No. 24-813

In the
# Supreme Court of the United States

CHEVRON U.S.A. INCORPORATED; CHEVRON U.S.A. HOLDINGS, INCORPORATED; CHEVRON PIPE LINE COMPANY; THE TEXAS COMPANY; EXXON MOBIL CORPORATION,

*Petitioners*,

v.

PLAQUEMINES PARISH; PARISH OF CAMERON; STATE OF LOUISIANA; LOUISIANA DEPARTMENT OF ENERGY AND NATURAL RESOURCES,

*Respondents*.

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

## REPLY BRIEF


JENNIFER J. CLARK
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005

PAUL D. CLEMENT
*Counsel of Record*
C. HARKER RHODES IV
JOSEPH J. DEMOTT
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

*(Additional Counsel Listed on Inside Cover)*


May 13, 2025

ALEXANDRA WHITE
ERIC J. MAYER
SUSMAN GODFREY LLP
1000 Louisiana Street, Suite 5100
Houston, TX 77002

CHARLES S. MCCOWAN III
PAMELA R. MASCARI
KEAN MILLER LLP
II City Plaza
400 Convention St., Suite 700
P.O. Box 3513 (70821)
Baton Rouge, LA 70801

MICHAEL R. PHILLIPS
CLAIRE E. JUNEAU
KEAN MILLER LLP
909 Poydras Street, Suite 3600
New Orleans, LA 70112

*Counsel for Chevron U.S.A. Inc., Chevron U.S.A. Holdings Inc., Chevron Pipe Line Company, and The Texas Company*

ROBERT B. MCNEAL
LISKOW & LEWIS
Hancock Whitney Center
701 Poydras Street, Suite 5000
New Orleans, LA 70139

JAMIE D. RHYMES
LISKOW & LEWIS
1200 Camellia Blvd., Suite 300
Lafayette, LA 70508

MARTIN A. STERN
JEFFREY E. RICHARDSON
ALEXANDRA LAMB
ADAMS AND REESE LLP
701 Poydras Street, Suite 4500
New Orleans, LA 71039

*Counsel for Exxon Mobil Corporation*

*Counsel for Petitioners*

## AMENDED LIST OF PARTIES TO THE PROCEEDING

Petitioners are Chevron U.S.A., Incorporated; Chevron U.S.A. Holdings, Incorporated; The Texas Company; Chevron Pipe Line Company; and Exxon Mobil Corporation. Petitioners were defendants-appellants below.

Respondents are Plaquemines Parish, Parish of Cameron, the State of Louisiana, and the Louisiana Department of Energy and Natural Resources. Respondents were plaintiffs-appellees below.

BP America Production Company; Shell Oil Company; Shell Offshore, Inc.; SWEPI, L.P.; and Burlington Resources Oil & Gas Company, were also defendants-appellants below. Burlington Resources Oil & Gas Company initially joined the petition for certiorari, but withdrew on May 7, 2025.

## AMENDED CORPORATE DISCLOSURE STATEMENT

Chevron U.S.A. Inc., Chevron U.S.A. Holdings, Inc., and Chevron Pipe Line Company are indirectly wholly owned subsidiaries of Chevron Corporation, a publicly traded company (NYSE: CVX).

The Texas Company is the former name of Texaco Inc., an indirect, wholly owned subsidiary of Chevron Corporation, a publicly traded company (NYSE: CVX).

Exxon Mobil Corporation is a publicly held corporation, shares of which are traded on the New York Stock Exchange under the symbol XOM. Exxon Mobil Corporation has no parent corporation, and no publicly held corporation owns ten percent (10%) or more of its outstanding stock.

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## REPLY BRIEF

The briefs in opposition underscore the need for this Court's intervention. Neither the Parishes nor the state offers any persuasive defense of the panel majority's decision, because none exists. Under the plain text of the federal-officer removal statute, a defendant who "act[ed] under" a federal officer must show that its challenged conduct "relat[es] to an[] act" performed under federal direction. 28 U.S.C. §1442(a)(1). That does not require a specific "contractual provision pertaining to" the challenged conduct, *contra* La.Br.20 (quoting App.30), much less a "contract-based motivation" for that conduct, *contra* Parishes.Br.18. Respondents' attempts to engraft those additional requirements onto the statute only confirm that the panel majority erroneously "reinstated a version of" the "causal-nexus test" Congress deliberately eliminated. App.57 (Oldham, J., dissenting).

Nor can Respondents explain away the entrenched division on this issue. They do not dispute that six other circuits have held that the "relating to" requirement does not require a showing of causation, but merely a "connection" or "association" between the challenged conduct and an act under federal direction. The Second Circuit, by contrast, has expressly "reject[ed]" the argument "that the ca[us]al-nexus requirement recognized in pre-2011 cases … was abrogated by the Removal Clarification Act of 2011." *Tong v. Exxon Mobil Corp.*, 83 F.4th 122, 145 n.7 (2d Cir. 2023). The Eleventh Circuit likewise continues to apply the pre-2011 causal-nexus test, while the Eighth and Ninth Circuits continue to demand a causal nexus

despite recognizing that Congress altered the standard. Pet.26-27; *see infra* pp.___. Now the Fifth Circuit has confused matters further by first deciding en banc that the Removal Clarification Act of 2011 eliminated the "causal nexus" test, and then partially reintroducing the former regime by requiring an explicit contractual "directive pertaining to" the challenged activities, and then falling one vote short of a second en banc review. App.38. All this makes the "Removal Clarification Act" something of a punchline. If Congress intended clarification—which it plainly did—only this Court can provide it.

This case provides an ideal opportunity to resolve the issue. Federal-officer removal was the only question litigated below, and neither the Parishes nor the state identifies any potential vehicle problem. Instead, they strain to suggest that the issue is not worth this Court's time. But the proceedings in the state courts underscore exactly why Congress provided a federal forum and why the stakes here are so high. As numerous amici attest, if serving the nation during wartime leads to crippling verdicts from state-court juries driven by parochial concerns, the government will not be able to enlist private-sector help when it needs it most. This Court should grant certiorari.

## I. The Fifth Circuit's Decision Conflicts With The Clear Statutory Text And Decisions From Multiple Circuits.

### A. The Decision Below Erroneously Adopts a Contractual-Direction Requirement That Congress Eliminated.

Although the divided court below jealously guarded federal contractors' access to the federal courts, the contrary intent of Congress could hardly be clearer. Over many decades, "Congress [has] relaxed, relaxed, and relaxed again the limits on federal officer removal." App.44 (Oldham, J., dissenting). The latest expansion—and would-be clarification—came in 2011. Before then, the statute authorized removal of suits "*for* an act" taken under federal direction, which this Court interpreted to require "a 'causal connection' between the charged conduct and asserted official authority." *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999) (brackets omitted). In 2011, however, Congress expanded the statute to permit removal of lawsuits "relating to" any federally directed act. 28 U.S.C. §1442(a)(1). As multiple courts have recognized, by deliberately adding words this Court had already interpreted to signal substantial breadth, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992), Congress dispensed with the old causal-nexus test and authorized removal of any suit based on conduct "related to"—i.e., "connected or associated with"—an act under federal direction. Pet.16.

That test is readily satisfied here. Respondents' theory of liability "plac[es] at issue … conduct that occurred during World War II," alleging that petitioners' production of crude oil in specific

Louisiana fields was not "lawfully commenced" because it supposedly "depart[ed] from prudent industry practices." App.5-6. And petitioners' WWII-era production of crude in those fields is plainly "connected" to petitioners' refinement of that *very same crude* to fulfill WWII-era avgas contracts. Pet.17-19. Indeed, the methods used to extract oil during WWII—which respondents now claim made the activities "illegal[]," Parishes.Br.12 n.21; *accord* La.Br.5—were necessitated by the federal government's unprecedented need for avgas. *See* Pet.18. Moreover, the close connection between extraction of crude and production of avgas is evident in the contracts themselves, which expressly linked the price of avgas to the cost of producing crude, and exempted the production of crude later refined into avgas from state and local taxation. Pet.19-20. Accordingly, even the panel majority was forced to concede that petitioners' WWII-era "oil production" had "some relation" to their federally directed "refinery activities." App.28.

The majority nevertheless deemed the statute's "relating to" requirement unsatisfied, supposedly because petitioners' "oil production activities" did not "ha[ve] a sufficient connection with *directives in* their federal refinery contracts." App.29 (emphasis added). The majority considered it not enough to show "some relation" (i.e., a connection) between petitioners' production of crude and their refinement of that same crude into avgas. The majority instead demanded a contractual provision that explicitly "address[ed] crude oil production," App.31, "direct[ed]" petitioners "to use only oil they produced," App.29-30, or limited their discretion "to forego [sic] producing any crude

and instead to buy it on the open market," App.30. As Judge Oldham persuasively explained in dissent, that approach erroneously "reinstates a version of the old, discarded, causal-nexus test," in defiance of Congress' 2011 amendment to §1442(a). App.57.

Respondents' efforts to defend the panel majority's decision fall flat. Remarkably, the state asserts that there is "no serious argument that the Fifth Circuit erred," La.Br.7, while studiously ignoring Judge Oldham's dissent (not to mention six votes for en banc review). Still worse, the state's lead argument does not even try to defend what the majority held; it instead attacks the panel's unanimous conclusion that petitioners satisfied "the 'acting under' requirement." App.16; *see* App.40. That argument contradicts not only the panel's unanimous holding, but also the Parishes' concession at oral argument, and this Court's recognition that government contractors are the very archetype of those who "act under" federal officers, *Watson v. Philip Morris Cos.*, 551 U.S. 142, 153-54 (2007). The State's effort to change the subject to the "acting under" prong merely underscores that their "relating to" arguments are at odds with Congress' deliberate decision to clarify and broaden the removal statute.

While the Parishes more directly defend the majority's holding, their arguments only illustrate its errors. The Parishes' basic position is that the "relating to" element requires a "contract-based motivation" for the "challenged conduct," meaning petitioners had to show they produced crude oil "*for* the government." Parishes.Br.17-18 (emphasis added). The Parishes also assert that the "relating to"

test is not met because petitioners "were not contractually *required* to refine the crude they produced." Parishes.Br.17 (emphasis added). Although those formulations differ slightly from the panel majority's, they repeat the same basic legal error: they reinstate the causal-nexus requirement that Congress discarded, by requiring a removing defendant to show that a specific contractual directive required the challenged conduct. In short, the panel majority did not "fail[] to find factual support for petitioners' relatedness argument," Parishes.Br.20; it simply applied the wrong legal standard. That error should not stand.

So too for the Parishes' discussion of PAW's allocation program. As already explained, PAW allocated crude from the fields at issue here to petitioners' avgas refineries, drawing a direct line from production to refinement and obviating the need for the federal contracts to spell out how petitioners should obtain the necessary crude. Pet.22-23; API/AFPM.Amicus.Br.5-12. The Parishes insist, however, that PAW's involvement somehow "severed" the link between production and refinement, because (they say) PAW's decisions were not made "on the basis of which company owned the crude." Parishes.Br.21 (emphasis omitted). That makes no sense. That PAW could have allocated crude elsewhere does not change the reality that PAW allocated some of these vertically integrated companies' own production to their refineries. PAW's involvement in these allocation decisions only underscores the close connection between production and refining.

The state professes concern that applying the federal-officer removal statute as written would open the floodgates, allowing removal based on "virtually every" activity with even a "remote" or "tenuous" relationship to a government contract. La.Br.20-21. Of course, the state's "policy concerns cannot trump the best interpretation of the statutory text." *Patel v. Garland*, 596 U.S. 328, 346 (2022). And the state's (and panel majority's) concern for limiting government contractors' access to the federal courthouse is hard to square with Congress' repeated interest in broadening federal-officer removal, presumably on the theory that protecting federal contractors from the parochialism of state-court litigation ultimately protects the public fisc and is an appropriate use of limited judicial resources. Regardless, the concern is unfounded. As Judge Oldham explained, the other elements of §1442(a)—including the "acting under" and "colorable federal defense" requirements—significantly limit the universe of removable cases. App.58-61. Those other elements are plainly satisfied here, and given the direct relationship between producing crude and refining that same crude into avgas, this case comes nowhere near testing whether a "remote" or "tenuous" relationship would suffice. *Contra* La.Br.20-21.

### B. The Decision Below Exacerbates An Entrenched Circuit Split.

The decision below worsens an entrenched circuit split and highlights the need for this Court to provide the clarification Congress intended. Six circuits have held that the Removal Clarification Act of 2011 did away with any causal-nexus requirement; at least two others (the Second and Eleventh) continue to apply

the pre-amendment causal-nexus test; and another two (the Eighth and Ninth) continue to use the phrase "causal nexus" while recognizing that the amendment altered the text. The decision below injects even more confusion by adding a new variant of the causal-nexus test—over a powerful dissent and six votes for en banc rehearing—in a circuit that previously went en banc to reject the causal-nexus test. The resulting confusion on an issue Congress sought to clarify amply warrants this Court's intervention.

Respondents' efforts to explain away this division are unpersuasive. The Second Circuit has unequivocally declared that it "continue[s] to apply the ca[us]al-nexus requirement," notwithstanding "the Removal Clarification Act of 2011." *Tong*, 83 F.4th at 145 n.7. There is nothing remotely "unclear" about "what the Second Circuit means by 'the causal nexus requirement,'" *contra* La.Br.11: The Second Circuit continues to follow "the causal-nexus requirement *recognized in pre-2011 cases*." *Tong*, 83 F.4th at 145 n.7 (emphasis added). Indeed, the appellant in *Tong* expressly invoked multiple cases on the other side of the split—including *In re Commonwealth's Motion to Appoint Counsel*, 790 F.3d 457 (3d Cir. 2015), and *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249 (4th Cir. 2017)—and the Second Circuit specifically declined to align itself with them. *See* Brief of Appellant at 40-41, *Tong v. Exxon Mobil*, No. 21-1446 (2d Cir. Sept. 21, 2021). Nor can that holding be dismissed as *dicta*, *contra* Parishes.Br.24, as the Second Circuit specifically relied on it to reject one of the *Tong* appellant's arguments, *see* 83 F.4th at 145 n.7; *Woods v. Interstate Realty Co.*, 337 U.S. 535, 537 (1949) ("[W]here a decision rests on two or more

grounds, none can be relegated to the category of obiter dictum.").

The Eleventh Circuit has been similarly clear. As recently as December 2023, it held a federal officer could not remove a state-court suit because he failed to "establish a 'causal connection between the charged conduct and asserted official authority.'" *Georgia v. Meadows*, 88 F.4th 1331, 1343 (11th Cir. 2023) (quoting *Acker*, 527 U.S. at 431); *see id.* at 1349. As that quotation makes clear, the Eleventh Circuit continues to apply the pre-2011 standard. The Parishes observe that *Meadows* also quoted the post-2011 statutory language ("relating to"), Parishes.Br.25, but that just underscores the problem with the Eleventh Circuit's continued use of the pre-2011 "causal connection" test. And while the state suggests *Meadows* is inconsistent with an earlier Eleventh Circuit decision, La.Br.9-10, that simply confirms the ongoing discord and confusion in this area of the law. *See also Georgia v. Clark*, 119 F.4th 1304, 1309-10, 1315-16 (11th Cir. 2024) (Rosenbaum, J., concurring) (applying pre-2011 standard based on *Meadows*).

Respondents also cannot harmonize the Eighth and Ninth Circuits' tests with other circuits. According to the Parishes, the Ninth Circuit "compresse[s] the requirements of 'acting under' and 'causal nexus' into a single 'causal nexus' requirement with two subparts: 'acting under' and 'causally connected.'" Parishes.Br.25. The Fifth Circuit, however, emphasizes that "the 'acting under' and 'connection' elements … are distinct." *St. Charles Surgical Hosp., L.L.C. v. La Health Serv. & Indem.*

*Co.*, 990 F.3d 447, 454 (5th Cir. 2021). For its part, the state claims that when the Eighth Circuit says "'causal connection,' [it] means a 'lower, post-amendment standard'" that is "identical to" courts that say causation is *not* required. La.Br.10. *Compare Minnesota ex rel. Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 715 (8th Cir. 2023), *with Sawyer*, 860 F.3d at 258. That self-contradicting assertion only confirms that the circuits are in disarray, which is why the Parishes are ultimately forced to concede that different circuits apply the federal-officer removal test using "different parts, expressed with different modifiers." Parishes.Br.26.

The decision below exacerbates the problem, adopting a "contractual-direction" requirement that flatly conflicts with the majority view, as illustrated by Third Circuit's decision in *Commonwealth's Motion* and the Fourth Circuit's decision in *Sawyer*. *See* Pet.28-30 & n.5. Respondents' efforts to distinguish those decisions cannot change the bottom line: *Commonwealth's Motion* and *Sawyer* permitted removal even though the relevant federal contracts were silent about—and certainly did not mandate—the challenged conduct. The decision below instead holds removal is impermissible "absent some [contractual] directive pertaining to" the challenged conduct. App.38.

Respondents' efforts to cast this as "a fact-bound case that really only affects Petitioners," La.Br.3, are unconvincing. Six judges of the Fifth Circuit who voted for rehearing en banc and numerous amici beg to differ. App.65. And the issue here was important enough to Congress that it acted to clarify matters and

broaden the statute by employing clear language that this Court has consistently construed to have broad effect. The lower courts have now made a tangle of what Congress tried to make straight. Only this Court can provide the clarification Congress sought to achieve in 2011.

## II. The Question Presented Is Important, And This Is An Excellent Vehicle To Resolve It.

Respondents' attempts to downplay the importance of the question presented are equally unavailing. This Court has long recognized that there are "important reasons" for federal-officer removal, *Willingham v. Morgan*, 395 U.S. 402, 407 (1969), including preventing state courts from interfering with "the operations of the general government," *Tennessee v. Davis*, 100 U.S. 257, 263 (1879), and guaranteeing that federal officials and contractors may assert federal defenses in a federal forum where they will be adjudicated without "local prejudice," *Maryland v. Soper*, 270 U.S. 9, 32 (1926). Congress has consistently reaffirmed these vital protections, repeatedly broadening the federal-officer removal statute over many decades. *See* Pet.5-7.

Recent events in state court underscore why Congress has placed such a high premium on providing government contractors with a federal forum. While the Parishes assure this Court that their coastal lawsuits "will not result in 'massive recoveries' or 'windfalls' for local governments," Parishes.Br.33, the reality of litigating in Plaquemines Parish, where a jury just returned a

*$744.6 million* verdict[1] in a parallel case based on liability theories that the Fifth Circuit has unanimously rejected as squarely foreclosed by the relevant statutory language, *see New Orleans City v. Aspect Energy, L.L.C.*, 126 F.4th 1047, 1052-54 (5th Cir. 2025), tells a very different story. Given a choice between a massive windfall for the local parish and respecting the long-ago needs of the federal government, the temptation to favor local interests is overwhelming. That is particularly true in a case like this, where the verdict will be an immediate boon to the local government and the costs will be shouldered by an out-of-state corporation in the short run and federal taxpayers throughout the country in the long run. As that extraordinary verdict illustrates, the "specter of hostile state courts" is anything but theoretical here. *Contra* Parishes.Br.32.

The three-quarters-of-a-billion-dollar verdict in a suit by just one parish underscores the stakes in this litigation alone, but the consequences are far broader, as numerous amici attest. Respondents attempt to downplay those future consequences of the decision below for other federal contractors and the federal government. *See* La.Br.17-19; Parishes.Br.33-34. But insisting that the retired Joint Chiefs provide additional "factual citation[s]," La.Br.18, is an odd way to second-guess their experience-based judgment that the decision below poses grave implications for national defense. *See, e.g.*, Joint.Chiefs.Br.5 (explaining that the decision below will "impair our

[1] Jack Brook, *Chevron Ordered to Pay More Than $740 Million to Restore Louisiana Coast in Landmark Trial*, Associated Press (Apr. 4, 2025), https://tinyurl.com/26cxpvy9.

military's ability to react rapidly to emerging and evolving international threats" because "[e]ssential contracts will become needlessly complicated and delayed"). Regardless, the state's demand for more facts ignores the amicus brief from the Chamber of Commerce and National Association of Manufacturers, which explains in detail how the availability of federal-officer removal has major significance for a wide variety of businesses across the country. Chamber.Br.15-21.

Finally, respondents do not dispute that this petition represents an excellent vehicle for addressing the proper scope of the amended federal-officer removal statute. Nor could they; the issue has been thoroughly litigated on a full record, generating both a majority opinion and a thorough dissent. The decision below turned exclusively on the "relating to" prong—i.e., the precise language Congress employed to broaden and clarify federal-officer removal. The decision below simultaneously narrows and confuses federal-officer removal. This Court should grant review and provide the broadening and clarification that Congress sought.

## CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

JENNIFER J. CLARK
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005

ALEXANDRA WHITE
ERIC J. MAYER
SUSMAN GODFREY LLP
1000 Louisiana Street, Suite 5100
Houston, TX 77002

CHARLES S. MCCOWAN III
PAMELA R. MASCARI
KEAN MILLER LLP
II City Plaza
400 Convention St., Suite 700
P.O. Box 3513 (70821)
Baton Rouge, LA 70801

MICHAEL R. PHILLIPS
CLAIRE E. JUNEAU
KEAN MILLER LLP
909 Poydras Street, Suite 3600
New Orleans, LA 70112

*Counsel for Chevron U.S.A. Inc., Chevron*

PAUL D. CLEMENT
*Counsel of Record*
C. HARKER RHODES IV
JOSEPH J. DEMOTT
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

ROBERT B. MCNEAL
LISKOW & LEWIS
Hancock Whitney Center
701 Poydras Street, Suite 5000
New Orleans, LA 70139

JAMIE D. RHYMES
LISKOW & LEWIS
1200 Camellia Blvd., Suite 300
Lafayette, LA 70508

*U.S.A. Holdings Inc., Chevron Pipe Line Company, and The Texas Company*

MARTIN A. STERN
JEFFREY E. RICHARDSON
ALEXANDRA LAMB
ADAMS AND REESE LLP
701 Poydras Street,
Suite 4500
New Orleans, LA 71039

*Counsel for Exxon Mobil Corporation*

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