No. 22-_____

IN THE
Supreme Court of the United States

CHEVRON CORPORATION, ET AL.,
Petitioners,

v.

COUNTY OF SAN MATEO, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a federal district court has jurisdiction under 28 U.S.C. § 1331 over nominally state-law claims seeking redress for injuries allegedly caused by the effect of transboundary greenhouse-gas emissions on the global climate, on the ground that federal law necessarily and exclusively governs such claims.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners are 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; Total E&P USA, Inc.; and Total Specialties USA, Inc.

Petitioner Anadarko Petroleum Corporation is wholly owned by petitioner Occidental Petroleum Corporation, a publicly traded corporation.

Petitioner Apache Corporation is wholly owned by parent holding company APA Corporation, which is publicly traded.

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

Petitioner Devon Energy Production Company, L.P. is a wholly owned subsidiary of Devon Energy Corporation.

Petitioner Eni Oil & Gas Inc. is a wholly owned subsidiary of Eni S.p.A. No publicly held corporation holds 10% or more of Eni S.p.A.'s stock.

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

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

Petitioner Marathon Oil Corporation has no parent corporation and is a publicly traded entity. The Vanguard Group, Inc., an investment advisor which is not a publicly traded corporation, disclosed through a Schedule 13G/A filed with the SEC that it beneficially

owns 10% or more of Marathon Oil Corporation's stock.

Petitioner Marathon Oil Company is a wholly owned direct subsidiary of Marathon Oil Corporation, a publicly traded entity.

Petitioner Marathon Petroleum Corporation has no parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of Marathon Petroleum Corporation's stock.

Petitioner Occidental Petroleum Corporation has no parent corporation. Berkshire Hathaway Inc., through itself or its subsidiaries, owns 10% or more of Occidental Petroleum Corporation's stock.

Petitioner Occidental Chemical Corporation is a wholly owned subsidiary of Occidental Chemical Holding Corporation, which is a wholly owned subsidiary of OXY USA Inc. OXY USA Inc. is a wholly owned subsidiary of Occidental Petroleum Corporation, a publicly traded corporation.

Petitioner Ovintiv Canada ULC (*f/k/a* Encana Corporation) is a wholly owned indirect subsidiary of Ovintiv Inc.

Petitioner Phillips 66 has no parent corporation. The Vanguard Group is the only shareholder owning 10% or more of Phillips 66.

Petitioner Repsol Energy North America Corporation is a subsidiary whose ultimate parent corporation is Repsol, S.A. Petitioner Repsol Trading USA Corporation is a subsidiary whose ultimate parent corporation is also Repsol, S.A. Repsol, S.A. has no parent corporation, and no publicly held company owns 10% or more of Repsol, S.A.'s stock.

Petitioners Rio Tinto Minerals Inc., Rio Tinto Energy America Inc., and Rio Tinto Services Inc. are wholly owned indirect subsidiaries of Rio Tinto plc. Rio Tinto plc is a publicly held corporation. Shining Prospect Pte. Ltd, a subsidiary of Aluminum Corporation of China, owns more than 10% of Rio Tinto plc's stock.

Petitioner Shell plc (*f/k/a* 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 LLC is a wholly owned indirect subsidiary of petitioner Shell plc (*f/k/a* Royal Dutch Shell plc).

Petitioner Total E&P USA, Inc. states that TOTAL Delaware, Inc. owns 76.39% of the stock of TEPUSA, and Elf Aquitaine, Inc. owns the remaining 23.61% of the stock of TEPUSA. TOTAL Delaware, Inc. owns 100% of the stock of Elf Aquitaine, Inc. TOTAL Holdings USA, Inc. owns 100% of the stock of TOTAL Delaware, Inc. TOTAL GESTION USA owns 100% of the stock of TOTAL Holdings USA, Inc. TOTAL, S.A. owns 100% of the stock of TOTAL GESTION USA. TOTAL, S.A. is a publicly held corporation that indirectly holds more than 10% of TOTAL E&P USA's stock.

Petitioner Total Specialties USA, Inc. states that TOTAL MARKETING SERVICES S.A. owns 100% of the stock of Total Specialties USA Inc. TOTAL S.A. owns 100% of the stock of TOTAL MARKETING SERVICES S.A. TOTAL, S.A. is a publicly held corporation that indirectly holds more than 10% of Total Specialties USA, Inc.'s stock.

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.

RULE 14.1(b)(iii) STATEMENT

United States District Court (N.D. Cal.):

County of San Mateo v. *Chevron Corp., et al.*, No. 17-cv-04929 (Mar. 16, 2018).

City of Imperial Beach v. *Chevron Corp., et al.*, No. 17-cv-04934 (Mar. 16, 2018).

County of Marin v. *Chevron Corp., et al.*, No. 17-cv-04935 (Mar. 16, 2018).

County of Santa Cruz v. *Chevron Corp., et al.*, No. 18-cv-00450 (July 10, 2018).

City of Santa Cruz v. *Chevron Corp., et al.*, No. 18-cv-00458 (July 10, 2018).

City of Richmond v. *Chevron Corp., et al.*, No. 18-cv-00732 (July 10, 2018).

United States Court of Appeals (9th Cir.):

County of San Mateo v. *Chevron Corp., et al.*, No. 18-15499 (Apr. 19, 2022).

City of Imperial Beach v. *Chevron Corp., et al.*, No. 18-15502 (Apr. 19, 2022).

County of Marin v. *Chevron Corp., et al.*, No. 18-15503 (Apr. 19, 2022).

County of Santa Cruz, et al. v. *Chevron Corp., et al.*, No. 18-16376 (Apr. 19, 2022).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Chevron Corporation, Chevron U.S.A., Inc., BP p.l.c., BP America Inc., ConocoPhillips, ConocoPhillips Company, Exxon Mobil Corporation, Shell plc (f/k/a Royal Dutch Shell plc), Shell Oil Products Company LLC, Anadarko Petroleum Corporation, Phillips 66, Apache Corporation, Eni Oil & Gas Inc., Rio Tinto Energy America Inc., Rio Tinto Minerals Inc., Rio Tinto Services Inc., Devon Energy Corporation, Devon Energy Production Company, L.P., Total E&P USA, Inc., Total Specialties USA, Inc., Ovintiv Canada ULC, CITGO Petroleum Corporation, Hess Corporation, Repsol Energy North America Corporation, Repsol Trading USA Corporation, Marathon Oil Company, Marathon Oil Corporation, Marathon Petroleum Corporation, Occidental Petroleum Corporation, and Occidental Chemical Corporation respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Ninth Circuit is reported at 32 F.4th 733. App. 1a–56a. The order denying petitioners' timely petition for rehearing en banc is not reported. App. 67a–69a. The district court's order in *County of San Mateo* v. *Chevron Corp.* is reported at 294 F. Supp. 3d 934. App. 57a–64a. The district court's order in *County of Santa Cruz* v. *Chevron Corp.* is not reported. App. 65a–66a.

JURISDICTION

The Ninth Circuit issued its opinion on April 19, 2022, and denied rehearing en banc on June 27, 2022.

On August 31, 2022, Justice Kagan extended the time within which to file a petition for a writ of certiorari until November 24, 2022. 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."

INTRODUCTION

Respondents are six California political subdivisions that have asked California state courts to apply California state nuisance and trespass law to impose massive monetary liability on petitioners—a group of 30 energy companies—for harms allegedly attributable to global climate change. This suit is just one of nearly two dozen actions that have been filed in state courts across the country, from Rhode Island to Hawaii, as part of a coordinated campaign to use state common law to hold some but not all of the energy industry liable for global climate change, a phenomenon that, on respondents' own theory, is the cumulative result of billions of individual decisions stretching back more than a century. If respondents' unprece-

dented effort to transform state courts into global climate-change regulators succeeds, every state court in the Nation will be empowered to use state law to unilaterally impose its own view of energy and environmental policy nationwide and, indeed, worldwide.

Under our constitutional structure, however, these claims necessarily arise under federal law alone. As this Court has repeatedly held, a State cannot use its own law to obtain relief for harms allegedly caused by out-of-state emissions. Rather, claims concerning interstate and international emissions are inherently federal in nature and, accordingly, are governed exclusively by federal law, even when they are nominally pleaded under state law.

This case presents the question whether these inherently federal claims can be removed to federal court. The Ninth Circuit held that they could not. In so holding, the court deepened a circuit conflict over whether federal district courts have subject-matter jurisdiction over claims necessarily and exclusively governed by federal law that are nominally pleaded under state law.

Not only are the circuits divided over this question, but this Court also recently invited the Solicitor General to file a brief expressing the views of the United States on this question in *Suncor Energy (U.S.A.) Inc.* v. *Board of County Commissioners of Boulder County*, No. 21-1550. The United States has previously taken the position that climate-change claims of this sort are removable because they are inherently and necessarily federal in nature.

The significance of these cases supports immediate review. Respondents' claims expose the energy sector

to vast, indeterminate monetary relief that will deter investment and employment across the industry and the broader economy, and cause disruption to the global economy. These cases will also disrupt and impede the political branches' international climate-change initiatives and negotiations. And these cases threaten to impose a patchwork of conflicting tort standards applicable to global production, marketing, and emissions under the laws of multiple States. This Court should decide whether these cases are governed by federal law and removable to federal court.

Because this petition presents the same issues as those presented in *Suncor*, it should be held pending the Court's disposition of that case. If the Court does not grant review in *Suncor*, this petition should be granted.

STATEMENT OF THE CASE

A. The cities' and counties' public-nuisance suits

This case is another in a long series of climate change-related nuisance actions that "seek[] to impose liability and damages on a scale unlike any prior environmental pollution case." *Native Vill. of Kivalina* v. *ExxonMobil Corp.*, 663 F. Supp. 2d 863, 876 (N.D. Cal. 2009). For nearly two decades, state and local governments, working with private plaintiffs' lawyers, have tried to use novel tort claims in an attempt to regulate global greenhouse-gas emissions by imposing massive civil liability on a selection of energy and other companies that produce goods and services essential to modern life.

The first wave of such lawsuits asserted nuisance claims against automobile companies for alleged contributions to climate change. *See California* v. *Gen. Motors Corp.*, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007) (dismissing state and federal common-law nuisance claims against automakers based on emissions for failing to state a claim and because claims were not justiciable).

The next round of litigation attempted to use federal common law to enjoin emissions from power plants. In July 2004, a group of private and public entities sought to enjoin emissions from five power companies on the ground that their "carbon-dioxide emissions created a substantial and unreasonable interference with public rights, in violation of the federal common law of interstate nuisance, or, in the alternative, of state tort law." *Am. Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 418 (2011) ("*AEP*") (internal quotation marks omitted). This Court stated that such claims were "meet for federal law governance" and that "borrowing the law of a particular State would be inappropriate." *Id.* at 422. Turning to the merits, the Court held that federal common law did not provide a remedy because "the Clean Air Act and the EPA actions it authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired powerplants." *Id.* at 424.

The third wave of litigation again invoked federal common law, but this time in actions seeking damages for harms allegedly attributable to global climate change rather than an injunction against emissions. In *Native Village of Kivalina* v. *ExxonMobil Corp.*, 696

F.3d 849 (9th Cir. 2012), the plaintiffs "s[ought] damages under a federal common law claim of public nuisance" allegedly for harm caused by climate change to a coastal community in Alaska, *id.* at 853. Although "[t]his case present[ed] the question in a slightly different context" than *AEP*, the *Kivalina* court found this distinction immaterial because this "Court has instructed that the type of remedy asserted is not relevant to the applicability of the doctrine of displacement." *Id.* at 857.

In response to these repeated failures, state and local governments opened a fourth front in their campaign to use the courts to remedy harms allegedly attributable to greenhouse-gas emissions by launching a series of lawsuits in *state* court seeking to hold energy companies liable for global climate change under *state* common law. Nearly two dozen actions have been brought under this theory against scores of defendants in state courts across the country, including in San Francisco, Boulder, Seattle, New York City, Baltimore, and Hawaii.[1]

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[1] *See*, *e.g.*, *Cnty. of San Mateo* v. *Chevron*, No. 17-3222 (Cal. Super. Ct. San Mateo Cnty.); *City of Imperial Beach* v. *Chevron*, No. 17-1227 (Cal. Super. Ct. Contra Costa Cnty.); *Cnty. of Marin* v. *Chevron*, No. 17-2586 (Cal. Super. Ct. Marin Cnty.); *City of Richmond* v. *Chevron*, No. 18-55 (Cal. Super. Ct. Contra Costa Cnty.); *Cnty. of Santa Cruz* v. *Chevron*, No. 17-3242 (Cal. Super. Ct., Santa Cruz Cnty.); *City of Santa Cruz* v. *Chevron*, No. 17-3243 (Cal. Super. Ct. Santa Cruz Cnty.); *City of Oakland* v. *BP P.L.C.*, No. RG17875889 (Cal. Super. Ct. Alameda Cnty.); *City & Cnty. of San Francisco* v. *B.P. P.L.C.*, No. CGC-17-561370 (Cal. Super. Ct. S.F. Cnty.); *Mayor & City Council of Baltimore* v. *BP P.L.C.*, No. 18-4219 (Balt. Cir. Ct.); *Pac. Coast Fed'n of Fishermen's Ass'ns, Inc.* v. *Chevron*, No. CGC-18-571285 (Cal. Super. Ct. S.F.

The cases at issue here are part of this campaign. They were filed by six California political subdivisions that each asserted California state tort law claims in California state court—including claims for trespass and nuisance. Respondents seek compensatory damages and an injunction requiring oil-and-gas companies "to abate the nuisance[] [caused by sea level rise]" related to "global warming," for which they contend that petitioners "bear a dominant responsibility." Ct. App. 3-ER-220, -312. Respondents' theory is global, alleging that the "dramatic increase in atmospheric CO_2 and other greenhouse gases is the main driver of the gravely dangerous changes occurring to the global climate" and that "Defendants are directly responsible . . . because of the consumption of their fossil fuel products." Ct. App. 3-ER-216–17. And respondents seek to hold petitioners liable for "caus[ing] global and local sea levels to rise," "flooding to become more frequent and more intense," and "storm surges to become more frequent and more intense." Ct. App. 3-ER-310.

Cnty.); *King Cnty.* v. *BP P.L.C.*, No. 18-2-11859-0 (Wash. Super. Ct. King Cnty.); *State* v. *Chevron*, No. PC-2018-4716 (R.I. Super. Ct.); *Bd. of Cnty. Comm'rs of Boulder* v. *Suncor Energy (U.S.A.)*, No. 2018-CV-030349 (Colo. Dist. Ct.); *City & Cnty. of Honolulu* v. *Sunoco*, No. 20-380 (1st Cir. Haw.); *District of Columbia* v. *Exxon*, No. 2020 CA 002892 B (D.C. Super. Ct.); *Cnty. of Maui* v. *Sunoco LP*, No. 2CCV-20-0000283 (2d Cir. Haw.); *State* v. *BP Am. Inc.*, No. N20C-09-097 (Del. Super. Ct.); *City of Charleston* v. *Brabham Oil Co.*, No. 2020-CP-10 (S.C. Ct. Com. Pl.); *City of Hoboken* v. *Exxon Mobil Corp.*, No. HUD-L-003179-20 (N.J. Super. Ct. Hudson Cnty.); *City of Annapolis* v. *BP P.L.C.*, No. C-02-CV-21-000250 (Md. Cir. Ct. Anne Arundel Cnty.); *Anne Arundel Cnty.* v. *BP P.L.C.*, No. C-02-CV-21-000565 (Md. Cir. Ct. Anne Arundel Cnty.); *State* v. *Exxon Mobil Corp.*, No. MER-L-001797-22 (N.J. Super. Ct. Mercer Cnty.).

B. Proceedings in the district court

Respondents—six political subdivisions in California—filed separate actions against petitioners in California state court, alleging that "the dominant cause of global warming and sea level rise" is worldwide "greenhouse gas pollution," Ct. App. 3-ER-216, and that petitioners, "through their extraction, promotion, marketing, and sale of their fossil fuel products, caused approximately 20% of global fossil fuel product-related CO_2 between 1965 and 2015, with contributions currently continuing unabated," Ct. App. 3-ER-247. Respondents seek to hold petitioners liable for "caus[ing] global and local sea levels to rise," "flooding to become more frequent and more intense," and "storm surges to become more frequent and more intense." Ct. App. 3-ER-310. Asserting numerous causes of action under California tort law, including for trespass and public and private nuisance, respondents demand compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. Ct. App. 3-ER-312.

Petitioners removed the actions to the U.S. District Court for the Northern District of California. App. 16a. The notices of removal asserted various bases for federal jurisdiction, including that respondents' claims are necessarily governed by and thus arise under federal law, and involve conduct undertaken at the direction of federal officers under 28 U.S.C. § 1442(a)(1). App. 16a.

The district court granted respondents' motion to remand the cases to state court. App. 58a–64a, 66a.

C. Proceedings in the Ninth Circuit and this Court

The Ninth Circuit affirmed the remand orders, but considered only the federal-officer-removal argument, concluding that it "lacked jurisdiction to review the appeal from the portions of the remand order that considered the [seven] other bases for subject-matter jurisdiction." App. 18a.

This Court disagreed, holding 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." *BP P.L.C.* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1538 (2021). Accordingly, the Court vacated the Ninth Circuit's judgment and remanded for further proceedings. *See Chevron Corp.* v. *San Mateo Cnty.*, 141 S. Ct. 2666 (2021).

On remand, the Ninth Circuit again affirmed the district court's remand orders. App. 15a. The court noted that, "[u]nder the well-pleaded complaint rule," plaintiffs "can generally avoid federal jurisdiction if a federal question does not appear on the face of the complaint." App. 20a. The court recognized that petitioners "argue[d] that [respondents'] global-warming claims arise under federal common law." App. 20a. But the court held that its precedents recognize only two exceptions to the well-pleaded complaint rule: "(1) the exception articulated in [*Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Manufacturing*, 545 U.S. 308 (2005)]; and (2) the doctrine of complete preemption." App. 20a.

The Ninth Circuit concluded that petitioners could not satisfy *Grable*, which authorizes removal where a

state-law claim necessarily implicates a substantial federal question; the court held that respondents' claims "do not require resolution of a substantial question of federal law because they do not require any interpretation of a federal statutory or constitutional issue, and are displaced by the Clean Air Act." App. 23a (internal quotation marks omitted). And the Ninth Circuit held that the complete-preemption doctrine did not apply here because petitioners' argument—which was premised on the structure of the Constitution—did not involve a "federal statute." App. 24a. The consequence of this decision is that, in the Ninth Circuit, claims that are necessarily and exclusively governed by federal law as a matter of constitutional structure cannot be removed to federal court when they are nominally pleaded under state law.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision deepens an existing conflict on the question whether federal jurisdiction under 28 U.S.C. § 1331 exists over claims necessarily and exclusively governed by federal law but pleaded under state law. The decision also implicates a circuit conflict on the question whether federal law necessarily and exclusively governs claims seeking redress for injuries allegedly caused by the effects of interstate and international greenhouse-gas emissions.

This petition should be held pending the Court's disposition of *Suncor*. If the Court denies review in *Suncor*, this petition should be granted.

I. WHETHER CLAIMS NECESSARILY AND EXCLUSIVELY GOVERNED BY FEDERAL LAW MAY BE REMOVED TO FEDERAL COURT IS AN IMPORTANT AND RECURRING ISSUE THAT HAS DIVIDED THE CIRCUITS.

Congress has authorized removal to federal court of any case brought in state court over which federal district courts "have original jurisdiction," 28 U.S.C. § 1441(a), thereby allowing removal of claims when the plaintiff could have "filed its operative complaint in federal court" in the first instance, *Home Depot U.S.A., Inc.* v. *Jackson*, 139 S. Ct. 1743, 1748 (2019). And a long line of precedents from this Court has made clear that claims for damages based on interstate emissions must be governed by federal law alone, and therefore can arise only under federal law, not state law. *See Illinois* v. *City of Milwaukee*, 406 U.S. 91, 105 n.6, 108 n.10 (1972) ("*Milwaukee I*") ("basic interests of federalism . . . demand[]" that, in disputes concerning interstate and international emissions, "[t]he rule of decision [must] be[] federal"). Yet the Ninth Circuit held that such claims cannot be removed to federal court. That erroneous decision deepens one circuit conflict and implicates another.

A. The Ninth Circuit's Decision Deepens A Circuit Conflict Over When Nominally State-Law Claims May Be Removed.

The decision below exacerbates the existing conflict among the federal courts of appeals concerning whether and when a claim pleaded under state law arises under federal law for purposes of establishing removal jurisdiction.

1. Several courts of appeals have expressly held that federal courts have jurisdiction under Section 1331 over claims artfully pleaded under state law but necessarily governed by federal law—specifically, federal common law.

In *Sam L. Majors Jewelers* v. *ABX, Inc.*, 117 F.3d 922 (5th Cir. 1997), a shipper sued a carrier in state court to recover the value of goods that had been lost in transit, "alleging breach of contract, negligence, and violations of the Texas deceptive trade practice law." *Id.* at 924. The court noted that, under Section 1441(a), "only actions that originally could have been filed in federal court can be removed to federal court." *Ibid.* The court then reasoned that there are "*three* theories that might support federal question jurisdiction": where "the complaint raises an express or implied cause of action that exists under a federal statute"; where the relevant "area of law is completely preempted by the federal regulatory regime"; and where "*the cause of action arises under federal common law principles*." *Ibid.* (emphases added). Citing a long tradition in which, "applying federal common law, federal courts found that civil actions against air carriers for lost or damaged goods arose under federal law," *id.* at 927–28, the Fifth Circuit held that the shipper's ostensibly state-law "negligence action . . . arises under federal common law," *id.* at 929. As a result, the court concluded that "[it] ha[d] jurisdiction over this action." *Ibid.*

Similarly, the Eighth Circuit has found federal jurisdiction over a removed state-court complaint that raised putative state-law claims. *In re Otter Tail Power Co.*, 116 F.3d 1207, 1213–15 (8th Cir. 1997). The complaint "raise[d] important questions of federal

law requiring interpretation of treaties, federal statutes, and the *federal common law* of inherent tribal sovereignty." *Ibid.* (emphasis added). In that situation, the "plaintiff's characterization of a claim as based solely on state law is not dispositive" because the complaint "necessarily presents a federal question," and removal is proper. *Id.* at 1213–14 (internal quotation marks omitted).

Other cases uphold federal jurisdiction over claims implicating federal common law using a *Grable*-type analysis because the complaint necessarily raises a substantial question of federal law. The rule of law announced in these cases is irreconcilable with the Ninth Circuit's view that plaintiffs can opt to plead only state-law claims, and thus avoid removal, in an area where federal law exclusively governs.

For example, in *Newton* v. *Capital Insurance Co.*, 245 F.3d 1306 (11th Cir. 2001), the Eleventh Circuit considered whether a state-court breach-of-contract claim brought by the plaintiff against his flood insurer had been properly removed to federal court. *Id.* at 1308. The court answered in the affirmative, holding that the complaint "satisfie[d] § 1331 by raising a substantial federal question on its face" because the contract was a federally subsidized Standard Flood Insurance Policy ("SFIP"), and "SFIP contracts are interpreted using principles of federal common law rather than state contract law." *Id.* at 1309.

In addition, the Fifth Circuit has affirmed the removal of "state-law tort claims" against a foreign company—despite the plaintiffs' invocation of "the well-pleaded complaint rule"—because the case "raise[d]

substantial questions of federal common law by implicating important foreign policy concerns." *Torres* v. *S. Peru Copper Corp.*, 113 F.3d 540, 542–43 (5th Cir. 1997).

Likewise, the Second Circuit has upheld federal jurisdiction over claims governed by the federal common law of foreign relations under a *Grable*-like theory. In *Republic of Philippines* v. *Marcos*, 806 F.2d 344 (2d Cir. 1986), the Philippine government sought an injunction in state court against its former president's transfer of properties, *id.* at 346. Although "the face of the complaint" asserted a claim "more nearly akin to a state cause of action for conversion," the Second Circuit indicated that removal would be proper on the ground that the case "arises under federal common law because of the necessary implications of such an action for United States foreign relations." *Id.* at 352–54. In any event, the court held that removal was proper because the claim raised, "as a necessary element," a "federal question to be decided with uniformity as a matter of federal law, and not separately in each state." *Id.* at 354.

Each of these circuits recognizes that claims asserted in an area governed exclusively by federal law arise under federal law and create federal jurisdiction—however they are pleaded, and whatever approach to federal jurisdiction applies.

2. In the decision below, the Ninth Circuit refused to follow the approach adopted by these other circuits. Relying on its prior precedent, the Ninth Circuit held that there are only two exceptions to the well-pleaded complaint rule: the *Grable* doctrine, which permits the removal of state-law claims that necessarily raise

substantial and disputed federal issues, and the doctrine of complete preemption. *See* App. 20a. The court rejected the idea that a nominally state-law claim that necessarily is governed by *non-statutory* federal law—such as by federal common law—can be removed to federal court. In other words, the Ninth Circuit failed to ask the threshold question whether respondents engaged in artful pleading by framing their claims in state-law terms even though they are inherently federal in nature.

Under the Ninth Circuit's logic, even in a case where federal law necessarily and exclusively governs the issues pleaded on the face of the complaint, a district court is bound by the labels the plaintiff applies to the claims in the complaint. That conclusion conflicts with the decisions of the Second, Fifth, Eighth, and Eleventh Circuits permitting the removal of putative state-law claims necessarily and exclusively governed by federal common law.

In addition to the Ninth Circuit, three other courts of appeals examining similar climate-change suits have held that Section 1331 does not permit the exercise of jurisdiction over claims necessarily governed by federal law but pleaded under state law.

In *Mayor & City Council of Baltimore* v. *BP P.L.C.*, a similar climate change case, the Fourth Circuit held that, under the well-pleaded complaint rule, federal common law cannot provide a basis for jurisdiction under Section 1331, and removal is thus improper, where the plaintiff omits any reference to federal law in the complaint. 31 F.4th 178, 200 (4th Cir. 2022).

In *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238

(10th Cir. 2022), *petition for cert. filed*, No. 21-1550, another identical climate change case, the Tenth Circuit likewise rejected the premise that federal common law provides a basis for removal of claims artfully pleaded under state law. *See id.* at 1261. The court concluded that the "artful pleading" doctrine does not exist outside of the context of complete preemption, a doctrine that allows the removal of a state-law claim where "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Id.* at 1256 (internal quotation marks and citation omitted). The court held that, because the defendants did not argue that a "statute" governed the claims, the artful-pleading doctrine was inapplicable. *See id.* at 1262.

Finally, in *City of Hoboken* v. *Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022), the Third Circuit reached the same conclusion. Like the Tenth Circuit, it held that a federal court can "recharacterize a state law claim as a federal claim removable to federal court . . . only when some federal statute completely preempts state law." *Id*. at 707 (cleaned up). The Third Circuit further concluded that federal common law cannot provide a basis for removal of claims artfully pleaded under state law because federal common law provides only a "garden-variety preemption" defense in that circumstance. *Id*. at 708.

* * *

Thus, the decision below deepens a widespread conflict of federal law among the courts of appeals. Four courts of appeals have held that 28 U.S.C. § 1331

provides a basis for jurisdiction over claims necessarily and exclusively governed by federal law but labeled as arising under state law, while four other courts of appeals, including the Ninth Circuit, have reached the opposite conclusion. That conflict is developed and entrenched, and the Court's intervention is necessary.

B. This Case Also Implicates A Conflict Among The Courts Of Appeals Over Whether Federal Law Necessarily And Exclusively Governs Claims Based On Transboundary Emissions.

The question presented in this petition also necessarily encompasses a threshold issue that has divided the circuits: whether claims seeking relief for harms allegedly caused by transboundary emissions are necessarily governed by federal law. The Second Circuit has explained, based on this Court's precedent, that claims centered on transboundary emissions "demand the existence of federal common law" because those emissions span state and even national boundaries, and "a federal rule of decision is necessary to protect uniquely federal interests." *City of New York* v. *Chevron Corp.*, 993 F.3d 81, 90 (2d Cir. 2021). Three other courts of appeals, however, have rejected that conclusion. Granting certiorari in this case would thus enable the Court to resolve that conflict as well.

1. In *City of New York*, the City alleged that the defendant energy companies (including some of petitioners here) were liable under state law for injuries caused by the effects of interstate greenhouse-gas emissions on global climate change. 993 F.3d at 88. The Second Circuit described the question before it as

"whether municipalities may utilize state tort law to hold multinational oil companies liable for the damages caused by global greenhouse gas emissions." *Id.* at 85. The court unanimously held that "the answer is 'no'"; New York City's "sprawling" claims, which—like respondents'—sought "damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet," were "simply beyond the limits of state law" and thus necessarily were "federal claims" that "must be brought under federal common law." *Id.* at 85, 92, 95.

In reaching this conclusion, the Second Circuit emphasized that, "[f]or over a century, a mostly unbroken string of [this Court's] cases has applied federal law to disputes involving interstate air or water pollution." *City of New York*, 993 F.3d at 91. Such "quarrels often implicate two federal interests that are incompatible with the application of state law," namely, the "overriding need for a uniform rule of decision" on matters influencing national energy and environmental policy, and "basic interests of federalism." *Id.* at 91–92 (internal quotation marks and alteration omitted) (quoting *Milwaukee I*, 406 U.S. at 105 n.6).

The court explained that application of state law to the city's claims would "risk upsetting the careful balance that has been struck between the prevention of global warming, a project that necessarily requires national standards and global participation, on the one hand, and energy production, economic growth, foreign policy, and national security, on the other." *City of New York*, 993 F.3d at 93.

The Second Circuit rejected the plaintiff's argument that displacement by the Clean Air Act of any

remedy under federal common law allows state law to "snap back into action." *City of New York*, 993 F.3d at 98. Although the Clean Air Act displaces any *remedy* under federal common law, it does not displace the entire *source* of law altogether. *See id.* at 95 & n.7; *accord United States* v. *Swiss Am. Bank, Ltd.*, 191 F.3d 30, 43 (1st Cir. 1999) (explaining that *United States* v. *Standard Oil Co. of Cal.*, 332 U.S. 301 (1947), established a two-step analysis that first asks whether "the source of the controlling law [should] be federal or state" and next considers the separate question whether that federal law provides for a remedy). The court explained that the city's contrary position was "difficult to square with the fact that federal common law governed this issue in the first place" because "where 'federal common law exists, . . . state law cannot be used.'" *Id.* at 98 (quoting *City of Milwaukee* v. *Illinois*, 451 U.S. 304, 313 n.7 (1981) ("*Milwaukee II*")). In the Second Circuit's view, "state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *Ibid.* Such an outcome would be "too strange to seriously contemplate." *Id.* at 98–99.

2. Several other courts of appeals, considering identical climate change suits, have squarely rejected the Second Circuit's approach in *City of New York*, creating a clear conflict among the circuits.

Whereas the Second Circuit held that the plaintiff's climate-change claims necessarily were "federal claims" that "must be brought under federal common law," 993 F.3d at 92, 95, the Fourth Circuit declined to "follow *City of New York*," reasoning that—under

the test for fashioning a new rule of federal common law—the Second Circuit had "fail[ed] to explain a significant conflict between the state-law claims before it and the federal interests at stake," *Baltimore*, 31 F.4th at 202–03. The First Circuit, too, rejected the argument that federal law governs transboundary-emissions claims, stating that it did not see "how any significant conflict exists between these federal interests and the state-law claims." *Rhode Island* v. *Shell Oil Prod. Co.*, 35 F.4th 44, 54 (1st Cir. 2022) (cleaned up). Those courts thus departed from both *City of New York* and a long line of precedent in which this Court has *already recognized* that federal law alone necessarily governs interstate pollution claims. *See City of New York*, 993 F.3d at 91 ("For over a century, a mostly unbroken string of cases has applied federal law to disputes involving interstate air or water pollution." (citing cases)).

Additionally, the First, Fourth, and Tenth Circuits have explicitly disagreed with the Second Circuit's holding that the Clean Air Act's displacement of a federal common law remedy does not allow state law to "snap back into action." *City of New York*, 993 F.3d at 98. In *Suncor*, 25 F.4th 1238, the Tenth Circuit held precisely the opposite, reasoning that federal jurisdiction was not present because, after statutory displacement by the Clean Air Act, the otherwise-applicable federal common law "no longer exists." *Id.* at 1260 (emphasis omitted). The Fourth Circuit similarly departed from the Second Circuit's holding, rejecting the view "that any federal common law controls Baltimore's state-law claims" on the ground that "federal common law in this area ceases to exist due to statutory displacement." *Baltimore*, 31 F.4th at 204. And

the First Circuit, too, held that it "cannot rule that any federal common law controls Rhode Island's claims" because "Congress displaced the federal common law of interstate pollution." *Rhode Island*, 35 F.4th at 55–56.

The First, Fourth, and Tenth Circuits attempted to distinguish *City of New York* on the ground that the Second Circuit did not need to apply the well-pleaded complaint rule because "the city initiated the action in federal court." *Suncor*, 25 F.4th at 1262; *see also Baltimore*, 31 F.4th at 203; *Rhode Island*, 35 F.4th at 55. But those courts did not explain how this difference in posture affects the answer to the distinct question whether federal law necessarily governs the claims at issue, a substantive question of federal law that requires the same answer regardless of the court in which a plaintiff chooses to file suit. The explicit conflict over that core question of federal law is squarely implicated in this case.

II. THE DECISION BELOW WAS WRONGLY DECIDED.

In addition to exacerbating two circuit conflicts, the Ninth Circuit erred in remanding the case to state court. Respondents' claims are necessarily and exclusively governed by federal law, and, accordingly, this case is removable to federal court.

1. The Ninth Circuit's decision departed from a long line of this Court's precedent making clear that, under our Constitution's structure, claims based on interstate emissions necessarily arise under federal law, not state law.

In our federal system, each State may make law within its own borders, but no State may "impos[e] its

regulatory policies on the entire Nation," *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 585 (1996), or dictate our "relationships with other members of the international community," *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 425 (1964). The Constitution's allocation of sovereignty between the States and the federal government, and among the States themselves, precludes application of state law in certain areas that are inherently interstate in nature. Allowing state law to govern such claims would permit one State to "impose its own legislation on . . . the others," violating the "cardinal" principle that "[e]ach state stands on the same level with all the rest." *Kansas* v. *Colorado*, 206 U.S. 46, 97 (1907).

For this reason, the Court has made clear that claims seeking redress for out-of-state emissions must be governed by federal law alone, and therefore can arise only under federal law, not state law. The allocation of sovereignty between the States and the federal government prevents applying state law in certain areas that are inherently interstate in nature. When the States "by their union made the forcible abatement of outside nuisances impossible to each," they necessarily agreed that disputes of that sort would be governed by federal law. *Georgia* v. *Tenn. Copper Co.*, 206 U.S. 230, 237 (1907). Thus, in cases involving "interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations," "our federal system does not permit the controversy to be resolved under state law" "because 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, 641 (1981).

Accordingly, this Court has long held unequivocally that, as a matter of constitutional structure, claims based on interstate and international emissions are necessarily governed exclusively by federal law. "[T]he basic scheme of the Constitution . . . demands" that "federal common law" govern disputes involving "air and water in their ambient or interstate aspects." *AEP*, 564 U.S. at 421; *see also Milwaukee I*, 406 U.S. at 105 n.6 ("basic interests of federalism . . . demand[]" this result). In disputes concerning interstate and international emissions, "[t]he rule of decision [must] be[] federal," *id.* at 108 n.10, and "state law cannot be used" at all, *Milwaukee II*, 451 U.S. at 313 n.7; *see also Int'l Paper Co.* v. *Ouellette*, 479 U.S. 481, 488 (1987) (interstate pollution "is a matter of federal, not state, law").

Applying these principles and precedents here, respondents' claims are necessarily governed by and "arise under" federal law because they seek damages based on interstate—and international—greenhouse-gas emissions. Respondents seek damages for injuries that they allege are caused by the cumulative impact of emissions emanating from every State in the Nation and every country in the world, and the claims are therefore necessarily governed by federal law.

That remains true whether the plaintiff claims that the defendant emitted greenhouse gases directly or instead claims that the defendant contributed to greenhouse-gas emissions by producing and promoting fossil-fuel products. Whatever the allegedly tortious conduct, the alleged injury is the result of greenhouse-gas emissions and their effect on the global climate.

The Ninth Circuit nevertheless determined that it was powerless to hear this case merely because respondents labeled their inherently federal claims as sounding in state common law. The Ninth Circuit should have followed this Court's long line of precedent holding that claims of this sort necessarily arise under federal law alone, regardless of the labels that plaintiffs choose to give them.

2. The Ninth Circuit's error was rooted in its flawed interpretation of the well-pleaded complaint rule.

As noted above, because respondents seek to impose liability for injuries allegedly resulting from interstate and international emissions, their claims are inherently governed by and "arise under" federal law. Such claims are, in turn, removable to federal court under federal-question jurisdiction because a defendant can remove any claim that a plaintiff could have originally filed in federal court. *See Home Depot*, 139 S. Ct. at 1748. Moreover, this Court has observed that it is "well settled" that 28 U.S.C. § 1331's "grant of jurisdiction will support claims founded upon federal common law." *Nat'l Farmers Union Ins. Cos.* v. *Crow Tribe of Indians*, 471 U.S. 845, 850 (1985) (internal quotation marks omitted). Accordingly, respondents' claims here, based on the alleged harms to respondents arising from global climate change, are governed by federal law, could have been filed in federal court, and are therefore removable to federal court.

Under the well-pleaded complaint rule, an action arises under federal law "only when the plaintiff's statement of his own cause of action shows that it is based upon federal law." *Vaden* v. *Discover Bank*, 556

U.S. 49, 60 (2009) (internal quotations marks, citation, and alteration omitted). An "independent corollary" to the well-pleaded complaint rule, however, is that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Franchise Tax Bd.* v. *Constr. Laborers Vacation Tr.*, 463 U.S. 1, 22 (1983). Thus, "courts will not permit plaintiff to use artful pleading to close off defendant's right to a federal forum," and sometimes the well-pleaded complaint rule requires a federal court to "determine whether the real nature of the claim is federal, regardless of plaintiff's characterization." *Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 397 n.2 (1981) (internal quotation marks and citation omitted); *see also* 14C Wright & Miller, Fed. Prac. & Proc. Juris. § 3722.1 (4th ed.) ("[A] plaintiff cannot frustrate a defendant's right to remove by pleading a case without reference to any federal law when the plaintiff's claim is necessarily federal" or by disguising an "inherently federal cause of action.").

The panel's narrow theory of federal jurisdiction would result in absurd consequences that are inconsistent with our federal system and common sense. Illinois could sue the City of Milwaukee in state court under Illinois state law for interstate water pollution, and Milwaukee would be denied a federal forum to address the interstate dispute. *Contra Milwaukee II*, 451 U.S. 304. Connecticut could bring suit in state court under Connecticut state law against an out-of-state defendant seeking to abate interstate air pollution, and the defendant could not remove to federal court. *Contra AEP*, 564 U.S. 410. Or Georgia could subject a Tennessee company to Georgia law to enjoin it from discharging fumes across state lines. *Contra*

Tenn. Copper Co., 206 U.S. at 236. The holding of the panel is irreconcilable with this Court's rulings that these claims arise under federal law alone and thus are properly heard in federal court.

3. The Ninth Circuit also erred in holding that, even assuming respondents' claims implicate federal law, the Clean Air Act had "displaced" the federal common law of interstate pollution and that such displacement prevented the exercise of removal jurisdiction. App. 23a.

The Ninth Circuit's reasoning erroneously conflates the merits of respondents' claims with federal courts' jurisdiction over them, breaking from long-established precedent from this Court. As the Second Circuit made clear in *City of New York*, although the Clean Air Act displaces any *remedy* under federal common law, it does not displace the entire *source* of law altogether, which remains exclusively federal. 993 F.3d at 95 & n.7. Whether a party can obtain a remedy under federal common law is a *merits* question distinct from the *jurisdictional* question whether federal law must supply the rule of decision in the first instance.

Indeed, whether a claim arises under state or federal law for jurisdictional purposes turns on which law governs; it does not depend on whether the plaintiff has stated a *viable* claim under federal law. Under this Court's two-step analytical approach set forth in *United States* v. *Standard Oil Co. of California*, 332 U.S. 301 (1947), courts must: (1) determine whether the source of law is federal or state based on the nature of the claims asserted and the issues at stake; and then (2) if federal law is the source, determine the

substance of the federal law and decide whether the plaintiff has stated a viable federal claim for relief under federal law. *See Swiss Am. Bank*, 191 F.3d at 42–45 (citing *Standard Oil*, 332 U.S. at 305). Whether a claim "arises under" federal law "turns on the resolution of the source question," not the "substance question." *Id*. at 44. And, critically, that "choice-of-law task is a federal task for federal courts." *Milwaukee II*, 451 U.S. at 349 (Blackmun, J., dissenting) (internal quotation marks omitted).

Thus, sometimes—as here—federal law governs, even when the party has no *remedy* under federal law on the merits. When "the interstate or international nature of the controversy makes it inappropriate for state law to control," *Tex. Indus.*, 451 U.S. at 641, federal law necessarily governs for "jurisdictional purposes," even if that claim "may fail at a later stage," *Oneida Indian Nation* v. *Cnty. of Oneida*, 414 U.S. 661, 675 (1974); *see also City of New York*, 993 F.3d at 95. Courts must not "conflate[]" these distinct "jurisdiction" and "merits-related determination[s]." *Arbaugh* v. *Y&H Corp.*, 546 U.S. 500, 511 (2006); *see also Al-Qarqani* v. *Chevron Corp*., 8 F.4th 1018, 1025 (9th Cir. 2021) ("[I]t has long been understood that a claim can arise under federal law even if a court ultimately concludes that federal law does not provide a cause of action.").

Nor does the displacement of federal law remedies mean that respondents can bring their claims under state law. As the Second Circuit explained, such an outcome "is difficult to square with the fact that federal common law governed this issue in the first place" because, "where federal common law exists, it is because state law cannot be used." *City of New York*,

993 F.3d at 98 (internal quotation marks omitted). "[S]tate law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *Ibid.* Accordingly, statutory displacement cannot "give birth to new state-law claims," *ibid.*, because our constitutional structure "does not permit the controversy to be resolved under state law," *Tex. Indus.*, 451 U.S. at 641. Indeed, the Second Circuit concluded that such an outcome is "too strange to seriously contemplate." *City of New York*, 993 F.3d at 98–99. Regardless of displacement, our constitutional structure requires "a federal rule of decision" for such claims. *Id.* at 90.

The Seventh Circuit, too, addressed this same question on remand after this Court held in *Milwaukee II* that the Clean Water Act displaced federal common law. The Seventh Circuit noted that this Court "continue[d] to cite *Milwaukee I* for the inapplicability of state law" to interstate pollution disputes "despite the displacement of federal common law." *Illinois* v. *City of Milwaukee*, 731 F.2d 403, 409 (7th Cir. 1984) ("*Milwaukee III*"). "The very reasons [this] Court gave for resorting to federal common law in *Milwaukee I* are the same reasons why the state . . . cannot apply its own state law to out-of-state discharges now," and "*Milwaukee II* did nothing to undermine that result." *Id.* at 410. Notwithstanding displacement, the Seventh Circuit held that the interstate pollution claims were "a problem of uniquely federal dimensions requiring the application of uniform federal standards." *Id.* at 410–11.

The Ninth Circuit's contrary conclusion here is incorrect and conflicts with established precedent of this Court.

III. This Case Raises An Important Question That Warrants The Court's Review.

This case presents a straightforward vehicle for the Court to resolve a persistent question concerning the scope of federal jurisdiction. As this Court's call for the views of the Solicitor General in *Suncor* suggests, this question is legally and practically important and merits the Court's review. Furthermore, petitioners' vital role in maintaining a dependable supply of oil and gas is a matter of national security, and a rule of decision on international-emissions-related suits that would open the energy industry to a patchwork of conflicting state laws and state lawsuits would undermine this important mission.

1. The question presented in this case concerns core principles of our federal system—specifically, the exclusive power of federal law over transboundary pollution cases and the inability of state law to adjudicate disputes in areas of unique federal importance, from interstate pollution to foreign affairs to tribal relations.

The Court has long recognized the "great importance" of maintaining clear and uniform rules on issues relating to removal. *Tennessee* v. *Davis*, 100 U.S. 257, 260 (1879); *see also Direct Mktg. Ass'n* v. *Brohl*, 575 U.S. 1, 14 (2015) ("jurisdictional rules should be clear" (internal quotation marks and 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).

The Court should take this opportunity to clarify the enduring role of federal law as the rule of decision for claims based on interstate and international emissions, and confirm the common-sense conclusion that claims necessarily and exclusively governed by federal law are removable to federal court.

2. The case is also important because of petitioners' vital role in ensuring a steady supply of oil and gas for domestic use and in support of the U.S. military. The United States currently faces record high gas prices, and just last month, the White House called on energy companies to "invest in production right now" in order to "help[] . . . improve U.S. energy security and bring down energy prices that have been driven up" by the conflict in Ukraine. *See* FACT SHEET: President Biden to Announce New Actions to Strengthen U.S. Energy Security, Encourage Production, and Bring Down Costs, White House Briefing Room (Oct. 18, 2022), https://tinyurl.com/2p8z6mee. Against this backdrop, this case presents a timely opportunity for this Court to clarify a uniform removal right for energy companies sued on interstate- and international-emissions-related grounds and to prevent a patchwork of lawsuits

in state courts across the country from undermining this crucial work.

3. Finally, this case is a suitable vehicle for resolving the question presented. The question was pressed below, fully briefed by the parties, and passed on by the Ninth Circuit. Petitioners also raised the relevant issues in their timely petition for rehearing en banc, which the Ninth Circuit denied. App. 69a.

CONCLUSION

The Court should hold this petition for a writ of certiorari pending its disposition of *Suncor*, No. 21-1550. If the Court does not grant review in *Suncor*, this petition should be granted.

Respectfully submitted.

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