

No. 22-715

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**In the Supreme Court of the United States**

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CHEVRON USA, INC., ET AL.,

*Petitioners,*

v.

PLAQUEMINES PARISH, LOUISIANA, ET AL.,

*Respondents.*

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

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**BRIEF OF THE AMERICAN PETROLEUM  
INSTITUTE AND AMERICAN FUEL &  
PETROCHEMICAL MANUFACTURERS AS *AMICI  
CURIAE* IN SUPPORT OF PETITIONERS**

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--	------

War, *A History of the Petroleum  
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(John W. Frey & H. Chandler Ide, eds.  
1946) [https://www.google.com/books/  
edition/A\\_History\\_of\\_the\\_Petroleum\\_A  
dministratio/oNfNAAAAMAAJ?hl=en&  
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## INTERESTS OF *AMICI CURIAE*

The American Petroleum Institute (“API”) and American Fuel & Petrochemical Manufacturers (“AFPM”) hereby submit this *amicus curiae* brief in support of the petition for certiorari filed by Chevron USA, Inc., et al.<sup>1</sup>

Formed in 1919, API is a national trade association that represents nearly 600 member companies supporting all segments of the oil and natural gas industry. API and its members are committed to ensuring the industry remains strong, viable, and capable of meeting the energy needs of our nation in a safe and environmentally responsible manner.

AFPM is a national trade association representing most American refining and petrochemical companies. These industries provide jobs, directly and indirectly, to more than three million Americans, contribute to our economic and national security, and enable the production of thousands of vital products used by families and businesses throughout the United States. AFPM is

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<sup>1</sup> Pursuant to Supreme Court Rule 37(2)(a), all parties received notice of the intent to file this *amicus curiae* brief 10 days prior to the due date for such brief. Pursuant to Supreme Court Rule 37(6), undersigned counsel certifies that (A) no party’s counsel authored this brief, in whole or in part; (B) no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and (C) no person, other than the *amici curiae* or their members, contributed money that was intended to fund preparing or submitting this brief.

committed to the development of sound policies that enable its members to supply the fuel and petrochemicals that growing populations need to thrive in an environmentally sustainable way.

API and AFPM's interest in these cases stems from the historical relationship between the oil and gas industry and the federal government during World War II ("WWII"). As discussed below, during that time, many oil and gas companies were effectively enlisted to the all-out war effort, operating at the bidding of the federal government, which directed and controlled the production, supply, and distribution of fuel and other petroleum products to ensure adequate quantities for the war.

Plaintiffs now seek to impose liability on some of these same companies for, among other things, actions they took at the direction of the federal government to fight a world war more than 70 years ago. 28 U.S.C. § 1442(a)(1) exists to ensure that those accused of wrongdoing while acting under federal direction, like Petitioners here, can have their case heard in federal court. The Fifth Circuit's decision in *Plaquemines Parish v. Chevron USA, Inc.*, No. 22-30055, 2022 WL 9914869 (5th Cir. Oct. 17, 2022) (unpublished), reproduced in Pet. App. 1a-9a, improperly denies that promised federal forum.

API and AFPM agree with Petitioners that Supreme Court review is necessary to ensure that § 1442(a)(1) secures a federal forum for private parties who rise to the government's call for assistance in times of national emergency. Federal

officer removal should ensure that parties who act under government direction to accomplish the government's ends are not later subject to suits in state court for their actions. In this brief, API and AFPM highlight the historical background of the Petroleum Administration for War ("PAW") and shows that the depth and breadth of federal control of the oil and gas industry during WWII went beyond mere compliance with regulations. The historical record shows that the oil industry was conscripted into service of the federal government's objectives. Under those circumstances, it is entitled to a federal forum under § 1442(a)(1). This historical background underscores that the Fifth Circuit's decision conflicts with this Court's precedent and warrants review by the Court.

### SUMMARY OF ARGUMENT

WWII, "from beginning to end, was a war of oil." Petroleum Administration for War, *A History of the Petroleum Administration for War, 1941–1945*, at 1 (John W. Frey & H. Chandler Ide, eds. 1946) [https://www.google.com/books/edition/A\\_History\\_of\\_the\\_Petroleum\\_Administratio/oNfNAAAAMAAJ?hl=en&gbpv=0](https://www.google.com/books/edition/A_History_of_the_Petroleum_Administratio/oNfNAAAAMAAJ?hl=en&gbpv=0) (hereinafter, "PAW History"). To fight such a war, and win it, required extraordinary coordination of America's oil industry—an industry that until that point had been the target of such energetic antitrust enforcement that "[o]il men hesitate[d] to lunch with a competitor, for fear of an anti-trust investigation." Max W. Ball, *Fueling a Global War – An Adventure in Statecraft*, 45 Ohio J. of Sci., 29, 33 (1945).

Indeed, the oil industry was called to actions “that in war are called cooperation but in peace are called collusion[.]” *Id.* The federal government accomplished this coordination through the formation of a new, independent agency, the PAW. PAW worked hand in glove with the oil industry at every level. Together, PAW and the oil industry choreographed an elaborate dance to ensure that production, refining, transport, and distribution of oil proceeded apace with the needs of the war.

This special relationship between PAW and the oil industry was accomplished sometimes through formal orders, but more often through close collaboration. The historical record demonstrates that while PAW exerted individualized and direct control over producer entities throughout WWII, the relationship between PAW and the oil industry was so closely intertwined that PAW directed and controlled the industry often without need for compulsion through direct orders.

### ARGUMENT

Removal is available under 28 U.S.C. § 1442(a)(1) where an entity’s actions “involve an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior.” Pet. App. at 7a. (internal quotation marks omitted) (quoting *Watson v. Philip Morris Cos.*, 551 U.S. 142, 151-52 (2007)). The Court of Appeals recited this standard, but effectively narrowed the standard to the point of irrelevance. The historical record demonstrates a “special relationship,” *Watson*, 551 U.S. at 157, between the federal government and the oil industry during WWII. Yet the Court of Appeals



held that removal was unwarranted because there was “insufficient evidence of [a] contract, [a] payment, [an] employer/employee relationship, or [a] principal/agent arrangement.” *Id.* at 5a. In so holding, the Court of Appeals applied an unjustifiably constricted version of the *Watson* standard. It also failed to appreciate the well-documented assistance that the oil industry provided to carry out the federal government’s objectives throughout the war.

In reality, the historical record demonstrates that the *Watson* standard was met here. As explained below, PAW’s primary “dut[y] or task[]” was to massively ramp up oil production and distribution to fuel the government’s war effort. And PAW carried out this task by dictating every facet of the oil industry’s operations. PAW used the oil industry to “provid[e] the Government with a product that it used to help conduct a war”—the archetypal relationship for federal officer removal. *Watson*, 551 U.S. at 154.

**I. PAW’s organization and industry-wide orders were intended to—and did—knit the petroleum industry together as a vertically integrated oil producer under the direction and control of the government.**

The historical record makes clear that PAW directed and controlled producers and refiners. PAW formed industry committees and ensured antitrust immunity for oil company executives so they could work together, under PAW’s direction and control, to ensure that refineries had the crude

oil needed to produce aviation gasoline and hundreds of other petroleum products the government needed to fight the war. *See* Ball, *supra*, at 37; PAW History at 3, 40.

#### **A. Creation and authority of PAW.**

The government acted to strengthen its petroleum position even before hostilities began. Since the 1920s, the American oil industry had operated with excess capacity to produce, refine, and distribute petroleum. PAW History at 15. But government leaders had “grave misgivings” as to the adequacy of U.S. production capabilities. *Id.* at 16. They recognized that mere coordination of existing governmental functions was not enough if the nation became involved in war. *Id.* The government foresaw that the oil industry would need to expand its output, drastically rearrange normal movements of oil to offset the loss of tankers from domestic service, and maintain operations in the face of wartime shortages of labor and materials. *Id.*

In the face of those needs, “[c]entralized planning and direction were inevitable” to maximize the nation’s petroleum resources. *Id.* Industry could not continue to operate as usual. “If allowed free rein . . . undirected competition would inevitably give rise to an unbalanced production and flow of supplies resulting in failure to meet essential war requirements[.]” *Id.* Thus, the government stepped in to direct the oil industry’s efforts towards the common goal.

In May 1941, the Office of Petroleum Coordinator for National Defense was established

by presidential letter. *Id.* at 1. On December 2, 1942, it became PAW—an independent, centralized agency with war powers. *See* Exec. Order No. 9276, 7 Fed. Reg. 10,091 (Dec. 2, 1942). PAW was created “to coordinate and centralize the war policies and actions of the Government relating to petroleum” to ensure “adequate supplies of petroleum for the successful prosecution of the war and for other essential purposes.” *Id.* Indeed, “PAW was the central source of authority in matters of oil supply.” PAW History at 3.

Subject to the direction of the War Production Board (“WPB”), PAW was vested with enormous authority to “ensur[e] ‘adequate supplies of petroleum for military, or other essential uses’ and ‘[effect] the proper distribution of such amounts of materials.’” *Shell Oil Co. v. United States*, 751 F.3d 1282, 1286 (Fed. Cir. 2014) (quoting Exec. Order No. 9276, 7 Fed. Reg. at 10,092); *see also* PAW History at 49. “[T]he Government exercised substantial wartime regulatory control over almost every aspect of the petroleum industry.” *Shell Oil*, 751 F.3d at 1285. It could impose obligatory product orders on private companies under threat of criminal sanctions or takeover. *Id.* Facilities had to prioritize government military contracts above all other contracts. *Id.* And if raw materials were scarce, the government could regulate supply chains to ensure continuing production. *Id.*

The industry was so effectively commandeered into the war effort that PAW sought an antitrust exemption from the Department of Justice to coordinate supply, pricing, transportation, refining, and distribution. *See* PAW History at 3, 382-84.

The government's decision to grant this exemption demonstrates that its relationship to Petitioners was not the usual regulated party/regulator relationship.

**B. The integration between PAW and the oil industry ensured federal participation and supervision.**

Backed by its sweeping war power authorization, PAW primarily carried out its mandate through recommendations and directives, which "cleared the way . . . for the comprehensive mobilization of all branches of the petroleum industry . . . while, at the same time, providing for appropriate Government participation or supervision at all stages." *Id.* at 42-43.

Over the course of the war, PAW or its predecessor agencies issued 80 directives and recommendations. *Id.* at 42. Of those, "56 [were addressed] to the petroleum industry as a whole or to branches thereof, 9 to specifically enumerated oil companies, and 30 to some one or more of the petroleum industry Committees that had been created by PAW." *Id.* at 41. The directives covered diverse subjects. Some "were for the purpose of bringing about some alteration or adjustment in industry operations in order to conserve materials or manpower, to expedite production and equitable distribution of petroleum products, and to assure most efficient utilization of petroleum facilities." *Id.*

Given the magnitude and complexity of the need, the government realized that "the fullest possible utilization would have to be made of the resourcefulness, ingenuity, and initiative of the

industry itself.” *Id.* at 15. Thus, PAW was organized “along functional lines paralleling the principal functions of the petroleum industry itself.” *Id.* PAW was structured like a vertically integrated oil company, with divisions for production, refining, supply, transportation, and distribution. Record on Appeal 139115 (hereinafter “ROA”); PAW History at 308. And critically, PAW used aforementioned industry committees to “advise and assist Government,” PAW History at 15, so that “the full resources of the industry would thus be enlisted on a cooperative basis; at the same time, orders and regulations [were] kept to a minimum, and the greatest possible reliance placed upon voluntary compliance and support,” *id.*

PAW’s relationship with industry committees was formalized with Recommendation 7 (issued in August 1941). *Id.* at 59. Under Recommendation 7, industry committees operated as extensions of PAW itself, relieving the agency from the need to create an elaborate organization and ensuring speed and efficiency. *Id.* at 61. Industry committees were not simply informative or advisory bodies. *Id.* They “shouldered a tremendous burden of arduous and time-consuming work in carrying out under Governmental supervision or direction, the terms of plans and programs that had been approved by PAW.” *Id.*

Doing so, the industry committees “operated, under the various recommendations, directives and orders, and subject to the clearance procedure and supervision [of PAW] . . . , in a very real sense as extensions of the Government agency.” *Id.* PAW used the committee mechanism to direct and

control the oil industry, including production. And critically, while industry committees provided the government with “plans or proposals,” “[n]o action beyond advice and suggestions was to be taken until formal clearance and approval by Government was given.” *Id.* at 59.

Indeed, the federal government itself understood the oil industry to be under its guidance and control. The official history of PAW does not leave room for doubt in its descriptions of the relationship: PAW “enlisted” the oil industry to serve its ends. *Id.* at 15. It was “apparent that the authority of Government would have to *channel and direct* this industry activity and would have to *assume responsibility* for the regulation of certain phases of oil company operations.” *Id.* at 39 (emphases added).

And the oil industry demonstrated “*wholehearted devotion to the national interest.*” *Id.* at 68 (emphasis added). According to the PAW History, “[i]t would be impossible to tell separately the story of government and of industry; *the two are inextricably linked together.*” *Id.* at 67 (emphasis added). Though it was “all but impossible to say where one left off and the other began . . . it was always the role of Government to *determine plans and policies*, to *direct and supervise* operations requisite to their fulfillment, and to *assume over-all governmental responsibility* for all aspects of the oil program.” *Id.* at 2 (emphases added).

\* \* \*

In short, the historical record demonstrates that for the duration of WWII the oil industry had a special relationship with PAW, such that the industry acted under PAW's "subjection, guidance, or control." *See Watson*, 551 U.S. at 151 (citation omitted). The industry assisted the federal government to a degree that was unprecedented in scope and intensity. This was not mere compliance with the law. It represented widespread submission to the aims of the government, to the detriment of oil producers' own private competitive interests and through unique exercises of government power—such as the antitrust exemption and industry committees—that cannot be characterized as mere regulation.

This relationship was entirely unlike the anodyne examples offered in *Watson*, such as "fill[ing] out complex federal tax forms," refraining from smoking on an airline flight, or being a "well-behaved federal prisoner." *Id.* at 152. Rather, the government used the oil industry as a tool to accomplish its aims.

Yet the Court of Appeals did not engage with this historical record. Instead, it characterized the industry's undertaking as mere "compli[ance] with federal regulations" or "cooperat[ion] with federal agencies." Pet. App. at 7a. Its conclusion did not address the pervasiveness of the government's direction and control of the oil industry at every level and in every decision. And it disregarded that the oil industry was charged with providing the product the government most needed to prosecute a "war of oil."

The Fifth Circuit’s decision below makes the federal forum guaranteed by 28 U.S.C. § 1442(a)(1) all but illusory.

**II. Even if 28 U.S.C. § 1442(a)(1) were read to demand granular evidence of individual direction, the historical record establishes that PAW exerted direct control over producer entities.**

PAW’s wartime directives went beyond generally applicable regulations—rather, in many instances PAW tailored its mandates to maximize production or economize materials on a field-by-field and well-by-well basis. This was not the merely “detailed regulation, monitoring, or supervision” that was at issue in *Watson*, 551 U.S. at 153. Rather, these individualized determinations represented micromanagement of oil producers to ensure that the government extracted maximum oil using a minimum of its material resources.

PAW (through WPB allocation procedures) was authorized to grant or deny priority to oil field operators to acquire scarce materials needed to operate existing wells or drill new ones. Thus, individual oil field operators could access steel for piping and drill casings only if PAW said so. ROA.13927.<sup>2</sup> PAW sometimes denied operators’ requests. *See, e.g.*, ROA.10878 (PAW Chief Counsel describing an incident where PAW refused a Texas

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<sup>2</sup> ROA Citations throughout Section II of this brief refer to the reports of Petitioners’ expert, Alfred M. Gravel, dated October 8, 2018 (ROA.10864-ROA.10929) and October 8, 2021 (ROA.13906-ROA.13957).



producer's request for pipe for drilling operations that "under Texas law he had a right to do").

As another example, PAW was entitled to grant exceptions to WPB Conservation Order M-68 (which required new oil wells to be spaced no closer than 40 acres apart) if it determined that it was "necessary and appropriate in the public interest to promote the war effort" to deviate from the general order for that particular operator or field. ROA.13930. This authority meant that PAW made individualized determinations about where and how field operators would drill new wells.

Under this authority, PAW denied Shell Oil the materials needed to drill a well on its leasehold in Cameron Parish because Shell Oil's proposed well would not achieve "the necessary minimum expenditure of critical material for the maximum development of the particular productive area[.]" ROA.13930-31. In contrast, when Stanolind Oil and Gas Company applied for an exception under Conservation Order M-68 to drill 16 closely spaced wells in West Hackberry Field, PAW approved the request apparently because the crude from the proposed wells would produce a base stock for 91 octane aviation gasoline. ROA.13931. Stanolind was granted another exception for Hackberry Field where it proposed to replace individual gathering lines with common lines, resulting in a net savings of materials. ROA.13931-32.

Humble Oil was granted an exception under Conservation Order M-68 for the Potash field in Plaquemines Parish that permitted it to exceed the 40-acre spacing requirement and use directional

drilling to access the productive area that was largely located under the Mississippi River. ROA.13935. PAW determined that an exception for Humble Oil served the national interest because: (1) the field's Mississippi River location allowed easy transport by barge, and (2) directional drilling (ordinarily prohibited) was necessary to "make available additional production and reserves for the war effort[.]" *Id.*

In 1943, PAW issued Petroleum Administrative Order-11 ("PAO-11") to supersede Conservation Order M-68. ROA.13933-34. PAO-11 continued the controls of the superseded order. It also added a requirement that all wells be drilled vertically absent an approved written exception. *Id.* By 1944, PAW had realized that the mandated 40-acre spacing of wells routinely failed to maximize production for certain coastal Louisiana oil fields. Thus, PAW issued a supplementary order to loosen standards to increase production for particularly identified fields by allowing wells to be drilled on 10-acre drilling units instead of the general 40-acre spacing. ROA.13934-35.

With each of these decisions, PAW directed (or prevented) action on the part of individual oil producers; in each instance its decision was calculated to serve PAW's mandate to produce "the greatest quantity of petroleum and natural gas commensurate with the minimum expenditure of scarce materials." ROA.13936-37. Oil producers who sought these exceptions were going "beyond simple compliance with the law," *Watson*, 551 U.S. at 153, and were in fact helping PAW fulfill its

basic governmental task—maximizing oil production for the purpose of supplying the military and winning the war. The Fifth Circuit’s contrary conclusion conflicts with this Court’s decision in *Watson*, see Petition at 15-19, and warrants this Court’s review.

### CONCLUSION

For all these reasons, API and AFPM respectfully urge the Court to grant the petition for writ of certiorari. Federal officer removal assures access to a neutral federal forum for private persons who respond to the government’s call for assistance and act under its direction—especially during times of national crisis. Without such assurance, a private party might hesitate to respond to the government’s needs. Yet the Fifth Circuit’s holding fundamentally narrows the availability of federal officer removal under 28 U.S.C. § 1442(a)(1) and conflicts with this Court’s guidance in *Watson*. Accordingly, this case presents an exceptional issue that warrants Supreme Court review.

Respectfully submitted,

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