No. 22-

IN THE

Supreme Court of the United States

CHEVRON USA, INC., ET AL.,
Petitioners,

v.

PLAQUEMINES PARISH, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

During World War II ("WWII"), the U.S. government recognized that it would need unprecedented quantities of oil to conduct and win the war and, accordingly, launched a massive government effort to secure sufficient supplies of this most critical war material. Invoking his war powers, the President created a new temporary agency—the Petroleum Administration for War ("PAW")—to take all action necessary to meet the government's oil needs. According to the government's own account, the oil industry worked as "extensions of the government," and, under PAW's direction, produced the billions of barrels of oil the United States required to prevail over the Axis powers.

More than 70 years later, Louisiana coastal parishes, joined by the state of Louisiana, filed this and 41 other cases in state court under a 1978 state law, alleging that oil companies should have employed more environmentally protective oil production practices going back for decades. The companies removed this and related cases to federal court because many of the challenged practices were undertaken by the companies during WWII while "acting under" PAW. The Fifth Circuit nonetheless ruled that the case should be remanded to state court. The Fifth Circuit reviewed the District Court's decision without giving petitioners the benefit of inferences in their favor.

The questions presented are:

1. Whether a private entity is "acting under" a federal officer for purposes of removal under 28 U.S.C. § 1442 when federal officials, through orders and regulations, direct the entity's production of a product the government requires to respond to a national emergency.

2. Whether, in assessing federal-officer removal under 28 U.S.C. § 1442, both the district court and the court of appeals must accept as true all facts alleged by the removing party and draw all reasonable inferences in its favor.

PARTIES TO THE PROCEEDING

Petitioners Chevron U.S.A., Inc., Exxon Mobil Corporation, and ConocoPhillips Company were defendants in the District Court and appellants in the Fifth Circuit. Graham Royalty, Ltd., Graham Exploration Ltd., The Estate of William G. Helis, and Riverwood Production Company were defendants in the District Court. Riverwood Production Company was a nominal defendant, was never served, and is no longer licensed to do business in Louisiana.

Respondent Plaquemines Parish was plaintiff in the District Court and appellee in the Fifth Circuit. Respondents State of Louisiana, ex rel. Jeff Landry, Attorney General and State of Louisiana, through the Louisiana Department of Natural Resources Office of Coastal Management and its Secretary, Thomas F. Harris, were intervenors in the District Court and appellees in the Fifth Circuit.

RULE 29.6 STATEMENT

Petitioner Chevron U.S.A., Inc. is an indirectly wholly owned subsidiary of Chevron Corporation, a publicly traded company (NYSE: CVX).

Petitioner ConocoPhillips Company is a Delaware corporation and a wholly owned subsidiary of ConocoPhillips, a publicly traded company (NYSE: COP).

Petitioner Exxon Mobil Corporation is a publicly traded company (NYSE: XOM) and has no parent corporation. There is no publicly held corporation (domestic or foreign) that owns ten percent (10%) or more of Exxon Mobil Corporation's stock.

RELATED PROCEEDINGS

This case directly relates to the following proceedings:

United States District Court (E.D. La.):

The Parish of Plaquemines v. *Riverwood Production Co., et al.*, No. 18-5217 (May 28, 2019)

The Parish of Plaquemines v. *Riverwood Production Co., et al.*, No. 18-5217 (Jan. 11, 2022)

United States Court of Appeals for the Fifth Circuit:

The Parish of Plaquemines, et al., v. *Chevron USA, Inc., et al.*, No. 19-30492 (Aug. 5, 2021)

Plaquemines Parish, et al., v. *Chevron USA, Inc., et al.*, No. 21-30055 (Oct. 17, 2022)

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PETITION FOR A WRIT OF CERTIORARI

Chevron USA, Inc., Exxon Mobil Corp. and ConocoPhillips Company (together, "petitioners") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The first decision of the District Court in this matter is available at *Parish of Plaquemines* v. *Riverwood Production Co.*, No. CV 18-5217, 2019 WL 2271118 (E.D. La. May 28, 2019). The Fifth Circuit's opinion reversing and remanding that decision is reported at *Parish of Plaquemines* v. *Chevron USA, Inc.*, 7 F.4th 362 (5th Cir. 2021). The District Court's decision on remand is *Parish of Plaquemines* v. *Riverwood Production Co.*, No. CV 18-5217, 2022 WL 101401 (E.D. La. Jan. 11, 2022), and is reproduced at Pet. App. 10a–34a. The Fifth Circuit's opinion affirming that decision is *Plaquemines Parish* v. *Chevron USA, Inc.*, No. 22-30055, 2022 WL 9914869 (5th Cir. Oct. 17, 2022) (unpublished), and is reproduced at Pet. App. 1a–9a.

JURISDICTION

The Fifth Circuit entered judgment on October 17, 2022, Pet. App. 1a, and denied timely petitions for rehearing and rehearing *en banc* on November 29, 2022, Pet. App. 35a–36a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

The statutory provision involved is 28 U.S.C. § 1442(a)(1), which provides:

> (a) A civil action … 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 any agency thereof, in an official or individual capacity, for or relating to any act under color of such office ….

INTRODUCTION

World War II was a "war of oil."[1] As the government explained in its official historical account, oil was "*the* indispensable material" it needed to defeat the Axis powers. ROA.14210–11. Recognizing this, President Roosevelt, relying on his constitutional war powers, issued an executive order creating the Petroleum Administration for War ("PAW") and giving its administrator, Harold Ickes, authority to direct the oil industry to ensure that the government had "adequate supplies of petroleum for the successful prosecution of the war." Executive Order 9276, *Establishing the Petroleum Administration for* War, 7 Fed. Reg. 10,091 (Dec. 4, 1942) ("EO 9276"). Under Ickes,

[1] Record on Appeal ("ROA") 14211. ROA pages 14210–84 cited herein contain excerpts from John W. Frey & H. Chandler Ide, *A History of the Petroleum Administration for War* 1941-1945 (Gov't Printing Off. 1946) ("*PAW History*"), the official government account prepared under the instructions of Presidents Roosevelt and Truman.

the oil companies were exempted from the antitrust laws, ROA.14268, and "fused in effect, though not formally, into one giant organization, under government direction and mobilized for war." ROA.16062.

PAW recognized that, without concentrated government direction, the oil industry would be unable to meet the organizational challenges required to produce the vast amount of aviation gasoline ("avgas") and other petroleum products the government needed to win the war. Thus, PAW issued directives requiring oil companies to dramatically increase oil production and to use production methods that minimized expenditure of critical materials, like steel, that were desperately needed for other wartime purposes. PAW also formed committees of oil company executives to develop production plans and practices to implement those directives. Indeed, "[s]o closely and continuously did [industry and PAW] work together, that it is often all but impossible to say where one left off and the other began." *PAW History*, ROA.14212.

More than 70 years later, six Louisiana coastal parishes, joined by the state of Louisiana, filed this case and 41 other lawsuits, seeking to hold nearly 200 oil companies liable for production practices going back for decades. The parishes alleged that the companies' practices, including many carried out or commenced during WWII, violated a state environmental law enacted in 1978, and caused land loss across the Gulf Coast. The parishes seek to require the companies to restore much of Louisiana's coast, a monumental undertaking that could cost billions of dollars.

The companies removed these cases to federal court because the parishes' theory of liability targets the

companies' production practices carried out under government direction during WWII.[2] The parishes claim that the companies should have used more environmentally protective production practices, including slower rates of production, directional drilling, steel storage tanks, and saltwater reinjection wells. But those practices would have slowed oil production and required more steel and other critical war materials, all in contravention of federal directives.

Petitioners are, accordingly, entitled to defend themselves in a federal forum under the federal-officer removal statute, 28 U.S.C. § 1442(a). They are being sued for actions they undertook while "acting under" the direction of PAW during WWII. The Fifth Circuit's decision rejecting that conclusion conflicts with *Watson* v. *Phillip Morris Cos.*, 551 U.S. 142 (2007), and decisions of other courts of appeals in two respects.

First, the Fifth Circuit misread *Watson* and split from other courts of appeals when it held that private companies that provided the government with critical materials it required to respond to a national emergency were not "acting under" a federal officer. Petitioners "provided a product that was essential to the government carrying out its duty to defend the Nation." Amici Curiae Brief of General (Retired) Richard B. Myers and Admiral (Retired) Michael G. Mullen at 15, (Mar. 21, 2022) *Plaquemines Par.* v. *Chevron, USA*, No. 22-30055 (5th Cir. Mar. 21, 2022), ECF No. 43 ("Brief of Retired Chairmen of the Joint Chiefs of Staff"). *Watson* held that "helping the Government to produce an item that it needs"—particularly a prod-

[2] One case was removed only on grounds other than federal-officer jurisdiction.

uct the government "used to help conduct a war"—is the kind of "assistance" that "goes beyond simple compliance with the law and helps officers fulfill other basic governmental tasks," as required to be "acting under" a federal officer. 551 U.S. at 153–54.

The Fifth Circuit brushed aside *Watson* because petitioners did not have a contract with the government. Pet. App. 6a–7a. But *Watson* did not hold that a contract is required, and the Fifth Circuit's ruling exalts form over substance. PAW established a wartime apparatus that conscripted petitioners to meet the government's extraordinary need for oil without the delays and inflexibilities of individual contract negotiations. That does not constitute the "usual regulator/regulated relationship," *Watson*, 551 U.S. at 157, and presents an equally strong basis for concluding that petitioners "acted under" PAW as would exist if PAW had demanded that they enter government contracts.

Indeed, the decision below conflicts with *Baker* v. *Atlantic Richfield Co.*, in which the Seventh Circuit upheld federal-officer removal by a defendant that was sued for activities related to manufacture of materials the federal government "needed to stay in the fight at home and abroad" during WWII, including materials it produced without a government contract. 962 F.3d 937, 940, 942 (7th Cir. 2020). The Fifth Circuit's decision also conflicts with Eleventh and Third Circuit precedent upholding removal where the government directed private entities through regulations, rather than contracts.

Second, the petition implicates a three-way circuit split on the standards courts must apply when evaluating federal-officer jurisdiction and reviewing re-

mand decisions. Here, the Fifth Circuit declined to give petitioners the benefit of all reasonable inferences from their removal allegations and held that it reviews district court factual findings for clear error only. Pet. App. 4a. This approach aligns with the First and Fourth Circuits, but conflicts with the Second and Seventh Circuits, where courts accept as true the removing party's allegations supporting federal-officer removal, give the removing party all reasonable inferences from the facts alleged, and credit the removing party's theory of the case. The Third and Sixth Circuits apply yet a third approach that distinguishes between "facial" and "factual" remand challenges and affords the removing party all reasonable inferences only in the former.

This Court's review is needed to bring uniformity to these important questions of federal-officer removal. The standards for assessing federal-officer removal apply in every case invoking federal-officer jurisdiction, and this is a lead case among more than 40 separate lawsuits involving virtually the entire oil industry and coastal zone in Louisiana. Beyond that, the decision below, like the decisions of the Fifth and Eighth Circuits at issue in two pending petitions from Tyson Foods, Inc., could affect how key industries respond to the government's directions during future national emergencies.[3]

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[3] *See Tyson Foods, Inc.* v. *Buljic*, No. 22-70 (U.S. July 22, 2022); *Tyson* v. *Glenn*, No. 22-455 (U.S. Nov. 10, 2022). Another petition currently pending before this Court presents a different question related to federal-officer removal involving the "colorable federal defense" requirement. *See* Petition for Certiorari at i, *Sunoco LP v. City of Honolulu*, No. 22-523 (U.S. Dec. 6, 2022).

As this case illustrates, the government must be able to direct key industries to help the government respond to national emergencies. Where companies provide that assistance and are then threatened with liability under state law, they are entitled to defend themselves in a federal forum. The fact that the federal direction was achieved through orders and integration of government and industry, rather than through individual government contracts, should not matter. Petitioners are being sued for answering the government's call for increased oil production the government needed to win WWII. If the decision below is allowed to stand, then during the next crisis, companies may hesitate to serve unless the government contracts directly with them or sanctions them to force compliance.

Review of these important, far-reaching issues is warranted.

STATEMENT OF THE CASE

A. Legal Background

As amended in 2011, the federal-officer removal statute allows a defendant to remove to federal court a civil suit "that is against or directed to … any person acting under [a federal] officer … for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). The removing defendant must be a "person," must assert a "colorable federal defenses," and must be "acting under" a federal officer, and the charged conduct must be "connected or associated" with an act under federal direction. *Latiolais* v. *Huntington Ingalls, Inc.*, 951 F.3d 286, 290–91 (5th Cir. 2020) (en banc). This case involves the "acting under" element.

In *Watson*, this Court held that Philip Morris was not "acting under" a federal officer when testing cigarette tar and nicotine levels according to government regulations as required to advertise its cigarettes to the public as light or low tar. This Court explained that the words "acting under" describe the "triggering relationship between a private entity and a federal officer" that allows a private entity to remove a case to federal court. *Watson*, 551 U.S. at 149. To qualify, the relationship must satisfy two criteria. First, the relationship "typically involves subjection, guidance, or control" by the government. *Id.* at 151 (cleaned up). Second, "the private person's 'acting under' must involve an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior." *Id*. at 152. This Court further explained that "the help or assistance necessary to bring a private person within the scope of the statute does *not* include simply *complying* with the law," such as when taxpayers "fill out complex federal tax forms," or when airline passengers "obey federal regulations prohibiting smoking." *Id*. Thus, "a highly regulated firm cannot find a statutory basis for removal in the face of federal regulation *alone*." *Id*. at 153 (emphasis added).

This Court then addressed a question posed by Philip Morris: if "close supervision is sufficient to turn a private contractor into a private firm 'acting under'" a government agency, why is such supervision *not* sufficient when "a company is subjected to intense regulation"? *Id*. The Court explained that "[t]he answer to this question lies in the fact that the private contractor in such cases is helping the Government to produce an item that it needs." *Id*. Such assistance "goes beyond simple compliance with the law and helps officers fulfill other basic governmental

tasks." *Id*. As an example, this Court pointed to a company that "provid[ed] the Government with a product that it used to help conduct a war," thereby performing a job that otherwise "the Government itself would have to perform." *Id*. at 154.

B. Factual Background

In over 40 lawsuits, multiple Louisiana parishes allege that nearly 200 oil and gas companies violated the permitting requirements of Louisiana's State and Local Coastal Resources Management Act, which was enacted in 1978 and became effective in 1980. Pet. App. 2a. Although the Act "grandfathered coastal uses … 'legally commenced or established'" prior to 1980, *id*. (citing La. Stat. § 49:214.34(C)(2)), the parishes assert that the companies' operations "were *not* 'lawfully commenced or established' before 1980[,] because, given various alleged 'depart[ures] from prudent industry practices,' they were not begun 'in good faith.'" *Id*. at 2a–3a. Thus, the parishes seek to hold the companies liable for failing to obtain a permit after 1980 for pre-1980 production practices, including practices that the companies undertook at the direction of PAW during WWII. Each of the cases seeks damages to "restore the … Parish Coastal Zone as near as practicable to its original condition." ROA.259.

The companies removed the cases from state to federal court under 28 U.S.C. § 1442, because expert discovery revealed that the parishes' challenge to oil production practices encompasses the WWII timeframe when petitioners were "produc[ing] an item that [the government] need[ed]," under PAW's extensive direction and control. *Watson*, 551 U.S. at 153.

During WWII, the government urgently needed unprecedented amounts of oil. The President established a temporary, wartime agency, PAW, to supervise and direct the Nation's oil production to "provid[e] adequate supplies of petroleum for the successful prosecution of the war and … other essential purposes." EO 9276. Under the direction of PAW Administrator Harold Ickes, the industry was reshaped, creating what the official government account described as a "Government-industry partnership" for "the service of the Nation at war." ROA.14224.

As the official *PAW History* explained, PAW recognized that "[l]eft to itself, there [was] no way by which the industry can effectively organize its resources and facilities" to meet the government's need for oil. ROA.14220. PAW formed "District Committees" composed of industry representatives to address production, refining, and transportation in each region, ROA.14221, and subcommittees for production including "well spacing, secondary recovery, conservation, … reserves," and "materials." ROA.14222. These committees submitted "plans or proposals to Government," but "[n]o action … was to be taken until formal clearance and approval by Government was given." ROA.14222. The committees operated "in a very real sense as extensions of the Government agency." ROA.14224.

To enable this industry coordination, the Attorney General advised oil companies that "concerted action in response to" a "formal recommendation or direction [of PAW] is not a violation of the anti-trust laws." 6 Fed. Reg. at 5016, 5016–17 (Oct. 2, 1941). The government also controlled and supervised oil production. It set crude oil prices, and controlled the volume of production by setting monthly production quotas

and by directing States to allocate the required production among fields to ensure a supply of oil to refineries producing avgas for the government. See, *e.g.*, 7 Fed. Reg. 164 (Jan. 8, 1942); ROA.13937, ROA.16064. PAW prohibited oil companies from abandoning any well capable of producing sufficient crude to cover operating costs, 7 Fed. Reg. 3489 (May 12, 1942), and new wells had to be drilled in conformity with well-spacing and vertical bore requirements that minimized the use of steel. ROA.15086, 8 Fed. Reg. 3955, 3957 (Mar. 31, 1943). PAW's approval was needed to purchase significant amounts of critical materials needed for oil production, and would be denied if an oil company's request was not compatible with the government's war effort, 7 Fed. Reg. 7309 (Sept. 17, 1942), ROA.15107–08. PAW also closely monitored oil production and made "monthly allocations" of crude oil "to specific refiners" as needed to achieve "maximum output of war products." ROA.14251; see also *Exxon Mobil Corp.* v. *United States*, No. H-10-2386, 2020 WL 5573048, at *10–12 (S.D. Tex. Sept. 16, 2020), *appeal dismissed*, No. 20-20590, 2021 WL 5545961 (5th Cir. June 18, 2021).

PAW's orders and controls applied to the oil production in the Potash field in Plaquemines Parish at issue in this case. During WWII, PAW identified the Potash field as one of Louisiana's "Critical Fields Essential to the War Program" because it maintained high pressure, had substantial reserves, and produced oil of great value to the war program. ROA.13938–39. Humble Oil and Refining Company, a predecessor to petitioner Exxon Mobil Corporation, drilled 13 wells in the Potash Field during WWII. ROA.11706, ROA.11708. Humble Oil significantly increased its production of crude oil from Potash Field

over pre-war levels to meet the government's need for crude at wartime refineries that made avgas and other war products for the government. ROA.11708, ROA.13945–50, ROA.15492–95. Humble Oil supplied Potash crude to a Standard Oil Company refinery in Baton Rouge that made these war products for the government. ROA.13949, ROA.15492–95. Humble Oil also supplied Potash crude to a Shell Oil Company refinery in Norco Louisiana with at least twenty contracts to provide petroleum products for the government. ROA.13945–48, ROA.13950.

The parishes allege that the companies violated state law by using production practices that did not sufficiently protect Louisiana's coast, such as "dredging canals (instead of building overland roads)," "using vertical drilling (instead of directional drilling)," "using earthen pits at well heads (instead of steel tanks)," "extracting too much oil," and "not building saltwater reinjection wells." *Par. of Plaquemines* v. *Chevron USA, Inc.*, 7 F.4th 362, 367 (5th Cir. 2021). But use of these alternative practices would have contravened PAW's directives during WWII, because they would have slowed oil production or required more steel and other critical materials needed elsewhere for the government's war effort. Accordingly, the companies removed this and related cases to federal court.

C. Procedural Background

After the companies removed the cases to federal court, this case and one case in the Western District of Louisiana were selected as lead cases for consideration of the parishes' motions to remand. The District Courts granted the remand motions. In this case, the District Court found removal untimely and rejected

petitioners' arguments for federal jurisdiction. *Par. of Plaquemines* v. *Riverwood Prod. Co.*, No. CV 18-5217, 2019 WL 2271118 (E.D. La. May 28, 2019). On appeal of both cases, the Fifth Circuit held that the removals were timely, and remanded the cases to the respective District Courts to determine whether federal-officer jurisdiction exists "with the benefit of [the Fifth Circuit's] recent en banc decision in *Latiolais* v. *Huntington Ingalls, Inc.*, 951 F.3d 286, 290 (5th Cir. 2020)," which had modified Fifth Circuit precedent on federal-officer removal. *Par. of Plaquemines*, 7 F.4th at 365.

On remand, the District Court in this case held that petitioners satisfied three of the four requirements for federal-officer jurisdiction: petitioners are "persons"; they asserted colorable federal defenses; and the charged conduct is "connected or associated" with federal direction because "[t]he challenged activities at issue in this jurisdictional dispute are, almost to a one, related to WWII efforts and/or regulatory directives." Pet. App. 18a, 32a. The District Court, however, found that petitioners were not "acting under" federal officers. Although the court acknowledged that petitioners' production practices were "intensely" controlled by the federal government "to quite literally fuel the government's war effort," it concluded that Humble Oil was merely complying with government regulation and lacked the "special relationship" with the government that *Watson* said makes a private party "acting under" a federal officer. Pet. App. 29a–32a. The District Court also rejected petitioners' separate argument that Humble Oil had "acted under" the government because it was a subcontractor to government contracts for avgas and other war products. The court faulted petitioners for failing to pro-

duce a "document evidencing … a subcontract." Pet. App. 27a. The District Court stayed the remand order pending appeal. See Order and Reasons, *Par. of Plaquemines* v. *Riverwood Prod. Co.*, No. 18-5217 (E.D. La. Mar. 22, 2022), ECF 145.

The Fifth Circuit affirmed, stating that it reviewed the District Court's decision de novo, but its factual findings for clear error. Pet. App. 4a.

The Fifth Circuit held that petitioners were not "acting under" a federal officer because "there is insufficient 'evidence of any contract, any payment, any employer/employee relationship, or any principal/agent arrangement' indicating that the oil companies acted under a federal officer's or agency's directions." Pet. App. 5a. The court rejected as "unpersuasive" petitioners' argument that the oil companies were acting under a federal officer based on their "unusually close" and "special relationship" with the federal government during WWII, see *Watson*, 551 U.S. at 153, 157. The court explained that "merely being subject to federal regulations is not enough to bring a private action within" the federal-officer removal statute and that the private actor must "'*assist*, or … help *carry out*, the duties or tasks of the federal superior.'" Pet. App. 7a. Petitioners did not provide such assistance to the federal government, in the Fifth Circuit's view, because they were "simply *complying* with the law" or "cooperat[ing]" with PAW. *Id*.

The court also rejected petitioners' argument that they were acting under federal officers as government subcontractors. Rather than reviewing de novo whether the facts alleged in support of removal were facially plausible giving all reasonable inferences to

petitioners, the court deferred to the District Court's determination that petitioners were not subcontractors. The court also accepted the Parish's argument that federal direction to subcontractors must be contained in a contractual instrument, rather than in other government directives, in order to be relevant to federal-officer removal. Pet. App. 8a.

REASONS FOR GRANTING THE PETITION

I. THE FIFTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S *WATSON* DECISION AND SPLITS FROM OTHER COURTS OF APPEALS.

The Fifth Circuit held that petitioners were not "acting under" federal officers when they produced oil for the government's war effort during WWII, and thus are not entitled to remove this case to federal court. This decision contradicts this Court's authority and splits with decisions of the Seventh, Eleventh, and Third Circuits.

A. The Fifth Circuit's Decision Conflicts with Precedent of this Court.

The Fifth Circuit's decision conflicts with this Court's federal-officer precedent. In the court of appeals' view, to "act under" federal officers, and to assist federal officers in performing a governmental task as *Watson* requires, a private person must provide "evidence of [a] contract, [a] payment, [an] employer/employee relationship, or [a] principal/agent arrangement'" between the private party and the government. Pet. App. 7a. Without such a formal relationship, a private person is simply complying with federal regulation or voluntarily cooperating with the government, and thus is not "acting under" federal

officials. *Id.* This contradicts this Court's precedent in three fundamental ways.

First, this Court's precedent does not require a contract or some other particular formal relationship as a prerequisite to federal-officer jurisdiction. Where, as here, private entities follow federal directives to help the government obtain a service or product that it requires to perform a governmental duty, those entities are "acting under" federal officials. *Watson* cited a list of formal relationships as examples of the kind of "special relationship" that can support removal, 551 U.S. at 156–57, not as technical requirements. This Court further indicated that "evidence of *some* such special relationship" could suffice by "*analogy* to Government contracting." *Id.* (emphases added). And in explaining why close supervision of a private contractor qualifies as "acting under" a federal officer, but close supervision of an intensely regulated firm does not, this Court pointed *not* to the contractual *form* of the federal directives but rather to their *purpose*: federal directives that serve to procure an item or service the government needs to fulfill basic governmental tasks demonstrate assistance that goes beyond mere "compliance with the law." *Id.* at 153.

This case illustrates why this Court does not restrict federal-officer removal to government contractors, employees, or agents. PAW's orders and directives achieved the same governmental goals that would have been achieved by myriad individual contracts with oil well operators requiring them to (1) limit the use of critical materials, (2) produce certain quantities of crude, and (3) provide their crude output to refineries with contracts to produce war products for the government. PAW's very existence—and its insistence that individual companies work coopera-

tively under the supervision of the industry committees and the direction and control of PAW officials—were based on a recognition that business as usual in the free-market, contract-based economy could not timely provide the government with the volume of petroleum products it needed to win the war. PAW's orders and directives thus enlisted petitioners to help "carry out" a critical government task under the "subjection, guidance, or control" of PAW officials—which is the very essence of "acting under" a federal official. PAW's relationship with the oil industry during WWII was not "the usual regulator/regulated relationship." *Id.* at 151–52, 157.

Second, this Court has held that a private entity that is "helping the Government to produce an item that it needs"—particularly an item it needs to fight a war—provides the kind of assistance that "goes beyond simple compliance with the law and helps officers fulfill other basic governmental tasks." *Id.* at 153. The Fifth Circuit thus split from *Watson* in holding that petitioners, who provided precisely this kind of assistance to the government during WWII, were simply complying with the law. Operating under the direction of a specialized federal agency whose sole purpose was to ensure that the government had sufficient supplies of oil to conduct WWII, petitioners drilled oil wells and dramatically increased production using methods that minimized expenditure of steel and other critical war materials. They then shipped their oil to refineries operating pursuant to federal contracts to produce specialized wartime petroleum products such as avgas. Petitioners thus assisted PAW in its presidentially-mandated duties to secure production of sufficient quantities of oil for the

government's war effort and simultaneously preserve other scarce war materials.

The Fifth Circuit's decision that petitioners were simply complying with federal regulations, Pet. App. 7a, treats petitioners as on par with "[t]axpayers who fill out complex federal tax forms, airline passengers who obey federal regulations prohibiting smoking, for that matter well-behaved federal prisoners," *Watson*, 551 U.S. at 152, or with a cigarette manufacturer that follows government regulations to advertise its products to the general public, *id*. at 157. But unlike those examples, the purpose of PAW's directives to the private oil companies—indeed, the purpose of PAW's very creation and existence—was to obtain *for the government* a crucial material the government needed to fight WWII. The private firms that provided that crucial material according to PAW directives were "acting under" federal officers.

The Fifth Circuit's third fundamental conflict with this Court's precedent lies in its conclusion that petitioners were not acting under federal officers because they merely "cooperated with federal agencies," Pet. App. 7a, during WWII. *Watson* recognized that defendants who voluntarily cooperate with the government "act under" federal officers. Indeed, *Watson* relied on *Maryland* v. *Soper*, 270 U.S. 9 (1926), in which this Court recognized that a private individual "acting as a chauffeur and helper to" prohibition officers was entitled to federal-officer removal. The Court nowhere suggested that the chauffeur had been coerced into providing his services. 551 U.S. at 150. *Watson* also recognized that federal contractors can satisfy the "acting under" element, yet private entities likewise enter into contracts with the government willingly. By holding that petitioners did not

"act under" federal officers because they were "cooperat[ing]" with federal agencies, the Fifth Circuit thus repeated the error it made in *Glenn* v. *Tyson Foods, Inc.*, 40 F.4th 230, 235 (5th Cir. 2022), *pet. for cert. pending*, No. 22-455 (U.S. Nov. 10, 2022).

In short, petitioners did not engage in business as usual during WWII. Instead, they were "acting under" a federal officer because PAW reshaped their practices, and oversaw and directed their wartime oil exploration, drilling, production, and sales in order to obtain sufficient oil for the military's use. The fundamental principle of this Court's cases is that when the government brings private enterprises under its direction and control to provide the government with a product or service that allows it to fulfill government purposes, those private enterprises are "acting under" federal officers.

B. The Fifth Circuit's Decision Splits From Decisions of the Seventh, Eleventh, and Third Circuits

The Fifth Circuit's decision also conflicts with the decisions of other courts of appeals which, under *Watson*, recognize that federal direction in the form of regulations can demonstrate the requisite "acting under" relationship when they are directed at obtaining a service or product the government needs for its governmental purposes.

Most notably, the Seventh Circuit recently upheld federal-officer removal in a case involving circumstances much like those at issue here. In *Baker* v. *Atlantic Richfield Co.*, the Seventh Circuit held that a private company was acting under a federal officer when, subject to WWII-era federal directives, it produced "critical wartime commodities … necessary to

make essential military and civilian goods," including lead and zinc that it "sold to entities who were under contract with the government to produce the goods for the military." 962 F.3d at 940. The court rejected the argument that the defendant was merely "adher[ing] to regulations that applied to all market participants." *Id.* at 941. The court instead held that under *Watson*, the defendant had a "special relationship" with the federal government because it "provided the federal government with materials that it needed to stay in the fight at home and abroad." *Id.* at 941–42. Without this assistance, "the government would have had to manufacture the relevant items on its own." *Id.* at 942. "For these reasons," the court explained, "this is not simply a case of compliance, but *assistance*." *Id.*

To be sure, the defendant in *Baker* supplied one critical wartime commodity (zinc oxide) directly to the government under contracts with the U.S. Army. *Id.* at 940. But it also supplied zinc oxide and other critical wartime commodities (lead and white lead carbonate) to the government indirectly, by selling them to other private entities holding government contracts. *Id.* In finding removal proper, the Seventh Circuit cited the government's wartime regulation of all of these commodities, and the fact that they were sold *to other private entities* producing wartime goods for the government under contract. See *id.* at 940, 942 (finding the defendants "provided the federal government with materials that it needed to stay in the fight at home and abroad—namely lead, zinc oxide, and white lead carbonate, *used in turn to manufacture products like rubber, paint, ammunition, die casts, and galvanized steel*" and "[w]ithout the aid of [the defendant], the government would have had to

manufacture the relevant items on its own") (emphasis added). This parallels precisely what Humble Oil did here in supplying oil to refineries that, pursuant to government contracts, produced avgas and other specialized petroleum products for the government. See *supra*, 11–12.

Moreover, in holding that the defendant was "acting under" a federal officer, the Seventh Circuit relied on federal directives and regulations substantially similar to those that applied to petitioners here. *Baker*, 962 F.3d at 940. The *Baker* defendant's production of "critical … wartime commodities" was subject to "detailed federal specifications," and "[c]ertain regulations also mandated that [the defendant] prioritize its sales to rubber and paint companies holding defense contracts." *Id.* The commodities there were likewise subject to federal "price control, with violations punishable by criminal prosecution and the denial of further supplies." *Id.*

Had this case been filed in the Seventh Circuit, petitioners would have been allowed to defend themselves in federal court. Like the *Baker* defendant, petitioners were "acting under" a federal officer because they had a "special relationship" with the federal government and "provided the federal government with materials that it needed to stay in the fight at home and abroad." *Id.* at 941–42. The Fifth Circuit's functional insistence that, to satisfy the "acting under" test, federal directives to a private person must be reduced to a contract with the government and cannot be in the form of regulations thus conflicts with *Baker*.

The Eleventh and Third Circuits have likewise concluded that a removing defendant was "acting un-

der" a federal officer based on federal direction or control embodied in regulations when the purpose of the federal direction is to help fulfill a governmental task. In *Caver* v. *Central Alabama Electric Cooperative*, the Eleventh Circuit held that the defendant was acting under a federal officer by participating in a federal government program to provide electricity to rural areas. 845 F.3d 1135 (11th Cir. 2017). The Eleventh Circuit explained that the defendant is "highly regulated by the federal government," and "these federal regulations … demonstrate the close and extensive relationship between [defendant] and [the federal government], as well as [the government's] significant level of control over [defendant's] operations." *Id*. at 1143. Those regulations, coupled with the defendant's efforts to "assist [the federal government] with accomplishing its duties or tasks" by "work[ing] closely with [the federal government] to fulfill the congressional objective of bringing electricity to rural areas that would otherwise go unserved" satisfied the "acting under" requirement. *Id*. at 1143–44; see also *Cessna* v. *REA Energy Coop., Inc*., 753 F. App'x 124, 128–29 (3d Cir. 2018).

Similarly, the Third Circuit found federal-officer removal proper when sought by the Federal Community Defender Organization, a non-profit entity that helps the Administrative Office of the U.S. Courts carry out its duties to provide counsel to federal defendants and indigent federal habeas corpus petitioners. *In re Commonwealth's Motion to Appoint Couns. Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 469 (3d Cir. 2015), as amended (June 16, 2015). The Third Circuit relied on regulations promulgated by the Judicial Conference governing the community defender organization and explained that the com-

munity defender organization "provides a service the federal government would itself otherwise have to provide." *Id.*

Here, too, PAW's directives and orders, including those embodied in regulations, "demonstrate the close and extensive relationship" between petitioners and the federal government. *Caver*, 845 F.3d at 1143. Petitioners "worked closely with [PAW] to fulfill the [governmental] objective" of securing sufficient oil for the government to fight and win WWII. *Id.* at 1144. And, by producing an indispensable material for the war effort, petitioners performed a job that "the federal government would itself otherwise have to [perform]." *In re Commonwealth's Motion*, 790 F.3d at 469; see also Brief of Retired Chairmen of the Joint Chiefs of Staff at 8 ("But for [petitioners'] production and supply of these fuels pursuant to the military's requirements during World War II, the Federal Government would have had to manufacture them itself.").

The Seventh, Eleventh, and Third Circuits thus hold that where, as here, private parties are providing a product or service that serves important governmental purposes, the government's direction and control can take the form of orders, regulations, or contractual direction and is not limited to formal contractual relationships. The Fifth Circuit, by contrast, reads *Watson* to say that even where a private party is providing a product or service for governmental purposes, if the federal direction and control is carried out via federal regulation without formal contractual relationships, it is not assisting the government and therefore is not "acting under" federal officers. The Fifth Circuit is mistaken, and this Court

should resolve these conflicting understandings of *Watson*.

II. THE FIFTH CIRCUIT'S DECISION IMPLICATES AN ENTRENCHED CIRCUIT SPLIT OVER THE STANDARDS FOR ASSESSING FEDERAL-OFFICER REMOVAL.

The Court should grant the petition for a second reason. In evaluating petitioners' entitlement to removal, neither the District Court decision nor the Fifth Circuit's review of that decision gave petitioners the benefit of all reasonable inferences from the facts they alleged, or credited defendants' theory of the case. The failure to do so was wrong and implicates a circuit split on how courts should assess federal-officer removal.

This Court has held that "[t]he words 'acting under' are broad, [and] the statute must be 'liberally construed.'" *Watson*, 551 U.S. at 147 (citing *Colorado* v. *Symes*, 296 U.S. 510, 517 (1932); *Willingham* v. *Morgan*, 395 U.S. 402, 406–07 (1969)). Consistent with that instruction, the Second and Seventh Circuits have instructed district courts to review "allegations in support of removal under the federal pleading standards, asking whether they are facially plausible." *Baker*, 962 F.3d at 941; see also *Betzner* v. *Boeing Co.*, 910 F.3d 1010, 1016 (7th Cir. 2018); *Agyin* v. *Razmzam*, 986 F.3d 168, 181 (2d Cir. 2021) ("[T]he same liberal rules employed in testing the sufficiency of a pleading should apply to appraise the sufficiency of a defendant's notice of removal." (citations omitted)). In these circuits, district courts give the removing party "the benefit of all reasonable inferences from the facts alleged" in support of removal. *Baker*, 962 F.3d at 945; see also *Agyin*, 986 F.3d at 180–81.

Courts "also must 'credit [the d]efendants' theory of the case' when evaluating the relationship between the defendants' actions and the federal officer." *Agyin*, 986 F.3d at 175. The court of appeals then reviews the district court's determination de novo. *Id.* at 173–74; *Baker*, 962 F.3d at 941.

This approach reflects that, in adopting § 1446's short-and-plain-statement standard for removal, "Congress … intended to simplify the pleading requirements for removal and to clarify that courts should apply the same liberal rules [to removal allegations] that are applied to other matters of pleading." *Agyin*, 986 F.3d at 180 (quoting *Dart Cherokee Basin Operating Co.* v. *Owens*, 574 U.S. 81, 87 (2014)); see also *Betzner*, 910 F.3d at 1014 (same). And it is consistent with this Court's admonition that "courts must liberally construe § 1442(a)." *Baker*, 962 F.3d at 941 (quoting *Betzner*, 910 F.3d at 1014); see also *Watson*, 551 U.S. at 147 ("the statute must be 'liberally construed'"); *Jefferson Cnty., Ala.* v. *Acker*, 527 U.S. 423, 431 (1999) (courts "do not require the officer virtually to 'win his case before he can have it removed'").

By contrast, in this case the Fifth Circuit relied on cases addressing subject-matter jurisdiction generally, not federal-officer cases. It indicated that in assessing federal-officer removal, a district court makes "'factual determinations … in the process of determining jurisdiction,'" and the court of appeals reviews those determinations for "clear error." Pet. App. 4a (quoting *U.S. Fire Ins. Co.* v. *Villegas*, 242 F.3d 279, 283 (5th Cir. 2001)). That is, in the Fifth Circuit's view, instead of giving removing defendants the benefit of all reasonable inferences from the removal allegations, the district court should weigh the evidence

and make factual findings to which the court of appeals should defer.

The Fifth Circuit's treatment of petitioners' alternative contention—that, at the very least, they were federal government subcontractors providing the essential ingredient required by refineries fulfilling government contracts for refined petroleum products—illustrates the conflict between its approach and that of the Second and Seventh Circuits. Here, the District Court concluded that petitioners "can point to no document evidencing … a subcontract," Pet. App. 27a, and, based on that, determined that petitioners were not "acting under" federal officers as federal subcontractors. The Fifth Circuit deferred to the District Court's finding of no subcontract, and faulted petitioners for not having sufficiently "shown that they were subjected to the federal government's guidance or control as subcontractors." *Id.* at 8a.

But petitioners' independent argument that they were subcontractors was plainly based on reasonable inferences from the facts alleged in support of removal in this case. Petitioners provided documents that supported their assertion that crude oil producers in fact contracted with refineries to supply the refineries with the crude oil necessary to fulfill the refineries' contracts with the government for fuel products during WWII. For instance, petitioners offered industry committee reports advising PAW that certain forecasts were incomplete because "firm contracts of supply" for crude oil "have not as yet been consummated" by some refineries. ROA.16237. Petitioners also provided transportation records showing that crude oil from the Potash field was delivered to refineries with contracts to produce avgas for the federal government. See ROA.13947; *supra*, 11–12. Had either the

District Court or the Fifth Circuit assessed the facts in petitioners' favor or given petitioners the benefit of reasonable inferences from the materials before it, it would have concluded that petitioners had subcontracts with refineries for crude oil and were federal subcontractors during WWII.

Indeed, petitioners also established facts from which the District Court and the Fifth Circuit should have inferred that petitioners were subcontractors as a matter of law under the expansive definitions of subcontractor temporarily used by applicable wartime laws and regulations. See ROA.13953–57. In 1942, in order to further ensure its ability to supervise and control the entire military supply chain, the War Department expanded the definition of "subcontract" to include "any purchase or agreement … to make or furnish any article, required for the performance of another contract or subcontract." 10 C.F.R. § 81.804a, *as amended*, 8 Fed. Reg. 2226 (Feb. 20, 1943); see also Sixth Supplemental National Defense Appropriations Act of 1942, Pub. L. No. 77-528, 56 Stat. 245 § 403, as amended by Revenue Act of 1942, Pub. L. No. 77-753, 56 Stat. 798 (§ 403(c)). And, in the District Court, petitioners submitted contracts between refiners and the government for avgas, showing that petitioners' product—crude oil—went to federal contractors. See ROA.14061–90. The refinery contracts specifically contemplate specifications on "raw materials" used to produce the wartime fuel, ROA.14063, and required the refinery to ensure compliance with all applicable laws "with respect to any contract entered into by it with others incidental to or in connection with this agreement," ROA.14074–75. The reasonable inference to which petitioners were entitled is that producers functionally did have sub-

contracts and that the government specifically "contemplated the use of subcontractors" and made subcontractors "accountable to the federal government." Pet. App. 8a (quoting *Cnty. Bd.* v. *Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 253 (4th Cir. 2021)). But because of the Fifth Circuit's erroneous legal standards, neither of the courts below gave petitioners the benefit of any such inferences.

The Fifth Circuit's approach in this case follows its precedent on the standards for assessing federal-officer removal. See *Texas* v. *Kleinert*, 855 F.3d 305, 311 (5th Cir. 2017) (stating in a federal-officer case that while the Circuit "review[s] a district court's determination of subject matter jurisdiction de novo," it "review[s] factual findings underlying that determination for clear error"). The Fifth Circuit's standards also align with those in the First and Fourth Circuits. See *Moore* v. *Elec. Boat Corp.*, 25 F.4th 30, 34 (1st Cir. 2022) (reviewing "de novo the district court's jurisdictional determination on removal," but reviewing "factual findings for clear error"); *W. Va. State Univ. Bd. Of Governors* v. *Dow Chem. Co.*, 23 F.4th 288, 296 (4th Cir. 2022) (same).

The Third and Sixth Circuits take a third approach—albeit one that likely would have led to a result similar to that reached by the Fifth Circuit here. Courts in these two circuits base the standard for assessing removal on a distinction between facial and factual challenges to removal. See *Papp* v. *Fore-Kast Sales Co.*, 842 F.3d 805, 811 (3d Cir. 2016) (citing *Davis*, 824 F.3d at 346). Where a plaintiff makes a facial attack on removal, the district court treats all factual "allegations … as true," and the court of appeals reviews de novo. *Id.* at 810; see also *Mays* v. *City of Flint*, 871 F.3d 437, 442 (6th Cir. 2017) (re-

viewing a facial attack de novo and accepting the allegations as true) (citing *Gentek Bldg. Prods., Inc.* v. *Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007)). In contrast, where a plaintiff attacks the facts underlying the removal, the district court may "'weigh and consider evidence,'" and it makes factual findings. *Davis*, 824 F.3d at 346 (explaining the process for Rule 12(b)(1) jurisdictional challenges). In these two circuits, the court of appeals exercises plenary review of the district court's legal conclusions but reviews the "findings of fact … only for clear error." *Id.*[4]; see also *Mays*, 871 F.3d at 442 (reviewing a facial attack de novo and accepting the facts as alleged) (citing *Gentek Bldg. Prods., Inc.* v. *Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007) (observing that to review a factual challenge to removal, the court does not presume the allegations are truthful)). In the case at hand, because the Parish purportedly challenged petitioners' allegations—for instance the existence of any contractual relationship—the Third and Sixth Circuits would likely have refused to give petitioners the inferences to which they would have been entitled in the Second and Seventh Circuits.[5]

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[4] The Third Circuit has explained that "[t]o the extent that" a factual "challenge bleeds into the merits of the case, the District Court ought not address it in terms of jurisdiction." *Papp*, 842 F.3d at 811 n.4.

[5] The Eighth, Tenth, and Eleventh Circuits hold that the court of appeals reviews the district court's determination de novo. *See Graves* v. *3M Co.*, 17 F.4th 764, 768 (8th Cir. 2021) (reviewing determination that court lacked jurisdiction under § 1442(a)(1) de novo); *Bd. of Cnty. Comm'rs* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1250 (10th Cir. 2022) (reviewing propriety of removal de novo); *Caver*, 845 F.3d at 1142 (reviewing federal officer determination de novo).

In sum, had this case arisen in the Second or Seventh Circuits, the outcome likely would have been different because, unlike the District Court and the Fifth Circuit, the Second or Seventh Circuit would have evaluated whether the petitioners' removal allegations were plausible, giving petitioners the benefit of all reasonable inferences.

The Fifth Circuit's decision further entrenches the conflict among the circuits and provides the Court with an opportunity to bring uniformity to the standards used to assess federal-officer removal.

III. THIS PETITION PRESENTS IMPORTANT RECURRING QUESTIONS THAT WARRANT THIS COURT'S ATTENTION.

The reasons justifying this Court's review are further enhanced by the importance of the questions presented and of this case overall. First, this Court's resolution of the question of federal-officer jurisdiction will have far-reaching significance due to the scale and scope of this case. This is one of more than 40 related lawsuits raising virtually identical claims filed by six separate Louisiana parishes. The parishes, joined by the State of Louisiana, have sued more than 200 oil and gas companies and are seeking monetary relief sufficient to restore much of Louisiana's coastal zone. The outcome of this case thus stands to affect a significant number of important cases involving nearly the entire oil and gas industry and its relationship to an entire state.

If the Fifth Circuit's seriously flawed decision is allowed to stand, petitioners and other oil and gas companies will be forced to defend many if not all of these potentially consequential cases in state court. Congress enacted the federal-officer removal statute to

give federal officers and the private persons who assist them a federal forum to present their federal defenses. *Watson*, 551 U.S. at 150. The federal forum "permits a trial upon the merits of the state-law question free from local interests or prejudice." *Arizona* v. *Manypenny*, 451 U.S. 232, 242 (1981). The need for a neutral federal forum is particularly heightened here where local governments joined by the state itself are seeking significant monetary relief under a state law for acts petitioners took decades earlier pursuant to federal directives.

Second, the issues presented have profound importance beyond the contours of this case. The lesson that private companies will learn from the Fifth Circuit's decision is that if they assist the government without being inexorably forced to do so, even during a national crisis, they may be accused of violating state law and forced to defend themselves in state court, without the protections of a federal forum. Private companies will also learn that they should hesitate to answer the government's calls for assistance without a government contract specifying the precise terms on which the assistance is to be provided. Thus, at the very moment when the government most needs swift and unqualified assistance from key industries to enable it to surmount a national emergency, its ability to direct and command those industries for the good of the Nation will be hamstrung.

Indeed, retired Chairmen of the Joint Chiefs of Staff have expressed "concer[n], based on our military experience, that the remand decision here undermines the [federal-officer removal] statute's purpose and sets a dangerous precedent that could adversely impact our national security." Brief of Retired Chairmen of the Joint Chiefs of Staff at 25. Under the

decision below, "[p]rivate actors, like [petitioners], will be disincentivized to step up and take direction from the Federal Government in service of our country for fear of becoming liable after the fact—even more than three-quarters of a century later, based upon new, subsequently-devised state law rules," with "catastrophic implications for our national defense." *Id*. at 26.

So, too, the correct standard for assessing federal-officer removal is of widespread importance. In any case invoking federal-officer jurisdiction, whether courts give reasonable inferences in favor of the removing party can make the difference between a removing defendant having access to a federal forum to raise its federal defenses or being required to present those defenses in state court.

Finally, both questions presented raise issues that are recurring in courts across the country. The question of the standards for assessing federal-officer removal arises in every case invoking federal-officer removal and every appeal from a remand determination in such cases. The Seventh Circuit's recent *Baker* decision correctly upheld federal-officer removal under similar circumstances where a private entity assisted the federal government during WWII by producing materials the government needed "to stay in the fight." 962 F.3d 942. And currently before this Court are two petitions from Tyson Foods, Inc., that likewise ask the Court to clarify the application of the federal-officer removal statute to private parties that assist the federal government during a national emergency. See *Tyson Foods, Inc.* v. *Buljic*, No. 22-70 (U.S. July 22, 2022); *Tyson* v. *Glenn*, No. 22-455 (U.S. Nov. 10, 2022).

This Court's guidance is needed to provide uniformity on both questions presented. National uniformity is particularly important because the federal-officer removal statute exists to protect the interests of those acting under the national government. This case is a prime example: to obtain sufficient oil to fight WWII, the government required the assistance of oil and gas companies throughout the country, and it needed those companies to work together to get the right quantities and types of crude oil to federally-contracted refineries that were producing avgas and other specialized petroleum products required for the war effort. If the companies are sued under state law for actions relating to their assistance to the federal government, the availability of a federal forum should not differ based on the circuit court in which the jurisdictional question arises.

The Court should grant this petition to provide direction to the lower courts on these important questions. Because this petition and the currently pending *Tyson* petitions raise overlapping issues, if the Court were to grant either *Tyson* petition, it should at a minimum hold this petition pending the resolution either of those cases. If, however, the Court were to deny the petitions in the *Tyson* cases, it should nonetheless grant this petition. This petition presents even stronger bases than either *Tyson* petition for federal-officer jurisdiction on which certiorari is warranted: Petitioners undertook the challenged conduct under direct federal mandates, and they assisted the government in the manner specifically identified in *Watson*, *i.e.*, by producing an item the government needed to conduct a war. In addition, this petition raises a second question presented—the standards for assessing federal-officer jurisdiction and review-

ing remand orders—which is not implicated by the *Tyson* petitions and which independently warrants review.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted,

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