No. 22-_____

IN THE
Supreme Court of the United States

BP AMERICA INC., ET AL.,
Petitioners,
v.
STATE OF DELAWARE
Respondent.

CHEVRON CORPORATION, ET AL.,
Petitioners,
v.
CITY OF HOBOKEN
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third 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 American Petroleum Institute; Apache Corporation; B.P. America Inc.; BP p.l.c.; Chevron Corporation; Chevron U.S.A. Inc.; CITGO Petroleum Corporation; CNX Resources Corporation; ConocoPhillips; ConocoPhillips Company; CONSOL Energy Inc.; Devon Energy Corporation; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Hess Corporation; Marathon Oil Corporation; Marathon Petroleum Company LP; Marathon Petroleum Corporation; Murphy Oil Corporation; Murphy USA Inc.; Occidental Petroleum Corporation; Ovintiv Inc.; Phillips 66; Phillips 66 Company; Shell plc (*f/k/a* Royal Dutch Shell plc); Shell USA, Inc. (*f/k/a* Shell Oil Company); Speedway LLC; TotalEnergies Marketing USA, Inc.; TotalEnergies SE (*f/k/a* Total S.A.); and XTO Energy Inc.

Petitioner American Petroleum Institute is a nonprofit, tax-exempt organization incorporated in the District of Columbia. It is a non-stock corporation and thus has no parent organization, and no publicly held corporation holds 10% or more of its stock.

Petitioner Apache Corporation does not have a parent corporation, and there is no publicly held corporation that owns 10% or more of Apache Corporation's stock.

Petitioner B.P. America Inc. is a 100% wholly owned indirect subsidiary of petitioner BP p.l.c., and no intermediate parent of BP America Inc. is a publicly traded corporation.

Petitioner BP p.l.c., a publicly traded corporation organized under the laws of England and Wales, has

no parent corporation, and there is no publicly held corporation that owns 10% or more of BP p.l.c.'s stock.

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 CNX Resources Corporation is a publicly held corporation and does not have a parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of CNX Resources Corporation's 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 CONSOL Energy Inc. is a publicly held corporation and does not have a parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of CONSOL Energy Inc.'s stock.

Petitioner Devon Energy Corporation has no parent corporation, and there is no publicly held corporation that owns 10% or more of Devon Energy Corporation's stock.

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

Petitioner ExxonMobil Oil Corporation's corporate parent is Mobil Corporation, which owns 100% of ExxonMobil Oil Corporation's stock. Mobil Corporation, in turn, is wholly owned by petitioner Exxon Mobil Corporation.

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

Petitioner Marathon Oil Corporation does not have a parent corporation and is a publicly traded entity. The Vanguard Group, Inc., an investment advisor that 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 Petroleum Company LP is a wholly owned indirect subsidiary of petitioner Marathon Petroleum Corporation. No other publicly held company owns 10% or more of Marathon Petroleum Company LP's stock.

Petitioner Marathon Petroleum Corporation is a publicly held corporation and does not have a parent corporation. BlackRock, Inc., through itself or its subsidiaries, owns 10% or more of Marathon Petroleum Corporation's stock.

Petitioner Murphy Oil Corporation has no parent corporation, and there is no publicly held corporation that owns 10% or more of Murphy Oil Corporation's stock.

Petitioner Murphy USA Inc. is a publicly held corporation, and it has no corporate parent. Murphy USA Inc. further discloses that BlackRock, Inc. owns more than 10% of Murphy USA Inc.'s outstanding stock.

Petitioner Occidental Petroleum Corporation, a publicly traded company, has no parent company. Berkshire Hathaway Inc. indirectly owns 10% or more of the issued and outstanding shares of common stock of Occidental Petroleum Corporation. No other publicly traded company owns more than 10% of the common stock of Occidental Petroleum Corporation.

Petitioner Ovintiv Inc. is a publicly held corporation and does not have a parent corporation. No publicly held corporation owns 10% or more of Ovintiv Inc.'s stock.

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

Petitioner Phillips 66 Company is wholly owned by Phillips 66.

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 USA, Inc. (*f/k/a* Shell Oil Company) is a wholly owned indirect subsidiary of petitioner Shell plc (*f/k/a* Royal Dutch Shell plc).

Petitioner Speedway LLC is an indirect subsidiary of Seven & i Holdings, Co., Ltd. Seven & i Holdings Co., Ltd., through itself or its subsidiaries, owns more than 10% of Speedway LLC's ownership interests.

Petitioner TotalEnergies Marketing USA, Inc. is a wholly owned subsidiary of TotalEnergies Marketing

Services. TotalEnergies Marketing Services is a wholly owned subsidiary of petitioner TotalEnergies S.E., a publicly held French company.

Petitioner TotalEnergies SE (*f/k/a* Total S.A.) is a publicly held French company.

Petitioner XTO Energy Inc.'s corporate parent is petitioner Exxon Mobil Corporation, which owns 95.5% of XTO Energy Inc.'s stock.

Respondents are the City of Hoboken and the State of Delaware *ex rel.* Kathleen Jennings, Attorney General of the State of Delaware.

RULE 14.1(b)(iii) STATEMENT

United States District Court (D. Del.):

State of Delaware ex rel. Jennings v. *B.P. America, Inc., et al.*, No. 1:20-cv-1429 (Jan. 5, 2022)

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

City of Hoboken v. *Exxon Mobil Corp., et al.*, No. 2:20-cv-14243 (Sept. 8, 2021)

United States Court of Appeals (3d Cir.):

City of Hoboken v. *Chevron Corp., et al.*, No. 21-2728 (Aug. 17, 2022)

State of Delaware ex rel. Jennings v. *B.P. America, Inc., et al.*, No. 22-1096 (Aug. 17, 2022)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners American Petroleum Institute; Apache Corporation; B.P. America Inc.; BP p.l.c.; Chevron Corporation; Chevron U.S.A. Inc.; CITGO Petroleum Corporation; CNX Resources Corporation; ConocoPhillips; ConocoPhillips Company; CONSOL Energy Inc.; Devon Energy Corporation; Exxon Mobil Corporation; ExxonMobil Oil Corporation; Hess Corporation; Marathon Oil Corporation; Marathon Petroleum Company LP; Marathon Petroleum Corporation; Murphy Oil Corporation; Murphy USA Inc.; Occidental Petroleum Corporation; Ovintiv Inc.; Phillips 66; Phillips 66 Company; Shell plc (*f/k/a* Royal Dutch Shell plc); Shell USA, Inc. (*f/k/a* Shell Oil Company); Speedway LLC; TotalEnergies Marketing USA, Inc.; TotalEnergies SE (*f/k/a* Total S.A.); and XTO Energy Inc. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in these cases.

OPINIONS BELOW

The opinion of the Third Circuit is reported at 45 F.4th 699. App. 1a–36a. The order denying petitioners' timely petition for rehearing en banc is not reported. App. 109a–11a. The district court's order in *City of Hoboken* v. *Exxon Mobil Corp.* is reported at 558 F. Supp. 3d 191. App. 37a–66a. The district court's order in *Delaware ex rel. Jennings* v. *BP America Inc.* is reported at 578 F. Supp. 3d 618. App. 67a–108a.

JURISDICTION

The Third Circuit issued its opinion on August 17, 2022, and denied panel rehearing and rehearing en

banc on September 30, 2022. On December 16, 2022, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari until February 27, 2023. *See* No. 22A528. 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, the State of Delaware and the City of Hoboken, New Jersey, have asked state courts to apply state tort law to impose massive monetary liability on petitioners—a group of 29 energy companies and an industry association—for harms allegedly attributable to global climate change. These suits are among 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 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' unprecedented 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 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 related to interstate and international emissions are inherently federal and, accordingly, are governed exclusively by federal law, even when they are nominally pleaded under state law.

These cases present the question whether these inherently federal claims can be removed to federal court. The Third 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 but 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.

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 thus decide whether these cases are governed by federal law and, in turn, 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 public-nuisance suits

These cases are part of 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 provide 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 invoked 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] dam-

ages 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, launching a series of lawsuits in *state* court seeking to hold energy companies liable for global climate change under *state* laws. Nearly two dozen actions have been brought under this theory against scores of defendants in state courts across the country, including in Rhode Island, New York City, Baltimore, Boulder, San Francisco, Seattle, 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. 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.

The cases at issue here are part of this campaign. They were filed by the State of Delaware and the City of Hoboken, New Jersey, in the Superior Court of the State of Delaware and the Superior Court of New Jersey, respectively. *Delaware* C.A. JA.239; *Hoboken* C.A. JA.41. Each case asserts state-law claims for nuisance, negligence, trespass, and violation of state consumer-fraud statutes. *Delaware* C.A. JA.444–62; *Hoboken* C.A. JA.118–84. Both respondents seek compensatory damages. *Delaware* C.A. JA.463; *Hoboken* C.A. JA.184. And both respondents' complaints demand injunctions requiring energy companies "to abate the nuisance[] [caused by sea level rise]" related to "global warming"—a nuisance that they contend petitioners were substantially responsible for creating. *Hoboken* C.A. JA.170–72, 184–85; *Delaware* C.A. JA.454.

Respondents' theory implicates worldwide conduct. They allege that global consumption of petitioners' fossil fuel products is "directly responsible for" the "dramatic increase in atmospheric CO_2 and other greenhouse gases," which in turn is "the main driver of the gravely dangerous changes occurring to the

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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.); *City of Charleston* v. *Brabham Oil Co.*, No. 2020-CP-10 (S.C. Ct. Com. Pl.); *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.).

global climate." *Delaware* C.A. JA.249, 251. And respondents seek to hold petitioners liable for causing "sea level rise, more frequent and intense storms, extreme heat, and extreme precipitation events." *Hoboken* C.A. JA.80; *accord Delaware* C.A. JA.445.

B. Proceedings in the district courts

Respondents filed separate actions against partially overlapping groups of petitioners in Delaware and New Jersey state courts respectively, each alleging that "the dominant cause of global warming" is worldwide "greenhouse gas pollution," *Delaware* C.A. JA.249; *accord Hoboken* C.A. JA.70, and that petitioners, by "extract[ing], produc[ing], market[ing], and sell[ing]" fossil fuels, caused more than 12% of global CO_2 emissions between 1965 and 2017, *Hoboken* C.A. JA.42–43. Asserting causes of action under Delaware and New Jersey state law for nuisance, negligence, trespass, and violation of state consumer-fraud statutes, respondents demand compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. *See Delaware* C.A. JA.444–63; *Hoboken* C.A. JA.118–85.

Petitioners removed the actions to the U.S. District Court for the District of Delaware and the U.S. District Court for the District of New Jersey. *Delaware* C.A. JA.88; *Hoboken* C.A. JA.137. 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, permitting removal under 28 U.S.C. § 1442(a)(1). *Delaware* C.A. JA.113–23, 129–75; *Hoboken* C.A. JA.230–42, 250–307. The district courts

granted respondents' motions to remand the cases to state court. App. 37a–38a, 74a.

C. Proceedings in the Third Circuit

The Third Circuit affirmed the remand orders. App. 20a. The court recognized that respondents' claims are "sweeping," *ibid.*, but concluded that, because the complaints facially pleaded only state-law claims, petitioners could remove the complaints only if they could "show either that [the] state claims are completely preempted by federal law or that some substantial federal issue must be resolved," App. 22a–23a (citing *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 393 (1987), and *Grable & Sons Metal Prods., Inc.* v. *Darue Eng'g & Mfg.*, 545 U.S. 308 (2005)). The court recognized that its decision conflicted with the approach of other circuits permitting the removal of claims pleaded under state law but exclusively governed by federal common law, including the Fifth Circuit's decision in *Sam L. Majors Jewelers* v. *ABX, Inc.*, 117 F.3d 922 (5th Cir. 1997), but it declined to "follow" that court's decision, App. 25a.

The Third Circuit concluded that neither of its two recognized bases for removal was present. The court first held that respondents' claims were not completely preempted by federal law. App. 25a. Petitioners argued that the claims are necessarily federal because "only federal common law can resolve far-reaching climate-change suits," App. 24a, but the court held that this was insufficient for complete preemption, which it viewed as arising only where a federal statute "authorizes a federal claim[] 'vindicating the same interest as the state claim,'" App. 23a (quoting *Goepel* v. *Nat'l Postal Mail Handlers Union*, 36 F.3d 306, 315

(3d Cir. 1994)). It found no such statute implicated in this litigation.

The Third Circuit also concluded that petitioners could not satisfy *Grable*, which authorizes removal where a state-law claim necessarily implicates a substantial federal question. App. 26a; *see* 545 U.S. at 313–14. Petitioners argued that respondents' claims raise a substantial federal question because they "arise in an area governed exclusively by federal law," but the court deemed this a mere defense that was insufficient to support federal jurisdiction. App. 26a. It also rejected petitioners' argument that respondents' claims necessarily raise important First Amendment issues. App. 27a. The consequence of this decision is that, in the Third 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 Third Circuit's decision deepens an existing conflict on the question whether federal jurisdiction under 28 U.S.C. §§ 1331 and 1441 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 ARE REMOVABLE 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). Thus, defendants may remove claims to federal court 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 precedent 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 Third Circuit held that such claims cannot be removed to federal court. That erroneous decision deepens one circuit conflict and implicates another.

A. The Third Circuit's Decision Deepens A Circuit Conflict Over When Nominally State-Law Claims Are Removable.

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 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 have used a *Grable*-type analysis to uphold federal jurisdiction over claims governed by federal common law because such claims necessarily raise a substantial question of federal law. The rule of law announced in these cases is irreconcilable with the Third Circuit's view that plaintiffs can opt to plead only nominally state-law claims, and thus avoid removal, in an area where federal law exclusively governs.

For example, in *Newton* v. *Capital Assurance 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 that courts "interpret[] 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 Third Circuit declined to "follow" the approach adopted by these other circuits; in fact, the court expressly rejected the Fifth Circuit's decision in *Sam L. Majors Jewelers*. App. 25a.

Instead, relying on its prior precedent, the Third Circuit held that there are only two exceptions to the well-pleaded complaint rule: "either that the[] state claims are completely preempted by federal law or that some substantial federal issue must be resolved [under *Grable*]." App. 22a–23a. The Third Circuit stated that "complete preemption"—which allows the removal of a state-law claim where the pre-emptive force of federal law is so great that it converts a state-law claim into a federal claim—is "rare" and limited to "three" federal statutes identified by this Court. App. 23a–24a. The Third Circuit rejected the view that courts can "recast a state-law claim as a federal one" when the defendant's position "relies not on statutes but federal common law." App. 23a. Thus, the court dismissed petitioners' argument that courts should "ask if our constitutional system permits the controversy to be resolved under state law," concluding that this was a "garden-variety preemption" argument. App. 24a (cleaned up).

The Third Circuit's approach skips the threshold question that the Second, Fifth, and Eleventh Circuits ask: whether respondents engaged in artful pleading by framing their claims in state-law terms even though those claims are inherently federal in nature. Under the Third 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 Third 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.*, 31 F.4th 178 (4th Cir. 2022), *pet. for cert. filed*, No. 22-361, 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. *See id.* at 200.

In *Board of County Commissioners of Boulder County* v. *Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238 (10th Cir. 2022), *pet. for cert. filed*, No. 21-1550, yet another 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. *Id.* at 1256. 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 Oakland* v. *BP PLC*, 969 F.3d 895 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2776 (2021), the Ninth Circuit reached the same conclusion, noting that its circuit precedent recognized only two "exceptions to the well-pleaded-complaint rule": complete preemption and *Grable* removal. *Id.* at 904–06. Like the Tenth Circuit, it held that the plaintiffs'

claims "fail[] to raise a substantial federal question" because "the claim neither requires an interpretation of a federal statute, nor challenges a federal statute's constitutionality," nor "necessarily raise[s]" a "legal issue" "that, if decided, will be controlling in numerous other cases." *Ibid.* (internal quotation marks and citation omitted). The Ninth Circuit further concluded that the complete-preemption doctrine did not apply because complete preemption can exist only by virtue of "a federal statute," and "the Clean Air Act [does not] meet either of the two requirements for complete preemption." *Id.* at 905, 907–08.

* * *

Thus, the decision below deepens a widespread conflict of federal law among the courts of appeals. Four circuits have recognized federal jurisdiction over claims necessarily and exclusively governed by federal law but labeled as arising under state law, while four other circuits, including the Third Circuit below, have reached the opposite conclusion. That conflict is developed and entrenched, and the Court's intervention is necessary to resolve it.

B. These Cases Also Implicate 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 the effect of transboundary greenhouse gas emissions on the global climate "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 these cases 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 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 the Clean Air Act's displacement of any remedy under federal common law could "give birth to new state-law claims." *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 California*, 332 U.S. 301 (1947), established a two-step analysis that distinguishes between the question whether "the source of the controlling law [should] be federal or state" and 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.'" *City of New York*, 993 F.3d 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. Three 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 expressly 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 Prods. 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 "give birth to new state-law claims" in an area where "federal common law governed th[e] issue in the first place." *City of New York*, 993 F.3d at 98. In *Suncor*, the Tenth Circuit held precisely the opposite, reasoning that federal jurisdiction was not present because, after statutory displacement by the Clean Air Act, "the federal common law of nuisance that formerly governed transboundary pollution suits *no longer exists*." 25 F.4th at 1260. 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 have 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 these cases because it is a necessary element of the jurisdictional analysis.

II. THE DECISION BELOW WAS WRONGLY DECIDED.

In addition to exacerbating two circuit conflicts, the Third Circuit's decision is incorrect. Respondents' claims are necessarily and exclusively governed by federal law, and accordingly, these cases are removable to federal court.

1. 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 States are "coequal sovereigns," *PPL Montana, LLC* v. *Montana*, 565 U.S. 576, 591 (2012), and the Constitution "implicitly forbids" them from applying their own laws to resolve "disputes implicating their conflicting

rights," *Franchise Tax Bd.* v. *Hyatt*, 139 S. Ct. 1485, 1498 (2019) (alteration and citations omitted). 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.

2. The Third Circuit nevertheless determined that it was powerless to hear these cases merely because respondents labeled their inherently federal claims as sounding in state common law. App. 20a. The Third 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 in the first instance, 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, *Federal Practice & Procedure* § 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 Third Circuit here, however, denied removal, concluding that only a federal statute—and not federal common law or the structure of our Constitution—"can transform state-law claims into federal

ones," based on its assumption that complete preemption by a statute is the only circumstance in which courts may apply the artful-pleading doctrine. App. 23a. But this Court has never so held, nor would it make sense to conclude that, although *Congress* can completely preempt state law, the structure of the Constitution itself is unable to transform state-law claims into federal ones. As leading commentators have observed, there is "[n]o plausible reason" why "the appropriateness of and need for a federal forum should turn on whether the claim arose under a federal statute or under federal common law." Richard H. Fallon, Jr., et al., *Hart & Wechsler's Federal Courts and the Federal System* 819 (7th ed. 2015).

The Third Circuit'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 court below 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 Third Circuit also erred in rejecting petitioners' *Grable* argument. Federal jurisdiction exists

over respondents' claims because they require resolution of substantial, disputed federal questions, thereby independently justifying removal under *Grable*, 545 U.S. at 313–14.

As noted above, numerous courts have upheld removal over nominally state-law claims when "federal common law *alone* governs" those claims because "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Battle* v. *Seibels Bruce Ins. Co.*, 288 F.3d 596, 607 (4th Cir. 2002); *see also Newton*, 245 F.3d at 1309 (similar).

Here, the Third Circuit rejected the argument that the applicability of federal common law to respondents' claims constitutes a substantial federal question under *Grable*, deeming that argument merely a "rehash[ed]" version of petitioners' "common-law preemption argument." App. 26a. In the court's view, the applicability of federal common law merely gives rise to an "ordinary preemption . . . *defense*," and "[d]efenses are not the kinds of substantial federal questions that support federal jurisdiction." *Ibid.* The court noted that, by contrast, in *Grable* and *Gunn* v. *Minton*, 568 U.S. 251 (2013), federal jurisdiction was present because "to prove some *element* of a state-law claim, the plaintiff had to win on an issue of federal law." App. 26a.

But in characterizing petitioners' *Grable* argument as a mere preemption defense, the Third Circuit misapprehended the point. Petitioners' central contention here is that respondents' claims necessarily sound in, and thus must proceed under, federal law, not that petitioners have a mere "defense" under federal law. Respondents' entire theory of harm stems

from "global warming and its attendant climate consequences," *Hoboken* C.A. JA.124–25, allegedly caused by the normal "use of [petitioners'] fossil fuels," *Hoboken* C.A. JA.158. Because such claims thus "deal with air and water in their ambient or interstate aspects, there is a federal common law." *AEP*, 564 U.S. at 421. Accordingly, to make out an element of their nominally state-law tort claims, respondents must necessarily achieve favorable resolution of a question of federal law.

That question is also "substantial" because, among other reasons, these issues "directly implicate[] actions taken by the" federal government, *Manning* v. *Merrill Lynch Pierce Fenner & Smith, Inc.*, 772 F.3d 158, 165 n.4 (3d Cir. 2014), to regulate the interstate and international phenomenon of global climate change. These federal actions are disputed because petitioners and respondents disagree over whether federal law allows respondents to recover at all on their claims. And the claims are properly adjudicated in federal court because these "sprawling case[s] [are] simply beyond the limits of state law." *City of New York*, 993 F.3d at 92.

The Third Circuit's contrary conclusion here is incorrect and conflicts with established precedent of this Court and numerous other circuits.

III. THESE CASES RAISE AN IMPORTANT QUESTION THAT WARRANTS THE COURT'S REVIEW.

These cases present 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* sug-

gests, 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 these cases 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 (1880); *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. These cases are 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 has recently faced record high gas prices, and just late last year, 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 that backdrop, these cases present a timely opportunity for the 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, these cases present a suitable vehicle for resolving the question presented. The question was pressed below, fully briefed by the parties, and passed on by the Third Circuit. Petitioners also raised the relevant issues in their timely petition for rehearing en banc, which the Third Circuit denied. App. 111a.

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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