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Federal Court Signals Skepticism Toward California's Challenge to CRA Waiver Revocations

By Joel D. Eagle

In June 2025, the California Attorney General and 10 other states filed suit against the Trump administration, challenging Republican-led resolutions under the Congressional Review Act (CRA) that repealed Clean Air Act (CAA) waivers that permitted CARB and CARB-following states to establish their own vehicle emissions standards. California's complaint, amended in October 2025, raises statutory claims under the CRA and the Administrative Procedure Act, as well as constitutional and separation-of-powers claims. The litigation is proceeding, and on February 19, 2026, U.S. District Judge Haywood S. Gilliam Jr. held a hearing on the federal government's motion to dismiss the lawsuit.

Key Developments from February 19 Hearing

While no ruling has been issued, Judge Gilliam's comments during the hearing signal that the states face an uphill battle on several fronts.

Statutory and ultra vires claims. Judge Gilliam noted that the states' ultra vires and statutory claims face "a significant challenge" in light of the Ninth Circuit's 2019 decision in *Center for Biological Diversity v. Bernhardt*, which held that federal courts lack jurisdiction to review actions taken under the CRA. In the hearing, the federal government argued that the states were attempting "jurisdictional gymnastics" to circumvent *Bernhardt* and further argued that the states lack standing because their claims rest on speculative future harms.

The states' counsel countered that *Bernhardt* is a narrow decision about an agency that missed a congressional reporting deadline and that the CRA's jurisdiction-stripping provision does not bar the states' claims, citing *National Association of Manufacturers v. Department of Defense* and the Ninth Circuit's decision in *National TPS Alliance v. Noem* in support.

Constitutional claims. Judge Gilliam also questioned the states' constitutional and separation-of-powers arguments, asking the states directly whether their position is that Congress could "under no circumstance" terminate the waivers. The states' response was that Congress had lawful means available, such as enacting new legislation, but that it could not use the CRA to revoke state waivers because the statute was designed for congressional review of federal agency rules, not state-issued waivers. The states also contend that they did not have an opportunity to participate in the process, stating: "[t]hey literally just issued a press release announcing their change."

Cautioning that his role is "not to weigh in on whether Congress is good or bad," Judge Gilliam also acknowledged that the CRA resolutions were "unusual looking" and that there was "certainly some irregularity" in the waiver repeal process. Rather than issuing a ruling from the bench, Judge Gilliam observed that the parties likely want to reach the court of appeals "as soon as possible, because that's where this is finalized, if not further."

Implications and Key Takeaways

The court's apparent skepticism toward the states' statutory claims, rooted in *Bernhardt*'s broad jurisdictional bar, suggests that the motion to dismiss may be granted in whole or in part. However, Judge Gilliam's recognition of "irregularity" in the repeal process leaves open a possible path for the constitutional claims. Regulated entities and stakeholders in the vehicle emissions space should monitor this case closely as a ruling is expected in the coming weeks, with appellate review likely to follow.

DOJ Announces Shift from Criminal Prosecution of Clean Air Act Defeat Device Violations

By Joel D. Eagle

In January 2026, the U.S. Department of Justice (DOJ) announced on X (formerly Twitter) that it is "exercising its enforcement discretion to no longer pursue criminal charges … on allegations of tampering with onboard diagnostic devices in motor vehicles" under the CAA. DOJ explained its change in enforcement is based on "sound enforcement principles, efficient use of government resources[,] and avoiding overcriminalization of federal environmental law." It has been reported that DOJ issued an internal memorandum regarding this change of enforcement policy, but the memorandum has not been publicly released.

CAA, EPA Guidance and Prior Criminal Prosecution

Section 203 of the CAA (42 U.S.C. 7522) prohibits the manufacture, sale or installation of aftermarket defeat devices that bypass vehicle emission controls and prohibits knowingly removing or rendering inoperative emission control devices after sale. Violations may result in civil penalties up to $59,114 per vehicle for manufacturers and dealers, as well as criminal prosecution. While most of the enforcement for alleged violations has been civil over the past decade, EPA has referred several defeat device and tampering cases to DOJ, resulting in prosecutions and convictions with criminal penalties and imprisonment.

Prior guidance documents such as EPA's 2020 FAQ "Vehicle Aftermarket Defeat Devices and Tampering" have stated that "[i]t is a crime to knowingly falsify, tamper with, render inaccurate, or fail to install any 'monitoring device or method' required under the CAA." In November 2020, EPA also published a revision to its 1974 Mobile Source Enforcement Memorandum 1A (June 25, 1974), titled "EPA Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act." This updated policy provides that EPA may exercise enforcement discretion and not pursue tampering violations if a person "has a documented, reasonable basis to conclude that the conduct does not adversely affect emissions."

EPA previously designated aftermarket defeat devices as one of its National Enforcement and Compliance Initiatives for FY 2020-2023, finalizing 189 cases totaling over $61 million in penalties, including 17 criminal prosecutions resulting in criminal penalties of $5.6 million, $1.2 million in restitution, $438,000 in environmental projects, and 54 months of incarceration.

Implications and Key Takeaways

In addition to revising its policy on future criminal enforcement, DOJ is also dismissing approximately 12 existing criminal tampering cases. This enforcement shift is in line with recent changes in EPA enforcement priorities, including its December 2025 memorandum, "Reinforcing a 'Compliance First' Orientation for Compliance Assurance and Civil Enforcement Activities." Despite this policy shift, DOJ has stated it intends to continue civil enforcement in partnership with EPA.

Regulated entities should also consider that enforcement discretion policies like this are subject to change over time, especially after a change in administration. Several states also have laws and regulations prohibiting this type of conduct. Therefore, even if the risk of federal prosecution has decreased for now, parties may be subject to state criminal prosecution and civil enforcement. Maintaining compliance with the defeat device and tampering prohibitions in the CAA and proper recordkeeping of such compliance will help mitigate the risk of future civil or criminal enforcement at the state and federal levels.

EPA Finalizes Rescission of GHG Endangerment Finding and Repeals GHG Motor Vehicle Emission Standards

By Joel D. Eagle

On February 12, 2026, EPA released its long-awaited final rule rescinding the 2009 Greenhouse Gas "Endangerment Finding" and repealing all federal greenhouse gas (GHG) emission standards for light-, medium- and heavy-duty motor vehicles and engines. The rule was published in the Federal Register on February 18 (91 Fed. Reg. 7686) and is effective April 20, 2026. EPA has characterized this final rule as "the single largest deregulatory action in U.S. history."

2009 Endangerment Finding

In *Massachusetts v. EPA*, 549 U.S. 497 (2007), the U.S. Supreme Court held that GHGs qualify as "air pollutants" under Section 302(g) of the CAA and that EPA must determine whether GHG emissions from new motor vehicles "endanger" public health or welfare. In response, on December 7, 2009, the Obama EPA issued the Endangerment and Cause or Contribute Findings ("Endangerment Finding"), which concluded that emissions of six key GHGs – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride – endanger public health and welfare. The Endangerment Finding became the legal prerequisite for all subsequent federal GHG emission standards for motor vehicles that have been promulgated over the past two decades and that regulate GHGs in motor vehicles through 2032.

Trump Administration Review and Final Rule

As directed by Executive Order 14154, EPA Administrator Lee Zeldin initiated a review of the Endangerment Finding in early 2025 and recommended its reconsideration on February 19, 2025. EPA proposed the rule to rescind the Endangerment Finding on August 1, 2025, followed by a 52-day public comment period and four days of virtual public hearings, during which the agency received approximately 572,000 comments.

In the final rule, EPA based its rescission on a revised legal interpretation rather than on new scientific findings as the proposed rule had done. Specifically, EPA concluded that Section 202(a)(1) of the CAA, as originally enacted and amended between 1965 and 1977, authorizes only the regulation of emissions that endanger health and welfare through "local or regional exposure" and does not extend to global climate change concerns. EPA cited several recent Supreme Court decisions as informing its revised interpretation, including *Utility Air Regulatory Group v. EPA* (2014), *West Virginia v. EPA* (2022) (applying the major questions doctrine) and *Loper Bright Enterprises v. Raimondo* (2024) (overruling *Chevron* deference). EPA also advanced a "futility" rationale, concluding that U.S. motor vehicle GHG standards have no material impact on global climate indicators and that regulating GHGs under the CAA "would be unreasonable given their futility and the immense burdens they place on regulated parties, consumers, and the economy."

Litigation Challenging the Rescission

As anticipated, the final rule immediately faced legal challenges. On February 18, 2026, the American Public Health Association, American Lung Association, Center for Biological Diversity, Sierra Club and other environmental and public health organizations filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit. Additional lawsuits from states and advocacy groups are expected. The litigation could ultimately reach the Supreme Court, which has never reviewed the substance of the 2009 Endangerment Finding itself.

California's Response and State-Level Action

California also responded immediately to the federal rescission. Governor Gavin Newsom announced on February 12, 2026, that the state would challenge the rescission in court, and Attorney General Rob Bonta called the repeal "a reckless rejection of decades of scientific evidence." Other states have responded similarly. For example, New York issued a press release stating that the "repeal of the Endangerment Finding made it clear that the political leadership of the Environmental Protection Agency is untethered to facts or science … and New York will continue to fight every day to protect New Yorkers from the impacts of climate change and deliver a safer, cleaner, and healthier future."

California is also considering whether to issue its own state-level GHG standards for vehicles. On February 19, Senate Bill 1266, "Greenhouse gases: endangerment findings," was introduced, which "would state that greenhouse gases are air pollutants that endanger public health and welfare and would, to the extent authorized by federal law, require state agencies implementing or enforcing statutes relating to air quality, climate change, transportation, energy, or public health to implement or enforce those statutes consistent with that endangerment statement."

One potential ramification, which will likely be pursued in the litigation and by states in future legislative and regulatory action, is the argument that where EPA concludes the CAA does not cover GHGs, the federal preemption that has historically prevented states from independently regulating vehicle GHG emissions may no longer apply. Anticipating this, EPA stated in the final rule that Section 209(a) of CAA, the provision regarding preemption of state motor vehicle emission standards, continues to apply such that states would also not be permitted to regulate GHGs from motor vehicles.

Implications and Key Takeaways

Regulated entities, particularly vehicle and engine manufacturers, should closely monitor the evolving regulatory and litigation landscape. While the final rule eliminates all federal GHG compliance, reporting and certification obligations for motor vehicles, companies operating in multiple jurisdictions must evaluate ongoing state-level requirements. Rescinding the Endangerment Finding may also have cascading implications for stationary source GHG regulations, but those programs remain in place unless separately repealed.

After SCOTUS Invalidates IEEPA Tariffs, Trump Administration Turns to Other Options – What Importers Need to Know

By Francesca M.S. Guerrero and Aaron C. Mandelbaum

On February 20, 2026, the U.S. Supreme Court (SCOTUS), in a landmark 6-3 ruling, determined that President Trump's use of the International Emergency Economic Powers Act (IEEPA) to impose tariffs was unlawful. In its decision, the SCOTUS stated: "When Congress grants the power to impose tariffs, it does so clearly and with careful constraints. It did neither in IEEPA."

As Chief Justice John Roberts noted in the majority opinion, the IEEPA gives the president economic tools to address significant foreign threats to U.S. national security, foreign policy or the economy. Early in his second term, President Trump declared a national emergency as to both drug trafficking and U.S. trade deficits and issued a series of executive orders imposing tariffs under the IEEPA.

Several small businesses subsequently filed complaints in federal district courts, including the U.S. District Court for the District of Columbia and the U.S. Court of International Trade (CIT), alleging that the IEEPA does not authorize tariffs. Consistently, these lower courts ruled in favor of the small businesses, and the U.S. Court of Appeals for the Federal Circuit affirmed on appeal, holding that the IEEPA's grant of authority to "regulate … importation" did not authorize the challenged tariffs, which "are unbounded in scope, amount, and duration." The Trump administration then sought review by the SCOTUS, which held oral argument on an expedited basis in November 2025. For additional analysis on the oral argument, see our November 7, 2025 SmarTrade blog post.

The SCOTUS held that the IEEPA does not authorize the president to impose tariffs. Its opinion makes clear that the U.S. Constitution reserves for the legislative branch "the power to lay and collect taxes, duties, imposts and excises" and that a tariff is a tax. The SCOTUS held that when Congress has delegated its constitutional power to tariff, "it has done so in explicit terms, and subject to strict limits" and "conditioned exercise of the tariff power on demanding procedures." The opinion notes, however, that "[a]bsent from [the] lengthy list of [IEEPA] powers is any mention of tariffs or duties."

Trump Administration's Reaction to the SCOTUS Decision and Other Tariff Options

After the SCOTUS opinion, President Trump on February 20, 2026, invoked Section 122 of the Trade Act of 1974 in Proclamation 11012 to impose a 10% tariff on imports worldwide. Section 122 empowers the president to address "fundamental international payments problems" that could impair U.S. national interests, including economic and national security interests. Any tariffs implemented under Section 122, however, are temporary, unable to exceed 150 days unless extended by an Act of Congress.

The new Section 122 tariff went into effect on February 24, 2026, and thus will continue until July 24, 2026. However, this tariff does not apply to products identified in the annexes of the executive order itself, which include "passenger vehicles, certain light trucks, certain medium- and heavy-duty vehicles, buses, and certain parts of passenger vehicles, light trucks, medium- and heavy-duty vehicles, and buses."

President Trump has also indicated that this temporary tariff will be raised to 15%, but as of this writing, there has been no official announcement formalizing such an increase.

For additional insight on the new Section 122 tariff, see our February 23, 2026 SmarTrade blog post.

Additionally, the U.S. Trade Representative (USTR) on February 20 announced that the Trump administration will rely on other statutory authorities to implement more tariffs, including Section 301 of the Trade Act of 1974 and Section 232 of the Trade Adjustment Act of 1962. However, both Section 301 and Section 232 are statutory authorities that require a lengthier administrative process before presidential action.

Section 301 allows the federal government to respond to a country's acts, policies or practices that, after investigation, are found to be unjustifiable, unreasonable, discriminatory and burdensome to U.S. commerce. Tariffs are one possible remedy under this statute. The USTR has stated that it will be initiating several Section 301 investigations on an expedited basis but did not specify which countries would be investigated.

Section 232 allows the federal government to impose tariffs and import restrictions on certain imports that threaten national security. The USTR has confirmed that tariffs currently imposed under Section 232 will remain in place, including those pertaining to automobiles and automobile parts and those affecting medium- and heavy-duty vehicles (MHDVs) and parts of MHDVs, while ongoing investigations will conclude soon. The Trump administration may seek to adjust tariffs on sectoral goods already subject to Section 232 tariffs and may initiate investigations related to other imports. To learn more about the USTR's response to the SCOTUS decision, see our February 23, 2026 SmarTrade blog post.

Immediate IEEPA Decision Implications

The SCOTUS opinion and subsequent Trump administration statements indicate that the CIT will oversee the IEEPA tariff refund process to be administered by U.S. Customs and Border Protection (CBP). The holding confirmed that the CIT is the sole trial court with jurisdiction to adjudicate any disputes arising from those claims.

How refunds may be provided is still unclear. The SCOTUS opinion provided no guidance to the CIT. Prior case law confirms that the CIT has the authority to order refunds, and the federal government defendants in the current CIT IEEPA tariff case have stated on the record that they will not contest the CIT's authority to order reliquidation and enable refunds. During a press conference after the SCOTUS decision, President Trump did not appear to contest this assertion either but stated that the matter could be litigated for years. Secretary of the Treasury Scott Bessent has also stated that the Trump administration "will follow the court's direction" but not until the CIT rules on a refund process. Importers of record, however, have stated that a process exists via the Automated Commercial Environment (ACE) system for processing imports and collecting tariff revenues to allow for a relatively straightforward refund process.

CBP stated that the federal government would stop collecting tariffs subject to the IEEPA beginning February 24, 2026 (see our February 23, 2026 SmarTrade blog post). Other tariff regimes, such as those imposed under Section 232 and Section 301, remain in effect.

How Can Importers Seek IEEPA Tariff Refunds?

Importers of record that have paid the IEEPA tariffs should take steps to preserve their rights and their records for seeking any refunds. Discussions with counsel on a refund strategy should include consideration of both CBP administrative refund procedures and the filing of a CIT complaint.

Overall, importers of record should collect and preserve records of all entries subject to IEEPA tariffs as evidence of tariff payments. This should include but not be limited to (i) entry records maintained in CBP's ACE system, (ii) CBP Entry Summary (Form 7501), (iii) CBP Periodic Monthly Statements and (iv) any other duty payment records. Importers of record should also monitor CBP's Cargo Systems Messaging Service for updates and guidance on the reporting and application of any tariff duty rates.

The SCOTUS indicated that the CIT has jurisdiction over IEEPA issues but did not indicate how refunds of the invalidated IEEPA tariffs should be processed. The Trump administration itself stated that it would issue refunds "following a final, unappealable decision ordering the government to refund the IEEPA tariffs." These actions have resulted in the continuation of complaints filed by importers of record at the CIT seeking refunds. While more than 1,500 complaints were filed before the SCOTUS ruling, they were all stayed by the CIT pending the outcome of the SCOTUS decision. With the tariffs now invalidated, the CIT may lift the stay and seek to address how refunds should be processed. The CIT could also mandate that CBP establish a court-supervised refund process, instead of a CBP administrative refund process. Absent any immediate process or procedural rulings from the CIT regarding refunds, the filing of a complaint may be the most prudent step to take to protect an importer of record's right to obtain a judgment and judicial relief.

Should a CBP administrative refund process take place, importers of record may be able to seek refunds by filing a post-summary correction (PSC) or a protest. For unliquidated entries, importers can file corrections up to 300 days of entry and at least 15 days before any scheduled liquidation. Any PSC submission is essentially a new Entry Summary and would correct any prior entry by removing the Harmonized Tariff Code of the United States classification in place for the IEEPA tariff codes and thus removing the additional duty rate. For liquated entries, importers of record can file a protest requesting a refund within 180 days of liquidation. This is a formal process to administratively contest CBP decisions related to imported merchandise and request refunds.

FOR MORE INFORMATION

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