or more to finish.<sup>21</sup>

Third, beyond delay, your action also fails to stay “within the bounds of reasoned decision-making.”<sup>22</sup> The reasons why should be clear to this point—chiefly, the Department has failed to consider the effects of this indefinite pause. Several export projects are awaiting approval from the Department, and the Department doesn’t explain how the pause will impact those projects. Here again, it’s likely because the Department has no idea what will happen to those projects. For example, an official said that the pause will have no impact on the Venture Global’s Calcasieu Pass 2 project—a facility planned to be built along the Louisiana coast—but a Department spokesperson later clarified that all “current and future pending applications” will

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<sup>15</sup> *U.S. Forest Serv. v. Cowpasture River Pres. Ass’n*, 140 S. Ct. 1837, 1848-49 (2020).

<sup>16</sup> *Da Costa v. Immigr. Inv. Program Off.*, 80 F.4th 330, 340 (D.C. Cir. 2023).

<sup>17</sup> *Cutler v. Hayes*, 818 F.2d 879, 898 (D.C. Cir. 1987) (cleaned up).

<sup>18</sup> *Urrutia*, *supra*, n.6 at 27-28.

<sup>19</sup> *Id.* at 34.

<sup>20</sup> *See, e.g., Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1100 (D.C. Cir. 2003).

<sup>21</sup> *See Ben Lefebvre, White House Gas Export Review to Freeze New Projects for More than a Year*, Politico (Jan. 25, 2024), <http://tinyurl.com/t5pxjhsh>.

<sup>22</sup> *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019).

be affected by the pause.<sup>23</sup> As companies make final decisions on whether to invest in these projects, the Department has no answers. And we as discuss below, the Department does not explain how the pause will impact our national security interests as our allies have come to depend on our LNG exports.<sup>24</sup> So the Department has not adequately explained how it arrived at its decision; the pause is neither “reasonable” nor “reasonably explained.”<sup>25</sup>

Fourth, and finally, the Department did not offer a chance for anyone to weigh in on the pause. Generally, agency legislative rules must go through the APA’s notice-and-comments procedures.<sup>26</sup> And the pause here is a substantive rule required to go through that process. The pause effectively commands the Department to stop performing its obligations under the NGA to approve export applications and does not leave the agency free to exercise discretion unless it chooses to disobey the policy. That’s the exact type of substantive rule that needs to go through notice and comment because it modifies substantial rights.<sup>27</sup>

### **This “Pause” Further Damages our Economy**

Beyond being unlawful, this “pause” unnecessarily harms our economy. Our nation’s abundant supply of LNG insulates U.S. consumers from the increasing global energy instability while at the same time advancing U.S. national interests and ensuring the energy security for U.S. allies. The United States is the world leader in natural gas production and became the top exporter of LNG in 2023—exporting an unprecedented 86 million metric tons.<sup>28</sup> Almost 187 million Americans use natural gas, and the industry supports more than four million jobs.<sup>29</sup> Notably, “[e]xport facilities employ thousands of workers, and the industry has ripple effects on construction and other indirect jobs.”<sup>30</sup> Because of our bountiful resources, the U.S. has enough dry natural gas to last nearly 90 years.<sup>31</sup>

However, we need the infrastructure to move that gas from where it is produced to where it is consumed, including abroad via LNG export facilities. The export of American LNG provides significant economic benefits across the country. Exports of American LNG are expected to create more than 450,000 jobs by 2035 and increase GDP by \$73 billion.<sup>32</sup> Given the

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<sup>23</sup> Kelsey Brugger, *Biden’s pause on LNG export approvals riles Republicans*, E&E News (Jan. 26, 2024), <http://tinyurl.com/mf3c46hc>.

<sup>24</sup> See Secretary Anthony J. Blinken Remarks Before U.S.-E.U. Energy Council Meeting, Department of State, April 4, 2023, <http://tinyurl.com/5n7m383p>.

<sup>25</sup> *Fed. Comm’n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

<sup>26</sup> See 5 U.S.C. § 553.

<sup>27</sup> See *Louisiana*, 543 F. Supp. 3d at 415 (holding that a “pause” on new oil-and-gas leases should have been subject to notice and comment).

<sup>28</sup> Ben Cahill, *U.S. LNG Export Boom: Defining National Interests*, Center for Strategic & International Studies (Jan. 11, 2024), <http://tinyurl.com/ms86yenu>.

<sup>29</sup> *Cleaner Energy by the Numbers*, American Gas Association, <http://tinyurl.com/4peywwzd>.

<sup>30</sup> Jeffrey Kupfer, *An LNG Export Ban is Bad Politics for Biden*, Wall Street Journal (January 24, 2024), <https://www.wsj.com/articles/stifling-energy-production-is-bad-politics-for-biden-lng-export-review-6b270d94>.

<sup>31</sup> *How Much Natural Gas Does the United States Have, and How Long Will it Last?*, U.S. Energy Information Administration (Mar. 28, 2023), <http://tinyurl.com/bdfz997h>.

<sup>32</sup> Harry Vidas, *Impact of LNG Exports on the U.S. Economy: A Brief Update*, ICF (September 2017).

recent growth in the domestic LNG industry, those benefits could be even greater today and in the future. Your “pause” will directly prevent America from reaching its full potential in LNG job production and economic growth. For example, the Venture Global’s Calcasieu Pass 2, a \$10 billion LNG terminal proposed project for exports in Louisiana (which will be affected by your “pause”), is estimated to boost daily American LNG shipments by about 20 percent.<sup>33</sup>

Natural gas meets domestic needs and the prices remain among the lowest in the world.<sup>34</sup> The gas production levels can satisfy both domestic consumption and export needs.<sup>35</sup> Even while exports reached record highs in 2023, domestic prices declined 62%.<sup>36</sup> This energy industry has the ability to meet rising global demand for natural gas and maintain a well-supplied domestic market. Your administration appears intent on destroying this economic progress in the name of vague climate change goals. That is simply unacceptable.

### **The “Pause” Harms our National Security**

Your administration’s pause on LNG exports is not only unlawful and harmful to our economy, it is also detrimental to our national security.

While exporting American LNG has no effect on the price of natural gas domestically, it does impact the prices paid by American allies and the rest of the world. American allies rely on American LNG to meet their energy needs.<sup>37</sup> The United States is the largest producer of LNG.<sup>38</sup> If the market for American LNG evaporates, consumers will be forced to turn to other suppliers—namely, Russia, Iran, and China—the next largest producers of LNG.<sup>39</sup> At best, these countries do not share our interests or values; at worst, they actively seek to harm us and our allies.

Freezing American LNG exports is a win for Russia and Vladimir Putin. European countries, including American allies, depend on natural gas imports to fulfill their energy needs.<sup>40</sup> Cutting them off from American LNG will not decrease that need; it will force them to turn to other sources. Russia is more than ready to fill the void. Not long ago, you celebrated the delivery of American gas to Europe as a “key geopolitical weapon” against Putin.<sup>41</sup> Now,

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<sup>33</sup> Brian Dabbs and Carlos Anchondo, *Will Biden Shock Global Market with LNG Stop Sign?* (Jan. 25, 2024), E&E News, <http://tinyurl.com/45ukwa8e/>.

<sup>34</sup> *Gas Market Report q2-2023*, IEA (May 2023), <http://tinyurl.com/ye7e7f49>.

<sup>35</sup> *Analysis of U.S. Natural Gas Market Price Impacts*, Am. Council for Capital Formation (May 22, 2023), <http://tinyurl.com/mrht6rf2>.

<sup>36</sup> *U.S. Henry Hub natural gas prices in 2023 were the lowest since mid-2020*, U.S. Energy Information Administration (Jan. 4, 2023), <http://tinyurl.com/mpum4adx>.

<sup>37</sup> *See Studies of Infrastructure Need to Expand US LNG Exports to European and Asian Allies* at 27, <http://tinyurl.com/4wwjchz3>.

<sup>38</sup> Melissa Pistilli, *Top 10 Countries for Natural Gas Production*, Investing News Network (Oct. 25, 2023), <http://tinyurl.com/436hbmt4>.

<sup>39</sup> *Id.*

<sup>40</sup> *See Studies of Infrastructure*, *supra* n.36.

<sup>41</sup> Matthew Daley, *Biden Delays Consideration of New Natural Gas Export Terminals, Citing Climate Risk*, AP (Jan. 26, 2024), <http://tinyurl.com/mwunn8f2>.

this pause effectively funds Russia’s war in Ukraine and its destabilization efforts in Europe and Asia.

And recently, Iran-backed militias killed three American military members and injured over 30 more in a drone strike on the Jordan-Syria border. You acknowledged that these “militias are responsible for [] continued attacks on U.S. forces,”<sup>42</sup> as well as being responsible for attacks on Israel, America’s strongest ally in the region.<sup>43</sup> You promised the American people to “take all necessary actions to defend the United States, our troops, and our interests.”<sup>44</sup> Your administration’s natural gas export pause not only contradicts that statement, it guarantees that even more money and resources will end up in the hands of a government intent on killing American servicemembers. This is wrong, and it is dangerous.

We hoped that your administration would have considered this and the economic and national security implications before announcing the pause, but this does not appear to be the case. It appears instead that the administration made this decision to appease a 25-year-old left-wing TikTok influencer<sup>45</sup> and Hollywood celebrities.<sup>46</sup> After viewing social media videos, your administration announced the pause, stating that it was necessary to address the “climate crisis.”<sup>47</sup> Under less serious circumstances, it would be laughable to think the President of the United States made any decision based on the whims of a Chinese-controlled social media platform.<sup>48</sup> But this is not a laughing matter. This decision harms our national security and will cost lives. We urge your administration to stop making decisions based on the whims of social media influencers and treat this matter seriously by reversing this reckless decision.

Your administration has already demonstrated your disinterest in our national security. This pause comes at a time when your administration is engaged in an unnecessary and unproductive standoff at the border with Texas, raising serious concerns about potential motives. Recently, every Republican state attorney general signed a letter condemning your administration’s desire to punish Texas for doing nothing more than protecting its borders from an invasion associated with illegal immigration; a responsibility your administration abdicated. Texas is one of the largest producers of natural gas and at least one of their projects will be implicated by this export pause.<sup>49</sup> While we certainly hope that the federal government is not intentionally trying to destroy a state’s economy, the timing of this announcement and your administration’s behavior are suspect.

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<sup>42</sup> Paul Mcleary and Lara Seligman, “*We Shall Respond*”: Biden Warns Militants After 3 US Troops Killed in Jordan, Politico, <http://tinyurl.com/dj3sra6j>.

<sup>43</sup> Steve Holland and Matt Spetalnick, *Biden Offers Israel Support, Faces Criticism on Iran at Home*, Reuters (Oct. 7, 2023), <http://tinyurl.com/yhmvvd8rv>.

<sup>44</sup> Mcleary, *supra* n.39.

<sup>45</sup> Coral Davenport, *White House Said to Delay Decision on Enormous Natural Gas Export Terminal*, New York Times (Jan. 24, 2024), <http://tinyurl.com/ye257mcw>.

<sup>46</sup> Mark Ruffalo (@MarkRuffalo), Twitter (Jan. 26, 2024), <http://tinyurl.com/54v3jszd>.

<sup>47</sup> *Statement from President Joe Biden on Decision to Pause Pending Approvals of Liquefied Natural Gas Exports*, The White House, Jan. 26, 2024, <http://tinyurl.com/mrx7f96n>.

<sup>48</sup> David Ingram, *TikTok’s Content on Some Political Subjects Aligns with the Chinese Government, Study Says*, NBC News (Dec. 21, 2023), <http://tinyurl.com/3eyyepue>.

<sup>49</sup> *Companies Most Affected by US Pause on LNG Export Permits*, Reuters (Jan. 26, 2024), <http://tinyurl.com/4ud474e7>.

**Conclusion**

Although your administration has put this country in a difficult situation through this LNG “pause,” you still have time to change course. Your administration does not have to recklessly continue down an unlawful path that harms our economic and national security interests. You can and must reverse course by immediately ending this “pause.”

Sincerely,



Attorney General for Kansas



Attorney General for Indiana



Attorney General for Louisiana




Attorney General for West Virginia



Attorney General for Alabama



Attorney General for Alaska



Attorney General for Arkansas



Attorney General for Georgia



Attorney General for Idaho



Attorney General for Kentucky



Attorney General for Mississippi



Attorney General for Missouri



Attorney General for Montana



Attorney General for Nebraska



Attorney General for Ohio





Attorney General for Oklahoma



Attorney General for South Carolina



Attorney General for South Dakota



Attorney General for North Dakota



Attorney General for Tennessee



Attorney General for Texas



Attorney General for Utah



Attorney General for Wyoming