No. 22A-

IN THE

Supreme Court of the United States

CHEVRON CORPORATION, *et al.*,

Applicants,

v.

COUNTY OF SAN MATEO., *et al.*,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

THOMAS G. HUNGAR
LOCHLAN F. SHELFER
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
(202) 955-8500
thungar@gibsondunn.com
lshelfer@gibsondunn.com

THEODORE J. BOUTROUS, JR.
WILLIAM E. THOMSON, III
JOSHUA D. DICK
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229-7000
tboutrous@gibsondunn.com
wthomson@gibsondunn.com
jdick@gibsondunn.com

Counsel for Applicants Chevron Corporation and Chevron U.S.A., Inc.
[Additional counsel listed on signature page]

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to Rules 13.5 and 30.2 of this Court, Applicants apply for a 60-day extension of time, to and including November 25, 2022, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case. The judgment of the court of appeals was entered on April 19, 2022, App., *infra*, 17a, 57a–58a, and a petition for rehearing was denied on June 27, 2022, *id.* at 64a. Unless extended, the time for filing a petition for a writ of certiorari will expire on September 26, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This Court's decisions establish that federal common law necessarily and exclusively supplies the rules of decision for certain narrow categories of claims implicating "uniquely federal interests," including where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640–41 (1981) (citation omitted). Interstate pollution is "undoubtedly" one such category. *Am. Electric Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011). Indeed, this Court has stated that "the basic scheme of the Constitution . . . demands" that "federal common law" govern disputes involving "air and water in their ambient or interstate aspects." *Ibid.* And under 28 U.S.C. § 1331, federal district courts have jurisdiction over claims "founded upon federal common law." *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985) (citation omitted).

The federal courts of appeals have reached conflicting results on the application of these jurisdictional principles in the context of cases removed from state to federal court. In particular, the courts of appeals are in conflict on the question whether a federal district court has removal jurisdiction over a claim necessarily governed exclusively by federal common law but artfully pleaded under state law. That conflict has come into particular focus in the context of climate-change litigation, where another conflict has arisen: namely, over the question whether federal common law necessarily and exclusively supplies the rule of decision for claims that seek redress for harms allegedly caused by global greenhouse-gas emissions.

2. Applicants in this case are thirty oil-and-gas companies.[1] Respondents are the County of San Mateo; the City of Imperial Beach; the County of Marin; the County of Santa Cruz; the City of Santa Cruz; and the City of Richmond. Each Respondent filed a separate action against Applicants in California state court, alleging that the companies' "extraction, refining, and/or formulation of fossil fuel products; their introduction of fossil fuel products into the stream of commerce; their wrongful promotion of their fossil fuel products and concealment of known hazards associated

[1] Applicants comprise Anadarko Petroleum Corporation; Apache Corporation; BP P.L.C.; BP America Inc.; Chevron Corporation; Chevron U.S.A. Inc.; CITGO Petroleum Corporation; ConocoPhillips; ConocoPhillips Company; Devon Energy Corporation; Devon Energy Production Company, L.P.; Eni Oil & Gas Inc.; Exxon Mobil Corporation; Hess Corporation; Marathon Oil Company; Marathon Oil Corporation; Marathon Petroleum Corporation; Occidental Chemical Corporation; Occidental Petroleum Corporation; Ovintiv Canada ULC (*f/k/a* Encana Corporation); Phillips 66 Company; Repsol Energy North America Corporation; Repsol Trading USA Corporation; Rio Tinto Energy America Inc.; Rio Tinto Minerals Inc.; Rio Tinto Services Inc.; Shell plc (*f/k/a* Royal Dutch Shell plc); Shell Oil Products Company LLC; TotalEnergies E&P USA, Inc.; and TotalEnergies Marketing USA, Inc.

with use of those products; and their failure to pursue less hazardous alternatives available to them; is a substantial factor in causing the increase in global mean temperature and consequent increase in global mean sea surface height." App., *infra*, 78a–79a. Asserting numerous causes of action ostensibly under California tort law, including product-liability claims and claims for public and private nuisance, Respondents demand compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. *Id.* at 7a.

Applicants removed the actions to the United States District Court for the Northern District of California. The notices of removal asserted various grounds for federal jurisdiction, including (1) that Respondents' claims are governed by federal common law; (2) that Respondents' claims necessarily raise disputed and substantial federal questions; and (3) that federal-officer removal is authorized under 28 U.S.C. § 1442(a). *See* App., *infra*, 101a–07a. Respondents filed a motion to remand, which the district court granted, and Applicants appealed.

In its original decision in this appeal, the Ninth Circuit addressed only federal-officer removal, concluding that it did not have appellate jurisdiction under 28 U.S.C. § 1447(d) to review any other basis for removal. *Cnty. of San Mateo v. Chevron Corp.*, 960 F.3d 586, 598 (9th Cir. 2020).

On May 17, 2021, this Court announced its decision in *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021). The Court clarified that, when a party seeks appellate review of an order remanding a "case . . . removed pursuant to section

1442 or 1443," "the whole of [that] order bec[omes] reviewable on appeal." *Id.* at 1538 (quoting 28 U.S.C. § 1447(d)).

Thereafter, on May 24, 2021, this Court vacated the Ninth Circuit's judgment in this appeal and remanded for further proceedings in light of its decision in *Baltimore*. *See Chevron Corp. v. San Mateo Cnty.*, No. 20-884, 2021 WL 2044534 (U.S. May 24, 2021). On remand, the panel affirmed the district court's remand orders, App., *infra*, 17a, 57a–58a.

As relevant here, the Ninth Circuit held that respondents' claims did not arise under federal common law because, *inter alia*, any relevant federal common law had been displaced by the Clean Air Act. App., *infra*, 25a. In so holding, the court of appeals expressly departed from the Second Circuit's decision in *City of New York v. Chevron Corp.* 993 F.3d 81 (2d Cir. 2021), which held that federal common law necessarily governs claims seeking redress for harms from global climate change, to the exclusion of state law, even when the Clean Air Act displaces any remedy available under federal common law. *See id.* at 94–95.

The Ninth Circuit also concluded that the well-pleaded complaint rule prevents the removal of claims necessarily and exclusively governed by federal common law but artfully pleaded under state law to avoid federal jurisdiction. *See* App., *infra*, 21a–26a. That conclusion conflicts with decisions of other courts of appeals holding that artfully pleaded claims governed by federal common law are removable. *See, e.g.*, *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 923 (5th Cir. 1997).

3. The undersigned counsel respectfully request an additional 60-day extension of time, to and including November 25, 2022, within which to file a petition for a writ of certiorari. This case presents significant and complex issues concerning the proper forum to litigate putative state-law claims that seek to hold energy companies liable for the effects of global climate change. A 60-day extension of time is necessary to allow Applicants' counsel to prepare the petition addressing these important issues and detailing the widening conflict among the courts of appeals, and to coordinate among the petitioning parties, who comprise 30 distinct entities represented by 21 different law firms, all of whom must approve the petition for certiorari before it can be filed. The current deadline also overlaps with national and religious holidays that will make coordination among these parties and their counsel more difficult.

Accordingly, Applicants respectfully request that the time to file a petition for a writ of certiorari be extended by 60 days, to and including November 25, 2022.

Respectfully submitted.

By: */s/ Jonathan W. Hughes*

Jonathan W. Hughes
ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Center,
10th Floor
San Francisco, California 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400
E-mail: jonathan.hughes@arnoldporter.com

Matthew T. Heartney
John D. Lombardo
ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
E-mail: matthew.heartney@arnoldporter.com
E-mail: john.lombardo@arnoldporter.com

Nancy Milburn
ARNOLD & PORTER KAYE SCHOLER LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
E-mail: nancy.milburn@arnoldporter.com

Attorneys for Defendants BP P.L.C. and BP AMERICA INC.

By: ** */s/ Theodore J. Boutrous, Jr.*

Theodore J. Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
E-mail: tboutrous@gibsondunn.com

Thomas G. Hungar
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
(202) 955-8500
thungar@gibsondunn.com

Neal S. Manne
Johnny W. Carter
Erica Harris
Steven Shepard
SUSMAN GODFREY LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
E-mail: nmanne@susmangodfrey.com
E-mail: jcarter@susmangodfrey.com
E-mail: eharris@susmangodfrey.com
E-mail: sshepard@susmangodfrey.com

Attorneys for Defendants CHEVRON CORP. and CHEVRON U.S.A., INC.

** Pursuant to Ninth Circuit L.R. 25-5(e), counsel attests that all other parties on whose behalf the filing is submitted concur in the filing's contents.

By: */s/ Daniel R. Brody*

Jameson R. Jones
Daniel R. Brody
BARTLIT BECK LLP
1801 Wewatta St., Suite 1200
Denver, Colorado 80202
Telephone: 303-592-3123
Facsimile: 303-592-3140
Email: jameson.jones@bartlitbeck.com
Email: dan.brody@bartlitbeck.com

Megan R. Nishikawa
KING & SPALDING LLP
101 Second Street, Suite 2300
San Francisco, California 94105
Telephone: (415) 318-1200
Facsimile: (415) 318-1300
Email: mnishikawa@kslaw.com

Attorneys for Defendants
CONOCOPHILLIPS and
CONOCOPHILLIPS COMPANY

By: */s/ Dawn Sestito*

M. Randall Oppenheimer
Dawn Sestito
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
E-Mail: roppenheimer@omm.com
E-Mail: dsestito@omm.com

Theodore V. Wells, Jr.
Daniel J. Toal
Jaren E. Janghorbani
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
E-Mail: twells@paulweiss.com
E-Mail: dtoal@paulweiss.com
E-Mail: jjanghorbani@paulweiss.com

Kannon Shanmugam
PAUL, WEISS, RIFKIND,
WHARTON, GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
Telephone: (202) 223-7325
Facsimile: (202) 224-7397
E-mail: kshanmugam@paulweiss.com

Attorneys for Defendant
EXXON MOBIL CORPORATION

By: */s/ David C. Frederick*

David C. Frederick
Daniel S. Severson
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
E-mail: dfrederick@kellogghansen.com
E-mail: dseverson@kellogghansen.com

Gary T. Lafayette
Brian H. Chun
LAFAYETTE & KUMAGAI LLP
1300 Clay Street, Suite 810
Oakland, CA 94612
Telephone: (415) 357-4600
Facsimile: (415) 357-4605
E-mail: glafayette@lkclaw.com
E-mail: bchun@lkclaw.com

Attorneys for Defendants SHELL PLC (F/K/A ROYAL DUTCH SHELL PLC) and SHELL OIL PRODUCTS COMPANY LLC

By: */s/ Kevin Orsini*

Kevin Orsini
Vanessa A. Lavely
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Tel: (212) 474-1000
Fax: (212) 474-3700
E-mail: korsini@cravath.com
E-mail: vlavely@cravath.com

Attorneys for Defendant ANADARKO PETROLEUM CORPORATION

By: */s/ Steven M. Bauer*

Steven M. Bauer
Margaret A. Tough
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
E-mail: steven.bauer@lw.com
E-mail: margaret.tough@lw.com

Attorneys for Defendant
PHILLIPS 66

By: */s/ Patrick W. Mizell*

Mortimer Hartwell
VINSON & ELKINS LLP
555 Mission Street Suite 2000
San Francisco, CA 94105
Telephone: (415) 979-6930
E-mail: mhartwell@velaw.com

Patrick W. Mizell
VINSON & ELKINS LLP
1001 Fannin Suite 2300
Houston, TX 77002
Telephone: (713) 758-2932
E-mail: pmizell@velaw.com

Attorneys for Defendant
APACHE CORPORATION

By: */s/ Bryan A. Merryman*

Bryan A. Merryman
WHITE & CASE LLP
555 S. Flower Street, Suite 2700
Los Angeles, CA 90071-2433
Telephone: (213) 620-7700
Facsimile: (213) 452-2329
Email: bmerryman@whitecase.com

Attorneys for Defendant
ENI OIL & GAS INC.

By: */s/ Andrew A. Kassof*

Mark McKane, P.C.
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
E-mail: mark.mckane@kirkland.com

Andrew A. Kassof, P.C.
Brenton Rogers
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
E-mail: andrew.kassof@kirkland.com
E-mail: brenton.rogers@kirkland.com

Attorneys for Defendants
RIO TINTO ENERGY AMERICA INC.,
RIO TINTO MINERALS, INC., and
RIO TINTO SERVICES INC.

By: */s/ Gregory Evans*

Gregory Evans
MCGUIREWOODS LLP
Wells Fargo Center
South Tower
355 S. Grand Avenue, Suite 4200
Los Angeles, CA 90071-3103
Telephone: (213) 457-9844
Facsimile: (213) 457-9888
E-mail: gevans@mcguirewoods.com

Joy C. Fuhr
Brian D. Schmalzbach
MCGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23219-3916
Telephone: (804) 775-1141
Facsimile: (804) 698-2208
E-mail: jfuhr@mcguirewoods.com
E-mail:
bschmalzbach@mcguirewoods.com

Attorneys for Defendants DEVON ENERGY CORPORATION and DEVON ENERGY PRODUCTION COMPANY, L.P.

By: */s/ Andrew McGaan*

Christopher W. Keegan
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
E-mail: chris.keegan@kirkland.com

Andrew R. McGaan, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
E-mail: andrew.mcgaan@kirkland.com

Anna G. Rotman, P.C.
KIRKLAND & ELLIS LLP
609 Main Street
Houston, Texas 77002
Telephone: (713) 836-3600
Facsimile: (713) 836-3601
E-mail: anna.rotman@kirkland.com

Bryan D. Rohm
TOTAL E&P USA, INC.
1201 Louisiana Street, Suite 1800
Houston, TX 77002
Telephone: (713) 647-3420
E-mail: bryan.rohm@total.com

Attorneys for Defendants TOTAL E&P USA, INC. and TOTAL SPECIALTIES USA, INC.

By: */s/ Michael F. Healy*

Michael F. Healy
SHOOK HARDY & BACON LLP
555 Mission Street, Suite 2300
San Francisco, CA 94104
Telephone: (415) 544-1942
E-mail: mfhealy@shb.com

Michael L. Fox
DUANE MORRIS LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
Telephone: (415) 957-3902
E-mail: MLFox@duanemorris.com

Attorneys for Defendant
OVINTIV CANADA ULC
(fka "Encana Corporation")

By: */s/ Peter Duchesneau*

Craig A. Moyer
Peter Duchesneau
MANATT, PHELPS & PHILLIPS, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
Telephone: (310) 312-4000
Facsimile: (310) 312-4224
E-mail: cmoyer@manatt.com
E-mail: pduchesneau@manatt.com

Stephanie A. Roeser
MANATT, PHELPS & PHILLIPS, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 291-7400
Facsimile: (415) 291-7474
E-mail: sroeser@manatt.com

Nathan P. Eimer
Lisa S. Meyer
Pamela R. Hanebutt
EIMER STAHL LLP
224 South Michigan Avenue, Ste. 1100
Chicago, IL 60604
Telephone: (312) 660-7605
Facsimile: (312) 961-3204
Email: neimer@EimerStahl.com
Email: lmeyer@EimerStahl.com
Email: phanebutt@EimerStahl.com

Robert E. Dunn
EIMER STAHL LLP
99 S. Almaden Blvd., Suite 642
San Jose, CA 95113
Telephone: (408) 889-1690
Email: rdunn@eimerstahl.com

Attorneys for Defendant
CITGO PETROLEUM CORPORATION

By: */s/ J. Scott Janoe*

J. Scott Janoe
BAKER BOTTS LLP
910 Louisiana Street
Houston, Texas 77002-4995
Telephone: (713) 229-1553
Facsimile: (713) 229-7953
Email: scott.janoe@bakerbotts.com

Megan Berge
BAKER BOTTS LLP
101 California Street, Suite 3200
San Francisco, CA 94111
Telephone: (202) 639-1308
Facsimile: (202) 639-1171
Email: megan.berge@bakerbotts.com

Attorneys for Defendants HESS CORP., REPSOL ENERGY NORTH AMERICA CORP., and REPSOL TRADING USA CORP.

By: */s/ Shannon S. Broome*

Shannon S. Broome
Ann Marie Mortimer
HUNTON ANDREWS KURTH LLP
50 California Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 975-3700
Facsimile: (415) 975-3701
E-mail: SBroome@HuntonAK.com
E-mail: AMortimer@HuntonAK.com

Shawn Patrick Regan
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166-0136
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
E-mail: SRegan@HuntonAK.com

Attorneys for Defendant MARATHON PETROLEUM CORPORATION

By: */s/ Kevin Orsini*

Kevin Orsini
Vanessa A. Lavely
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Tel: (212) 474-1000
Fax: (212) 474-3700
E-mail: korsini@cravath.com
E-mail: vlavely@cravath.com

Stephen C. Lewis
R. Morgan Gilhuly
BARG COFFIN LEWIS & TRAPP, LLP
350 California Street, 22nd Floor
San Francisco, California 94104-1435
Telephone: (415) 228-5400
Facsimile: (415) 228-5450
E-mail: slewis@bargcoffin.com
E-mail: mgilhuly@bargcoffin.com

Attorneys for Defendants
OCCIDENTAL PETROLEUM CORP.
and OCCIDENTAL CHEMICAL CORP.

By: */s/ Donald W. Carlson*

Donald W. Carlson
A. David Bona
CARLSON, CALLADINE &
PETERSON LLP
275 Battery Street, 16th Floor
San Francisco, CA 94111
Tel: (415) 391-3911
Fax: (415) 391-3898
E-mail: dcarlson@ccplaw.com
E-mail: dbona@ccplaw.com

Attorneys for Defendants
MARATHON OIL CORPORATION and
MARATHON OIL COMPANY

August 26, 2022