No. _____

IN THE
Supreme Court of the United States

SHELL OIL PRODS. CO., L.L.C., ET AL.,
Petitioners,

v.

STATE OF RHODE ISLAND,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 28 U.S.C. § 1447(d) authorizes appellate review of any issue encompassed in a remand order when removal was premised in part on the federal-officer removal statute, 28 U.S.C. § 1442, or the civil-rights removal statute, 28 U.S.C. § 1443.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners are Shell Oil Products Co. L.L.C.; Chevron Corp.; Chevron USA, Inc.; ExxonMobil Corp.; BP plc; BP America Inc.; BP Products North America, Inc.; Royal Dutch Shell P.L.C.; Motiva Enterprises, L.L.C.; CITGO Petroleum Corp.; ConocoPhillips; ConocoPhillips Co.; Phillips 66; Marathon Oil Corp.; Marathon Oil Co.; Marathon Petroleum Corp.; Marathon Petroleum Co. LP; Speedway, LLC; Hess Corp.; and Lukoil Pan Americas L.L.C.

Royal Dutch Shell plc has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner Shell Oil Products Company L.L.C. is a wholly owned indirect subsidiary of Petitioner Royal Dutch Shell plc.

Petitioner Chevron Corporation has no parent corporation, and no publicly held company holds 10% or more of its stock.

Petitioner Chevron U.S.A., Inc., is a wholly owned subsidiary of petitioner Chevron Corporation.

Petitioner Exxon Mobil Corporation has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner BP p.l.c. has no parent corporation, and no publicly held company holds 10% or more of its stock.

Petitioner BP America Inc. is a wholly owned indirect subsidiary of petitioner BP p.l.c.

Petitioner BP Products North America Inc. is an indirect wholly owned subsidiary of BP p.l.c.

Petitioner Motiva Enterprises, L.L.C. is a wholly owned subsidiary of Saudi Refining, Inc. and Aramco Financial Services Co. No publicly held company owns 10% or more of its stock.

Petitioner CITGO Petroleum Corporation is a wholly owned indirect subsidiary of Petróleos de Venezuela S.A., which is the national oil company of the Bolivarian Republic of Venezuela. No publicly held company owns 10% or more of its stock.

Petitioner ConocoPhillips has no parent corporation, and no publicly held company holds 10% or more of its stock.

Petitioner ConocoPhillips Company is a wholly owned subsidiary of petitioner ConocoPhillips.

Petitioner Phillips 66 has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner Marathon Oil Company is a wholly owned subsidiary of petitioner Marathon Oil Corporation. Petitioner Marathon Oil Corporation has no parent corporation. BlackRock, Inc. disclosed through a Schedule 13G/A filed with the SEC that, through itself and as the parent holding company or control person over certain subsidiaries, it beneficially owns 10% or more of Marathon Oil Corporation's stock.

Petitioner Marathon Petroleum Corporation has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner Marathon Petroleum Company LP is not a publicly traded company. Marathon Petroleum Company LP's parent corporations are Marathon Petroleum Corporation and MPC Investment LLC. No

other publicly held company owns more than 10% of its stock.

Petitioner Speedway LLC is a wholly owned indirect subsidiary of Petitioner Marathon Petroleum Corporation. No other publicly held company owns more than ten percent of its stock.

Petitioner Hess Corporation has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner Lukoil Pan Americas, LLC is a wholly owned subsidiary of LITASCO SA. No publicly held company holds 10% or more of its stock.

Respondent is the State of Rhode Island.

RULE 14.1(b)(iii) STATEMENT

United States District Court (D.R.I.):

State of Rhode Island v. *Chevron Corp.*, *et al.*, No. 18-cv-00395 (July 22, 2019).

United States Court of Appeals (1st Cir.):

State of Rhode Island v. *Shell Oil Prods. Co., et al.*, No. 19-1818 (Oct. 29, 2020).

United States Supreme Court:

BP P.L.C., et al. v. *State of Rhode Island*, No. 19A391 (Oct. 22, 2019) (order denying stay pending appeal).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Shell Oil Products Co., L.L.C.; Chevron Corp.; Chevron USA, Inc.; ExxonMobil Corp.; BP plc; BP America Inc.; BP Products North America Inc.; Royal Dutch Shell P.L.C.; Motiva Enterprises, L.L.C.; CITGO Petroleum Corp.; ConocoPhillips; ConocoPhillips Co.; Phillips 66; Marathon Oil Co.; Marathon Oil Corp.; Marathon Petroleum Corp.; Marathon Petroleum Co. LP; Speedway LLC; Hess Corp.; and Lukoil Pan Americas L.L.C. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the First Circuit is reported at 979 F.3d 50. App. 1a–20a. The district court's order is reported at 393 F. Supp. 3d 142. App. 26a–40a.

JURISDICTION

The First Circuit issued its opinion on October 29, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1331 provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

28 U.S.C. § 1441(a) provides: "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

28 U.S.C. § 1442(a) provides: "A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending: (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue. . . ."

28 U.S.C. § 1447(d) provides: "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise."

STATEMENT OF THE CASE

This petition presents the same question already pending before this Court in *BP p.l.c.* v. *Mayor and City Council of Baltimore*, No. 19-1189 (cert. granted Oct. 2, 2020): Whether 28 U.S.C. § 1447(d) empowers a court of appeals to review any issue contained in a district court's order remanding a removed case to state court when the defendant premised removal in part on 28 U.S.C. § 1442 (the federal-officer removal statute), or 28 U.S.C. § 1443 (the civil-rights removal statute).

Section 1447(d) provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal . . . except that an

order remanding a case to the State court from which it was removed pursuant to section 1442 [federal-officer removal] or 1443 [civil-rights removal] of this title shall be reviewable by appeal." 28 U.S.C. § 1447(d). Some circuit courts have held that when a case has been remanded following removal on one of the enumerated grounds, appellate jurisdiction extends to the entire "order." In so holding, these courts have drawn on *Yamaha Motor Corp., U.S.A.* v. *Calhoun*, 516 U.S. 199 (1996), in which this Court interpreted 28 U.S.C. § 1292(b)'s grant of appellate jurisdiction over an interlocutory "order" containing a certified question to extend to the entire order. But the court below and multiple other circuit courts have disagreed. Those courts have held that a court of appeals may review only the precise grounds specified in Section 1447(d), and may not consider any other bases for removal.

Accordingly, petitioners respectfully request that the Court hold this petition pending its forthcoming decision in *Baltimore*. And for the reasons set forth in the petitioners' merits brief in *Baltimore*, the Court should hold in *Baltimore* that Section 1447(d) authorizes a court of appeals to review the district court's entire remand order, including all asserted grounds for removal, in a case removed in part on federal-officer or civil-rights grounds. *See* Pet. Br. at 16–37, *Baltimore*, *supra*. The Court should then grant the petition in this case and dispose of it in a manner consistent with its ruling in *Baltimore*.

A. Proceedings In The District Court

Respondent filed this action against more than a dozen energy companies in Rhode Island state court, alleging that petitioners have "extracted, advertised, and sold a substantial percentage of the fossil fuels

burned globally since the 1960s," and that "[t]his activity has released an immense amount of greenhouse gas into the Earth's atmosphere, changing its climate and leading to all kinds of displacement, death (extinctions, even), and destruction." App. 27a (citation omitted). Asserting numerous causes of action under Rhode Island state tort law, including for public nuisance, respondent demanded compensatory and punitive damages, disgorgement of profits, equitable relief to abate the alleged nuisances, and other relief. C.A. J.A. 162.

Petitioners removed the action to the U.S. District Court for the District of Rhode Island. App. 26a. The notices of removal asserted numerous bases for removal, including that respondent's claims are necessarily governed by and thus arise under federal common law, raise disputed and substantial federal questions under *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308, 314 (2005), are completely preempted by federal statutes such as the Clean Air Act, as well as by the United States Constitution, arise out of or in connection to oil and gas operations on the Outer Continental Shelf and therefore fall under the broad grant of federal jurisdiction under the Outer Continental Shelf Leasing Act, 43 U.S.C. § 1349, and involve conduct undertaken at the direction of federal officers under 28 U.S.C. § 1442(a)(1). App. 30a–39a.

The district court rejected all of petitioners' bases for removal and remanded the case to state court. App. 39a–40a.

B. Proceedings In The First Circuit

The First Circuit affirmed the district court's remand order. But before reaching the merits of that

order, it considered whether and to what extent it had jurisdiction over the appeal. The First Circuit concluded that 28 U.S.C. § 1447(d) "prohibit[s] appellate review of district court orders remanding cases for lack of subject matter jurisdiction, except for the components of those orders, should they exist, where the district court rejects a defendant's attempt to remove a case under federal-officer removal or civil rights removal." App. 17a. The court acknowledged that the Seventh Circuit had reached the opposite conclusion in *Lu Junhong* v. *Boeing Co.*, 792 F.3d 805 (7th Cir. 2015), but it rejected that court's "textual" analysis because it contended that Section 1447(d)'s use of the term "order" was "ambiguous." App. 14a. Instead, the First Circuit relied on what it viewed as the "overall purpose of the statute" to adopt a narrow reading of Section 1447(d). App. 15a. The First Circuit also affirmed the district court's conclusion that petitioners had not established "subject-matter jurisdiction under the federal-officer removal statute." App. 20a.

REASONS FOR GRANTING THE PETITION

This Court has already granted certiorari in *BP p.l.c.* v. *Mayor and City Council of Baltimore*, No. 19-1189 (cert. granted Oct. 2, 2020), to decide whether appellate review of an order remanding a case removed in part on federal-officer or civil-rights grounds extends to the entire order or only those particular grounds. This petition, which also involves a climate-change case removed on federal-officer and other similar grounds, raises the exact same question—one that has divided the courts of appeals. The First Circuit below refused to examine any part of the district court's remand order other than the federal-officer removal ground. This Court should therefore hold this petition pending its decision in *Baltimore*, and then

dispose of this case in a manner consistent with its ruling in that case.

I. The First Circuit's Holding That Section 1447(d) Confers Jurisdiction Over Only Two Specified Grounds For Removal Conflicts With This Court's Precedent And Further Entrenches A Circuit Conflict.

Section 1447(d) prohibits appellate courts from reviewing most remand orders, but contains an express exception for "an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title." 28 U.S.C. § 1447(d). This case was removed pursuant to Section 1442, the federal-officer removal statute. Yet the First Circuit held that it lacked jurisdiction to review the remand *order*, and instead had jurisdiction to review only the *issue* of federal-officer removal. App. 17a.

As explained in greater detail in *Baltimore*, *see*, *e.g.*, Pet. Br. 16–37, No. 19-1189, the First Circuit's holding conflicts with the plain text of the statute, as confirmed by this Court's interpretation of a closely analogous jurisdictional statute, 28 U.S.C. § 1292(b), *see Yamaha*, 516 U.S. at 205. It also further deepens a conflict among the federal courts of appeals—a conflict that the First Circuit acknowledged. *See* App. 14a.

The First Circuit's error led the court to disregard substantial grounds for removal, resulting in remand of a case that addresses issues of national—and international—energy and environmental policy. If the First Circuit's decision is not reversed, petitioners will be deprived of their right to have these inherently federal issues heard in federal court.

A. The Decision Below Conflicts With This Court's Decision In *Yamaha* And Is Wrong As A Textual Matter.

In *Yamaha*, this Court confronted a question remarkably similar to the one here: Whether, "[u]nder 28 U.S.C. § 1292(b), . . . the courts of appeals [may] exercise jurisdiction over any question that is included within the order that contains the controlling question of law identified by the district court," or whether they may address only the precise *issue* certified by the district court. 516 U.S. at 204. Applying a straightforward textual analysis, the Court adopted the former interpretation: "As the text of § 1292(b) indicates, appellate jurisdiction applies to the *order* certified to the court of appeals, and is not tied to the particular question formulated by the district court." *Id.* at 205. Thus, the court of appeals "may address any issue fairly included within the certified order because it is the *order* that is appealable, and not the controlling question identified by the district court." *Ibid.* (internal quotation marks omitted).

This Court's textual analysis of Section 1292(b) applies equally to Section 1447(d). Section 1292(b) provides that "[w]hen a district judge, in making in a civil action an order not otherwise appealable under this section," certifies a question for interlocutory review, "[t]he Court of Appeals . . . may thereupon, in its discretion, permit an appeal to be taken *from such order*." 28 U.S.C. § 1292(b) (emphasis added). Section 1447(d), meanwhile, provides that "[a]n *order* remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an *order* remanding a case to the State court from which it was removed pursuant to section 1442

or 1443 of this title *shall be reviewable* by appeal or otherwise." 28 U.S.C. § 1447(d) (emphases added).

The First Circuit's decision is thus incorrect and irreconcilable with *Yamaha* and the plain text of Section 1447(d).

B. The Decision Below Further Entrenches A Mature Circuit Split.

The First Circuit's decision reaffirms a circuit conflict on which nearly every circuit has taken a position. Some courts of appeals have issued decisions interpreting Section 1447(d) to confer appellate jurisdiction over the entire remand order so long as removal was based in part on one of the enumerated grounds, while others agree with the First Circuit that a court of appeals may not review the order but must instead consider only the Section 1442 or 1443 ground for removal.

1. Several Circuits have issued decisions holding that appellate jurisdiction under Section 1447(d) extends to the entire remand "order," provided that the case was removed in part on one of the enumerated grounds. The Seventh Circuit in *Lu Junhong* v. *Boeing Co.*, 792 F.3d 805 (7th Cir. 2015), "appli[ed] . . . *Yamaha* . . . to the word 'order' in § 1447(d)" to conclude that "if appellate review of an 'order' has been authorized, that means review of the 'order.' Not particular reasons *for* the order, but the order itself." *Id.* at 812. Other courts have followed the Seventh Circuit's lead. *See Decatur Hosp. Auth.* v. *Aetna Health, Inc.*, 854 F.3d 292, 296 (5th Cir. 2017) (noting that the court's appellate jurisdiction includes not only "'particular reasons *for* [the] order, but the order itself'")

(quoting *Lu Junhong*, 792 F.3d at 812);[1] *Mays* v. *City of Flint*, 871 F.3d 437, 442 (6th Cir. 2017) ("Our jurisdiction to review the remand order also encompasses review of the district court's decision on the alternative ground for removal under 28 U.S.C. § 1441." (citing *Lu Junhong*, 792 F.3d at 811–13)).[2]

2. Other courts, meanwhile, have held that Section 1447(d) does *not* confer appellate jurisdiction over the remand "order," but only over the particular civil-rights or federal-officer ground for removal. The majority of these courts have done so without providing any analysis to support their atextual reading. *See Cty. of San Mateo* v. *Chevron Corp.*, 960 F.3d 586, 597–98 (9th Cir. 2020) (holding that court was "bound by" prior circuit precedent, but noting that, "[w]ere [it] writing on a clean slate, [it] might conclude that *Lu Junhong* provides a more persuasive interpretation of § 1447(d)"); *Mayor & City Council of Baltimore* v. *BP P.L.C.*, 952 F.3d 452, 459–61 (4th Cir. 2020) (construing circuit precedent to compel the conclusion that its appellate jurisdiction "does not extend to the non-§ 1442 grounds that were considered and rejected by the district court"); *Jacks* v. *Meridian Res. Co.*, 701 F.3d 1224, 1229 (8th Cir. 2012) ("[The court] lack[s]

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[1] *But cf. City of Walker* v. *Louisiana*, 877 F.3d 563, 566 n.2 (5th Cir. 2017) (suggesting that it had "rejected . . . in the past" the argument that Section 1447(d) permits review of the entire remand order); *Robertson* v. *Ball*, 534 F.2d 63, 65 (5th Cir. 1976) (per curiam) (limiting appellate review to federal-officer removal issue).

[2] *But cf. Detroit Police Lieutenants & Sergeants Ass'n* v. *City of Detroit*, 597 F.2d 566, 567 (6th Cir. 1979) (limiting review to enumerated statutory grounds for removal); *Appalachian Volunteers, Inc.* v. *Clark*, 432 F.2d 530, 534 (6th Cir. 1970) (same).

jurisdiction to review the district court's determination concerning the availability of federal common law to resolve this suit[.]"); *Alabama* v. *Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001) (per curiam) ("[T]he only question presently before us is whether the district court properly remanded Conley's action based on a finding that removal jurisdiction under § 1443 did not exist."); *Davis* v. *Glanton*, 107 F.3d 1044, 1047 (3d Cir. 1997) ("[I]nsofar as the [defendants'] appeal challenges the district court's rulings under 28 U.S.C. § 1441, we must dismiss the appeal for want of appellate jurisdiction."); *State Farm Mut. Auto. Ins. Co.* v. *Baasch*, 644 F.2d 94, 97 (2d Cir. 1981) (per curiam) ("Insofar as the appeal challenges denial of removal under 28 U.S.C. § 1441(a), it is dismissed for want of appellate jurisdiction.").

Thus, until the Tenth Circuit's recent decision in *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, 965 F.3d 792 (10th Cir. 2020), *cert. pet. filed*, No. 20-783 (Dec. 4, 2020), the cases "refusing to extend the review granted by the § 1447(d) exceptions to" the entire remand order had "employed mostly summary analysis," in stark contrast with the Seventh Circuit's thorough reasoning. *Id.* at 802–03. The Tenth Circuit ultimately disagreed with the Seventh Circuit, finding what it deemed a latent "ambiguity" in the statutory text and then resolving that alleged ambiguity based on extratextual considerations such as purported statutory purpose. *See id.* at 813–19.

II. The Court Should Hold This Petition Pending Resolution Of *Baltimore*.

The Court should hold this petition pending this Court's decision in *Baltimore*. To ensure similar treatment of similar cases, the Court routinely holds

petitions that implicate the same issue as other cases pending before it and, once the related case is decided, resolves the held petitions in a consistent manner. *See*, *e.g.*, *Lawrence ex rel. Lawrence* v. *Chater*, 516 U.S. 163, 166 (1996) (per curiam) (noting that the Court has "GVR'd in light of a wide range of developments, including [its] own decisions"); *id.* at 181 (Scalia, J., dissenting) ("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be 'GVR'd' when the case is decided.") (emphasis omitted).

That procedure is particularly apt here, given that the cases involve a jurisdictional question that must be answered in the same way throughout the Nation. As this Court has frequently emphasized, "jurisdictional rules should be clear." *Direct Mktg. Ass'n* v. *Brohl*, 575 U.S. 1, 14 (2015) (brackets omitted). "Clarity is to be desired in any statute, but in matters of jurisdiction it is especially important. Otherwise the courts and the parties must expend great energy, not on the merits of dispute settlement, but on simply deciding whether a court has the power to hear a case." *United States* v. *Sisson*, 399 U.S. 267, 307 (1970). Indeed, conflicting and uncertain jurisdictional rules "produce appeals and reversals, encourage gamesmanship, and, again, diminish the likelihood that results and settlements will reflect a claim's legal and factual merits." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010).

Because this petition raises the same recurring question of appellate jurisdiction at issue in *Baltimore*, the Court should follow its usual practice here to ensure that this petition is resolved in a consistent manner.

CONCLUSION

The Court should hold this petition pending its disposition of *Baltimore*, and then dispose of this petition in a manner consistent with its decision in that case.

Respectfully submitted.

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