FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CINDY CODONI; MICHELLE GEER; HORACE CATHCART; AMY FRANCE; TAMARA CHAKOS, *Plaintiffs - Appellees*, v. PORT OF SEATTLE; ALASKA AIR GROUP, INC.; DELTA AIR LINES, INC., *Defendants - Appellants*.	No. 25-2830 D.C. No. 2:23-cv-00795-JNW OPINION

Appeal from the United States District Court
for the Western District of Washington
Jamal N. Whitehead, District Judge, Presiding

Argued and Submitted March 5, 2026
Seattle, Washington

Filed September 23, 2026

Before: M. Margaret McKeown, Richard A. Paez, and Daniel A. Bress, Circuit Judges.

Opinion by Judge Paez

SUMMARY*

Collateral Attack Doctrine / Clean Air Act Preemption

The panel reversed the district court's order denying Defendants' motion to dismiss Plaintiffs' suit concerning clean up and payment for pollution from overhead flight paths at the Seattle-Tacoma Airport.

Plaintiffs, who live beneath the takeoff and landing paths at the Seattle-Tacoma Airport, sued Alaska Airlines, Delta Airlines, and the Port of Seattle, alleging state tort and constitutional claims.

The panel held that the district court properly exercised jurisdiction over Plaintiffs' claims. Delta argued that the complaint was an improper collateral attack designed to circumvent the exclusive judicial review of certain agency orders in the courts of appeals. The panel held that the collateral attack doctrine, which provides that the district court lacks jurisdiction to hear claims that are inescapably intertwined with a review of the procedures and merits of a prior agency order, was not applicable to this case. Defendants did not and could not identify the specific agency orders that were necessarily implicated by Plaintiffs' complaint.

The panel held that Plaintiffs' state law claims were expressly preempted by Section 233 of the Clean Air Act, 42 U.S.C. § 7573, which provides that "[n]o State or political subdivision thereof may adopt or attempt to enforce any

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part." Plaintiffs' complaint took aim at emissions that sit at the core of the Act—particulate matter that concentrates in the ambient air. Although Section 233 allows states to enforce standards that are identical to the Environmental Protection Agency's aircraft emission standards, the possibility of enforcing federal standards via state law claims does not save Plaintiffs' complaint because Plaintiffs' complaint does not contain any allegation that Defendants are violating federal law.

Accordingly, the panel reversed the district court's denial of Defendants' motion to dismiss, and remanded the case for further proceedings.

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OPINION

PAEZ, Circuit Judge:

Plaintiffs Cindy Codoni, Michelle Geer, Horace Cathcart, Amy France, and Tamara Chakos live underneath the takeoff and landing paths at the Seattle-Tacoma Airport. On behalf of themselves and their neighbors, they sued Alaska Airlines, Delta Airlines, and the Port of Seattle to clean up and pay for pollution from the flights overhead, advancing state tort and constitutional claims. Defendants moved to dismiss, and the district court denied the motion, but certified its order for interlocutory review.

While this case presents many diverse legal theories, we resolve this appeal by answering only two questions today.

First, we hold that the district court properly exercised jurisdiction over Plaintiffs' claims. Delta Airlines argues that the complaint is an improper collateral attack designed to circumvent the exclusive judicial review of certain agency orders in the courts of appeals. But the collateral attack doctrine is not applicable to this case, as Defendants do not and cannot identify the specific agency orders that are necessarily implicated by Plaintiffs' complaint.

Second, we hold that Plaintiffs' claims are expressly preempted by Section 233 of the Clean Air Act, 42 U.S.C. § 7573. The complaint takes aim at emissions that sit at the core of the Act—particulate matter that concentrates in the ambient air. We therefore reverse the district court's denial of the motion to dismiss.

I. Background

A. Facts

Plaintiffs are five individuals who reside within a five-mile radius of the Seattle Tacoma Airport ("Sea-Tac"), which the complaint refers to as the "Contamination Zone." Defendants are two commercial airlines—Alaska Air Group ("Alaska") and Delta Airlines, Inc. ("Delta") (collectively, the "Airlines")—and the Port of Seattle ("Port"), a special-purpose municipal corporation that owns and operates Sea-Tac. Alaska and Delta together operate about 80% of the flights into and out of Sea-Tac.

We recount the well-pleaded allegations in the complaint, which we must accept as true. *Thomas v. County of Humboldt*, 124 F.4th 1179, 1186 (9th Cir. 2024). Alaska and Delta "rain" pollutants on the Contamination Zone as their planes take off and land, and the Port permits this pollution to occur. Plaintiffs point to two sources of pollution: aircraft engine exhaust and aircraft fuselages (that is, the bodies of aircraft). Aircraft exhaust generates "particulate matter, dangerous gases (such as carbon monoxide, nitrogen dioxide, and sulfur oxide), hazardous air pollutants (such as formaldehyde, acrolein, 1,3-butadiene, naphthalene, benzene, acetaldehyde, and ethylbenzene), and some heavy metals (such as barium and, particularly in piston-engined aircraft, arsenic and lead)." As for the fuselages, the repeated expansion and contraction of fuselages on takeoff and landing "causes particulate matter—including aluminum, barium, cadmium, copper, lead, magnesium, silver, and zinc—to flake off the aircraft's body and to pollute the surrounding environment."

Most such pollutants are dispersed by wind while airplanes fly, which "minimizes the buildup of pollutants in any one location." "However, when planes fly below 3,000 feet, there is not enough time for the wind to fully disperse the pollutants. Pollutants released below this altitude are sucked downwind and accumulate in local communities." Plaintiffs cite a 2019 study from the University of Washington, which found that communities directly below the takeoff and landing paths at Sea-Tac experience significantly higher concentrations of particulate matter air pollution than neighboring communities, with the highest concentrations occurring in the Contamination Zone. A follow-up study in 2021 found that this pollution also infiltrates classrooms in the Contamination Zone. And studies of airports from around the world find that soil near an airport tends to be significantly contaminated with heavy metals.

Plaintiffs allege that Defendants learned about each Contamination Zone study after it was published and held specific meetings to discuss the studies in 2021. Nonetheless, Defendants have not acted to prevent or clean up further pollution.

Plaintiffs allege that the pollution of air and soil in the Contamination Zone harms the health and property of those who call it home. They cite a comparative study that found that individuals in the Contamination Zone are more likely to be hospitalized for respiratory conditions, to be born too early and with low birth weights, to live shorter lives, and to die from cancer and respiratory disease, as well as all other leading causes of death. And because pollution negatively affects home values, the ongoing pollution depreciates the value of Plaintiffs' property. These burdens do not fall equally across the demographics of King County. Rather, plaintiffs maintain that this concentration of health and economic harm falls disproportionately on King County's impoverished, minority, and immigrant communities.

B. Procedure

On behalf of themselves and all other residents and homeowners of the Contamination Zone, Plaintiffs sued the Airlines and the Port to stop, remediate, and compensate for this pollution. Plaintiffs first sued in King County Superior Court and Defendants removed the action to federal court. The class action complaint proposes two classes: the Resident Class, defined by residency in the Contamination Zone, and the Homeowner and Renter Class, defined by relationship to real property in the Contamination Zone. The proposed classes include over 300,000 individuals.

Plaintiffs advance six claims. The Resident Class alleges 1) negligence, against all Defendants, and 2) battery, against the Airlines. The Homeowner and Renter Class alleges 3) negligence, 4) continuing intentional trespass ("trespass"), and 5) public nuisance against all Defendants, as well as 6) inverse condemnation[1] against the Port, in the alternative to the battery, negligence, and trespass claims. The essence of each claim is that Defendants cause pollutants to "rain down" on Plaintiffs' persons and property and fail to remediate that pollution. Plaintiffs pray for declaratory relief, injunctive relief (including for the

[1] Inverse condemnation is a takings claim brought under the Washington Constitution to "recover the value of property which has been appropriated in fact, but with no formal exercise of the power of eminent domain." *Dickgieser v. Washington*, 105 P.3d 26, 28 (Wash. 2005).

remediation of property and a medical monitoring program), damages for the loss of use and enjoyment of property, and other appropriate relief.

The Airlines and Port all moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. The district court denied the motions. Defendants first argued that Plaintiffs' claims are improper collateral attacks on federal agency actions subject to two exclusive judicial review provisions: 49 U.S.C. § 46110 (Federal Aviation Administration ("FAA"), among other agencies) and 42 U.S.C. § 7607(b)(1) (Environmental Protection Agency ("EPA")). The district court rejected this argument, noting that Plaintiffs' complaint did not expressly challenge or cite any agency order, and that Defendants failed to explain how Plaintiffs' claims implicated any specific orders reviewable under either statute.

Defendants also argued that Plaintiffs' claims were expressly preempted by a provision of the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1), and Section 233 of the Clean Air Act, 42 U.S.C. § 7573 ("Section 233"). The district court rejected the Airline Deregulation Act defense because it determined that Plaintiffs' theories of liability do not necessarily turn on the Airlines' choices in preempted areas, such as their routes and services, and because it was too early to know whether Plaintiffs' claims would bind the Airlines to any particular price, route, or service. And the district court rejected the Section 233 preemption defense based on our decision in *California v. Navy*, 624 F.2d 885 (9th Cir. 1980). Under *Navy*, the district court held that Plaintiffs' claims would only be preempted by Section 233 if they "necessitate aircraft alterations as a factual matter." The district court further noted that Section 233 allows states to enforce standards that are identical to federal standards.

Whether Plaintiffs' claims would require aircraft alterations and whether Defendants are in compliance with the relevant federal standards are both factual questions, and the district court declined to resolve those questions in Defendants' favor on their motion to dismiss.

Defendants also raised implied preemption defenses, arguing that Congress fully occupied the fields of "airspace management and flight paths, aviation safety, aircraft engine and body design, and emissions." The district court rejected Defendants' proposed field definitions and instead specified the field of "airplane pollution and its effects on people and property." The district court concluded that this field was not fully occupied because *Navy*'s preemption test implied that some state airplane pollution standards would not be preempted. Finally, the district court rejected Defendants' conflict preemption defense, based on its prior holdings as to express and field preemption.

On Defendants' joint motion, the district court certified its order denying the motion to dismiss for interlocutory review under 28 U.S.C. § 1292(b). Defendants then petitioned this court for interlocutory review, which a motions panel granted.

II. Jurisdiction and Standard of Review

We have jurisdiction to review a district court's denial of a motion to dismiss certified for interlocutory review under 28 U.S.C. § 1292(b). *Bennett v. United States*, 44 F.4th 929, 933 (9th Cir. 2022). For interlocutory review to be proper, the order must present "a controlling question of law as to which there is substantial ground for difference of opinion," and it must be the case that "an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C § 1292(b).

We have an independent duty to confirm that interlocutory review is appropriate under this standard. *Sterling v. Feek*, 150 F.4th 1235, 1247 (9th Cir. 2025). The standard is met here. The questions of law that Defendants advance under the collateral attack doctrine are both novel and important, and Section 233 of the Clean Air Act is infrequently interpreted.

We review de novo the district court's denial of the motion to dismiss. *Bennett*, 44 F.4th at 933. We construe the facts in the light most favorable to the nonmovants and draw all reasonable inferences in their favor. *Thomas*, 124 F.4th at 1186.

"Preemption is an affirmative defense, so the defendant bears the burden of pleading and supporting its preemption argument." *Cohen v. ConAgra Brands, Inc.*, 16 F.4th 1283, 1289 (9th Cir. 2021). "[T]he assertion of an affirmative defense may be considered properly on a motion to dismiss where the 'allegations in the complaint suffice to establish' the defense." *Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013) (quoting *Jones v. Bock*, 549 U.S. 199, 215 (2007)).

III. Discussion

A. Subject Matter Jurisdiction

We first consider whether the district court had subject matter jurisdiction to adjudicate Plaintiffs' claims.

Under 42 U.S.C. § 7607(b)(1), "[a] petition for review of action of the [EPA] Administrator in promulgating . . . any standard under section 7571 of this title . . . may be filed only in the United States Court of Appeals for the District of Columbia." That cross-referenced section, 42 U.S.C. § 7571(a)(2)(A), provides for emission standards for "aircraft engines." And under 49 U.S.C. § 46110(c), the federal courts of appeals have "exclusive jurisdiction to affirm, amend, modify, or set aside" an "order" of the FAA on certain subjects.[2] An "order" is any "final agency action" of an aviation agency. *Magassa v. Mayorkas*, 52 F.4th 1156, 1165 (9th Cir. 2022). The exclusive judicial review provisions of these two statutes are not identical, but they do not differ in any material respect for our purposes. We therefore treat the two statutes together here, while acknowledging that their differences may be pertinent in future cases.

When, under these statutes, a claim can be heard in the courts of appeals, the district court lacks jurisdiction to hear that claim. *See Cal. Dump Truck Owners Ass'n v. Nichols*, 784 F.3d 500, 504–05, 508 (9th Cir. 2015); *Magassa*, 52 F.4th at 1164. That is, the district court's jurisdiction is "preempted" by the exclusive judicial review provision. *Latif v. Holder*, 686 F.3d 1122, 1127 (9th Cir. 2012) (quoting *Americopters, LLC v. FAA*, 441 F.3d 726, 736 (9th Cir. 2006)). But these provisions do not preempt the district court's jurisdiction in "every possible dispute" involving the listed agencies. *Americopters*, 441 F.3d at 735. Rather, for a claim to trigger these statutes, it generally must implicate the agencies, actions, and remedies specified in each statute. *See Magassa*, 52 F.4th at 1165. When § 7607 and § 46110 do not "explicitly" allow the courts of appeals to hear a claim, the district court retains jurisdiction. *Latif*, 686 F.3d at 1128 (quoting *Americopters*, 441 F.3d at 735); *see also*

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[2] The order must pertain to the FAA Administrator's "aviation duties and powers." 49 U.S.C. § 46110(a). 49 U.S.C. § 46110 applies to other agencies as well, but for the purposes of this opinion, we consider only its application to the FAA.

EPA v. Calumet Shreveport Refining, L.L.C., 145 S. Ct. 1735, 1743 (2025).

In limited circumstances, however, the district court may also lack jurisdiction over claims that fall outside of these judicial review provisions. Under the collateral attack doctrine, the district court lacks jurisdiction to hear claims that are "inescapably intertwined with a review of the procedures and merits" of a prior agency order. *Americopters*, 441 F.3d at 736 (quoting *Crist v. Leippe*, 138 F.3d 801, 803 (9th Cir. 1998)); *see also Nichols*, 784 F.3d at 506 (applying 42 U.S.C. § 7607(b)(1) to claims that "*effectively,* if not facially, challenged an EPA final action"). The purpose of the doctrine is to prevent litigants from using a district court proceeding to raise a claim that is a "thinly disguised attempt at an end-run around the jurisdictional limitation imposed by" the exclusive review provisions. *Mace v. Skinner*, 34 F.3d 854, 860 (9th Cir. 1994). A complaint is not a collateral attack, however, when it is "not based on the merits of any particular [agency] order." *Id.* at 858. Whether a lawsuit presents a collateral attack must be judged "on the face of the complaint." *Id.* at 860.

Delta argues that the collateral attack doctrine bars the district court from adjudicating Plaintiffs' claims.[3] Plaintiffs, they assert, seek relief from pollution caused by takeoffs and landings at Sea-Tac, but this conduct is generally regulated by EPA actions and FAA orders. As an illustrative list, Delta points to: EPA's regulations of aircraft emissions, including a recent rule examining health impacts

[3] Delta does not argue, however, that Plaintiffs' claims are "explicitly" covered by the statutes. *Americopters*, 441 F.3d at 735. For good reason, as Plaintiffs seek damages, among other remedies, and neither 42 U.S.C. § 7607 nor 49 U.S.C. § 46110 provides for damages.

near airports like Sea-Tac; the FAA's Finding of No Significant Impact for the Greener Skies Over Seattle initiative, in which the FAA set flight paths at Sea-Tac to reduce environmental impacts; and the FAA's authorization of Sea-Tac's third runway. Delta does not identify all the relevant regulations that apply to Defendants' conduct, but offer this list of "example[s]" to show that regulations are pervasive. And according to Delta, any harm arising out of generally regulated conduct, or caused by regulated entities, must be litigated under the relevant exclusive judicial review provisions.

Delta's collateral attack defense is not well taken. Plaintiffs' complaint is not "inescapably intertwined with review of the procedures and merits surrounding" any particular agency order. *Americopters*, 441 F.3d at 736 (quoting *Crist*, 138 F.3d at 803). Rather, the complaint takes aim at a broad course of variably regulated conduct. That makes the collateral attack doctrine inapplicable.

Among the live agency actions possibly relevant here, the complaint does not implicate any "particular" action. *Mace*, 34 F.3d at 858. Even in the collateral attack defense we rejected in *Mace*, the complaint "stem[med] from" a specific agency action, the revocation of one aircraft mechanic's certificate. *Id.* And in every case on which Delta and amici rely, the plaintiffs challenged one or two identifiable agency actions.[4] This complaint is not

[4] *See Americopters*, 441 F.3d at 728, 731 (seeking rescission of FAA orders and damages); *Ctr. for Biological Diversity v. EPA*, 847 F.3d 1075, 1080 (9th Cir. 2017) (challenging specific agency action of pesticide registration); *Gilmore v. Gonzales*, 435 F.3d 1125, 1129 n.1, 1131 (9th Cir. 2006) (challenging "enactment and enforcement" of identification policy promulgated by FAA); *Tur v. FAA*, 104 F.3d 290, 291 (9th Cir. 1997) (challenging FAA's rejection of a pilot's license);

comparable. Plaintiffs claim, for example, that Defendants negligently "shower pollutants on neighboring communities in quantities that pose serious health risks." But the agency actions regulating this allegedly tortious act are innumerable, touching on topics as varied as airplane and engine design, fuel types, runway directions, flight paths, flight frequency, flight hours, emissions level allowances—and surely many more. Although the complaint generally implicates a pervasive regulatory scheme that may support a preemption defense, *see, e.g.*, *City of Burbank v. Lockheed Air Terminal Inc.*, 411 U.S. 624, 638 (1973), it is not a collateral attack on agency action.

Nor is the complaint "inescapably intertwined with a review of the procedures and merits surrounding" any agency order. *Americopters*, 441 F.3d at 736 (quoting *Crist*, 138 F.3d at 803). Delta stresses that if this case were to proceed to trial, a jury *might* be asked to assess the reasonableness of certain agency actions, such as EPA-approved emissions levels or FAA-approved flight paths, or the district court *might* grant relief conflicting with those actions. But a jury might *not* be asked to make such assessments, and the district court might *not* grant conflicting relief. Defendants ignore the posture of the case and our duty to look only to the facial allegations at this

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Nichols, 784 F.3d at 503–04 (without naming EPA order, seeking injunction against specific California regulation that EPA approved and adopted); *New England Legal Found. v. Costle*, 666 F.2d 30, 31–32 (2d Cir. 1981) (seeking injunction against burning fuel with EPA-approved sulfur content); *Krauss v. FAA*, No. 15-CV-05365, 2016 WL 1162028, at *1 (N.D. Cal. Mar. 24, 2016) (challenging one specific flight path which FAA approved and seeking return to old flight path); *McKay v. City & County of San Francisco*, No. 16-CV-03561, 2016 WL 7425927, at *1 (N.D. Cal. Dec. 23, 2016) (challenging two specific flight paths).

stage. *Mace*, 34 F.3d at 860; *Latif*, 686 F.3d at 1127 n.5. Because the complaint supports non-collateral trial theories and remedies, the fact that it might also support a collateral attack does not require dismissal at this stage.

To save their collateral attack defense, Delta asks us to twist our precedent. Relying on our decision in *Gilmore*, Delta argues that a suit is “inescapably intertwined” with agency orders whenever it “arise[s] out of the particular facts” of an encounter with a regulated party. 435 F.3d at 1133 n.9 (quoting *Mace*, 34 F.3d at 858).

Our holding in *Gilmore* was not so sweeping. *Gilmore* concerned an encounter with agency officials and a regulated entity acting pursuant to a single identifiable agency action, TSA’s policy of requiring identification to board flights. *Id.* at 1130, 1132 n.6. We held that the district court lacked jurisdiction over the facial attack on the agency action, as well as the as-applied challenges arising from the “particular facts of Gilmore’s encounter with Southwest Airlines,” where Southwest Airlines was acting pursuant to the *same* expressly challenged action. *Id.* at 1133 n.9. *Gilmore* is thus consistent with the basic rule that a collateral attack is one that is “based on the merits of [a] particular [agency] order.” *Mace*, 34 F.3d at 858. And it is consistent with our subsequent observation that 49 U.S.C. § 46110 does not grant the courts of appeals “direct and exclusive jurisdiction over every possible dispute involving the FAA,” let alone the entities it regulates. *Americopters*, 441 F.3d at 735.[5] *Gilmore* does not stand for the proposition that all encounters with regulated entities give rise to claims that must be heard only in the courts of appeals.

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[5] *Gilmore* and *Americopters* concerned only 49 U.S.C. § 46110.

Because Plaintiffs seek redress from a broad course of variably regulated conduct, and Defendants cannot identify any agency actions that are inescapably intertwined with the complaint, the collateral attack doctrine is not applicable here. The district court thus properly exercised jurisdiction.

B. Clean Air Act Express Preemption

We turn to the preemption question. Defendants argue that Plaintiffs' claims are preempted by federal law, including Section 233 of the Clean Air Act, codified at 42 U.S.C. § 7573. We agree that Section 233 preempts the claims in the operative complaint and so do not proceed to consider Defendants' defenses under the Airline Deregulation Act and their implied preemption theories.

1. Section 233

The Constitution and laws of the United States are the "supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Accordingly, "Congress has the power to preempt state law," and it may "withdraw specified powers from the States by enacting a statute containing an express preemption provision." *Arizona v. United States*, 567 U.S. 387, 399 (2012). When a statute contains an express preemption clause, "the task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993).

Added to the Clean Air Act in 1970, Section 233 provides that "[n]o State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part." 42 U.S.C. § 7573; Clean Air Amendments of 1970, Pub. L. No. 91-604, § 11(a)(1), 84 Stat. 1676, 1704–05 (1970).

Before applying Section 233, we define its key terms. In the context of this preemption provision, the word "standard" includes positive enactments of state law as well as "state common-law rules."[6] *See Nw., Inc. v. Ginsberg*, 572 U.S. 273, 281–83 (2014) (interpreting the scope of the ADA's original preemption provision); *Harris ex rel. Harris v. Ford Motor Co.*, 110 F.3d 1410, 1414 (9th Cir. 1997) ("'[A]ny safety standard' sweeps broadly and suggests no distinction between positive enactments and common law." (quoting 15 U.S.C. § 1392(d) (1988)). "Use of the word 'respecting' in a legal context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018). An "emission" is an "action of giving off or sending out (chiefly what is subtle or imponderable, light, heat, gases, odours, sounds, etc.)." *Emission*, 5 Oxford English Dictionary 180 (2d ed. 1989). Finally, the Clean Air Act elsewhere defines "air pollutant" as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter

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[6] The word "standard" generally excludes state law claims that seek only to enforce "the parties' voluntary undertaking[s]," such as state tort actions for breach of contract. *See Ginsberg*, 572 U.S. at 284. Plaintiffs do not argue that their claims seek to enforce voluntarily undertakings or otherwise contest that their state law claims are "standard[s]" within the meaning of Section 233.

which is emitted into or otherwise enters the ambient air." 42 U.S.C. § 7602(g).

Section 233 does not categorically preempt all state law claims. Rather, "[t]he proper inquiry calls for an examination of the elements of the common-law duty at issue." *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 445 (2005). And the elements of the relevant duty must bear on the preempted subject matter with the requisite specificity prescribed by the statute.

Section 233 does, however, preempt Plaintiffs' state law claims. Here, the "standard[s]" that Plaintiffs seek to "enforce" are "respecting emissions," 42 U.S.C. § 7573, as "respecting" is an exceptionally broad word, *Lamar*, 584 U.S. at 717. The central factual premise of the complaint is that the Airlines are "giving off or sending out" pollutants as they take off and land, *Emission*, 5 Oxford English Dictionary 180, and that the Port permits the activities that generate these emissions. In Plaintiffs' view, Defendants have been negligent, caused battery and trespass, created a public nuisance, and inversely condemned property, all with regards to or by way of these emissions. To allow Plaintiffs to recover on these state law claims, then, would be to allow the state of Washington to enforce common law and constitutional duties "respecting emissions." 42 U.S.C. § 7573.

Plaintiffs argue that they do not target the original act of emission, but the failure to clean up pollutants after dispersal. Even so, such a failure-to-clean-up claim is still "respecting" the emission of air pollutants, because it is at least "relating to" such emissions, *Lamar*, 584 U.S. at 716 (quoting Webster's New Twentieth Century Dictionary

1542 (2d ed. 1979) [Webster's]), or brought "in view of" the original act of emission, *id.* (quoting Webster's 1934).

Finally, the emissions that Plaintiffs take aim at are "of [] air pollutant[s]" within the meaning of Section 233. At no point in this litigation have Plaintiffs contended otherwise. The complaint itself characterizes the offending substances as "pollutants," and identifies aircraft engine exhaust as the primary pollutant source. The only other source of pollution the complaint identifies is "particulate matter" that "flake[s] off" aircraft fuselages. The complaint further alleges that both the exhaust and the fuselage debris are composed of pollutants that normally disperse in the air. Both the exhaust and fuselage debris thus fall squarely within the definition of "air pollutant" as defined by the Clean Air Act, 42 U.S.C. § 7602(g), and as ordinarily understood, *Air Pollutant*, Oxford English Dictionary Online [OED Online], https://www.oed.com/dictionary/air-pollutant_n (last visited Aug. 5, 2026); [https://perma.cc/FX5S-TW2T]. ("A substance whose presence in the air constitutes pollution; a pollutant of the air."). If there are difficult questions to answer about the scope of "air pollutant" in Section 233, they are not presented by Plaintiffs' complaint.

2. *Navy*

Plaintiffs argue that their claims are not preempted because the relief they seek would not necessarily require the Airlines to alter their aircraft or engines. For this argument, Plaintiffs draw on our Section 233 decision in *California v. Navy*, where we held that "if the state pollution regulations can be met without affecting the design, structure, operation, or performance of the aircraft engine, then the state emission regulations are not preempted." 624 F.2d at 888. Accordingly, Plaintiffs suggest that Defendants could provide compensation or remediate on-the-ground contamination without changing any aircraft or engines, and thus not run afoul of this rule.

We disagree. Understood in context, the test we announced in *Navy* does not govern this case. There, California sued the Navy to enforce state air quality standards that the Navy had violated by testing detached aircraft engines in "jet engine test cells." *Id.* at 886. Jet engine test cells are "immobile concrete housing structures" that "hold the engine in place while it is run." *Id.* at 886–87. The emissions at issue originated from jet engines, but all such emissions exited the test cells through 60-foot-tall concrete smokestacks, and California was concerned only with the emissions at the point they left the smokestacks. *Id.* at 887; *People of State of Cal. ex rel. State Air Res. Bd. v. Dep't of Navy*, 431 F. Supp. 1271, 1275 (N.D. Cal. 1977). Thus, the central issue in the case was whether the jet engine test cells, as a whole, fell within the scope of Section 233. *Navy*, 624 F.2d at 887. Or, put another way, whether an emission from a smokestack is covered by Section 233 simply because the emission originates from a detached aircraft engine. Answering that narrow question, we held that "emissions from aircraft engine test cells are subject to state pollution regulations if those regulations can be met without affecting the engine." *Id.* at 889. California's regulatory efforts were thus not preempted because the district court found, and the Navy did not contest, that "means exist whereby test cell emissions can be controlled without affecting the engine"—namely, smokestack filtration systems. *Id.* at 888–89, 888 n.6.

No similar question is present in this case, as Plaintiffs do not seek to limit aircraft emissions passing through any mediating stationary source. Rather, Plaintiffs seek redress for pollution generated directly by aircraft bodies and engines in flight, the core of Section 233's preemptive reach. In this context, and without the unique factual circumstance of *Navy*'s test cells, we do not apply *Navy*'s test to decide whether such emissions fall within the scope of Section 233. They plainly do.

3. Identical Standard

Finally, the district court concluded that dismissal was premature because Section 233 allows states to enforce standards that are identical to EPA's aircraft emission standards. We agree that Section 233 allows for such enforcement, but Plaintiffs' complaint does not contain any allegation that Defendants are violating federal law. Therefore, the possibility of enforcing federal standards via state law claims does not save Plaintiffs' complaint here.

Section 233 does not preempt state law actions brought to enforce federal emissions standards. Defendants concede as much. Oral Argument at 16:54–17:45. That is because Section 233 exempts from its scope state standards that are "identical to a standard applicable to such aircraft under this part." 42 U.S.C. § 7573. And in other contexts, similar statutes and carveouts have been read to allow states "to provide a traditional damages remedy for violations of common-law duties when those duties parallel federal requirements." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 495–97 (1996) (plurality opinion); *accord Riegel v. Medtronic, Inc.*, 552 U.S. 312, 339 (2008); *see also Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 257 (1984) ("Paying both federal fines and state-imposed punitive damages for the same incident would not appear to be physically impossible. Nor does exposure to punitive damages frustrate any purpose of the federal remedial scheme."); *Bates*, 544 U.S. at 447–

52. Moreover, in enacting the Clean Air Act's preemption provisions, Congress was apparently concerned with avoiding a patchwork of different emissions standards, *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1079 (D.C. Cir. 1996), not a patchwork of enforcement mechanisms for the same standard. *See Bates*, 544 U.S. at 452 (holding that federal poisons law preempted "competing state labeling standards" but not "state rules that are fully consistent with federal requirements").

Nonetheless, a plaintiff seeking to enforce federal standards with state law claims must at least allege a violation of federal law. *See Medtronic*, 518 U.S. at 495 (holding that, at the pleading stage, the "precise contours of [the] theory of recovery" need not be defined, but the allegations must at least support a claim that the defendant has violated federal law); *Nacarino v. Kashi Co.*, 77 F.4th 1201, 1212 (9th Cir. 2023) ("Plaintiffs' complaints do not allege that the challenged protein claims are misleading within the meaning of the federal regulations. To the extent that state law would hold Defendants to a different standard, Plaintiffs' claims are expressly preempted.").

Here, Plaintiffs have not alleged that Defendants are violating the emissions standards prescribed by EPA. At oral argument, Plaintiffs explained that they intentionally omitted any such allegation because they did not have, in their opinion, sufficient supporting evidence. Oral Argument at 25:20–25:22, 29:13–29:41. Whatever the reason, the choice to omit such allegations is fatal to the complaint. *Nacarino*, 77 F.4th at 1212.

IV. Conclusion

The order of the district court is reversed and the case is remanded for further proceedings consistent with this opinion.

REVERSED and REMANDED.