No. 24-813

IN THE
Supreme Court of the United States

CHEVRON U.S.A. INCORPORATED, ET AL.,

Petitioners,

v.

PLAQUEMINES PARISH, LOUISIANA, ET AL.

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

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL ASSOCIATION OF MANUFACTURERS AS AMICI CURIAE SUPPORTING PETITIONERS

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF THE AMICI CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 13 million men and women, contributes $2.93 trillion to the United States economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the Nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

Many of the Chamber's and the NAM's members perform vital functions for the United States while acting under the direction and control of federal

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[1] Amici curiae timely provided notice of intent to file this brief to all parties. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

officers. The Chamber's and the NAM's members are sometimes exposed to potential liability for the performance of those functions. Thus, the Chamber and the NAM have a strong interest in ensuring that the federal-officer removal statute, 28 U.S.C. § 1442(a), is correctly interpreted so that claims subject to the statute are heard in federal courts, and not in state courts where local interests may sometimes be given undue weight.

SUMMARY OF ARGUMENT

In the decision below, the Fifth Circuit worsened an entrenched circuit split on the meaning of a key provision of § 1442(a). This Court should grant certiorari to resolve that split once and for all—and to ensure that federal contractors have reliable access to federal court in cases that relate to their work for the federal government.

I. Despite Congress' *expansion* of access to federal-officer removal in the Removal Clarification Act of 2011, the panel majority *narrowed* such access by requiring a federal contractor to show that it was following a "relevant federal directive" issued by a federal officer when engaging in the conduct leading to suit. *See* Pet. 21; Pet. App. 19, 29. Most circuits read the phrase "relating to" as requiring only a connection or association between an act taken under a federal officer and the subject matter of the suit, not strict causation. But not the Fifth Circuit. The panel majority's insistence that a removing party must also identify a "relevant federal directive" makes the Fifth Circuit an outlier among the circuits—even among the few that still insist on a showing of causation.

There is no basis for this overly restrictive construction, particularly now that Congress has

amended the statute to add the broad words "relating to." If Congress wanted removing defendants to show that the subject of the suit against them was the result of a "relevant federal directive," it would have had no need to amend the federal-officer removal statute as it did: such suits were already subject to removal "for" acts under color of federal office.

The panel majority's "relevant federal directive" requirement clashes not just with the text and history of the federal-officer removal statute, but also with the realities of modern government contracting. While there are many contracts under which the government will dictate every last detail, there are many others under which the government will trust a contractor's expertise and judgment to some degree. Given the broad spectrum of discretion in government contracting, it was unrealistic for the panel majority to require that defendants tie the claims they are removing to a "relevant federal directive."

Respondents' lawsuits here plainly satisfy the statutory "for or relating to" requirement for removal. The lawsuits relate to crude oil exploration and production activity that petitioners undertook to fulfill their federal contracts for avgas and other refined petroleum products during the Second World War. That should have been enough for petitioners to remove the lawsuits to federal court.

If left to stand, the Fifth Circuit's overly restrictive approach to removal will make companies think twice about performing work for the federal government, for fear that they will be exposed to litigation "relating to" that work in hostile state courts.

II. The questions presented are important, as they affect virtually every private contractor that assists the

federal government in carrying out its functions. Like federal employees, federal contractors may end up performing work for the federal government that is nationally important but locally unpopular. Federal contractors therefore depend on predictable access to a fair, federal forum, should their work for the federal government ever be the subject of litigation.

But because of the circuits' division on the meaning of "for or relating to"—exacerbated by the panel majority's outlier decision—access to a fair, federal forum now depends on where a plaintiff chooses to bring his suit against a federal contractor. A circuit-by-circuit approach to federal-officer removal is untenable, not least because the work that a private company performs for the federal government often has nationwide impacts. When a federal contractor faces a lawsuit relating to federal work, that contractor's access to federal court should be the same, regardless of whether suit is brought in Louisiana or elsewhere. This Court should grant certiorari to resolve the split and ensure uniform access to federal courts for federal contractors.

ARGUMENT

I. The Fifth Circuit's "relevant federal directive" requirement has no basis in law or the realities of federal contracting.

Until 2011, the federal-officer removal statute permitted "any [federal] officer (or any person acting under that officer)" to remove a civil action to federal court "*for* any act under color of such office." 28 U.S.C. § 1442(a)(1) (2006) (emphasis added). This Court construed this phrase to require that a suit "*grow[] out of* conduct under color of office," *i.e.*, that there be a "'causal connection' between the charged conduct and

asserted official authority." *Willingham v. Morgan*, 395 U.S. 402, 407, 409 (1969) (emphasis added) (citation omitted). But the causal-connection requirement was never particularly taxing; merely showing that an act occurred while federal officers (or contractors) were "performing their duties" was enough to satisfy the connection requirement. *See id.* at 409.

Against the backdrop of § 1442's broad, liberal construction, *see Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007), Congress enacted the Removal Clarification Act of 2011, which allowed removal not just of any civil action "for any act under color of such office," but for any action "for *or relating to* any act under color of such office." § 2(b)(1)(A), 125 Stat. 545. As the Fifth Circuit itself has recognized, the addition of "or relating to" "broadened the universe of acts that could sustain removability." *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 294 (5th Cir. 2020) (en banc). But this was "not a radical change," for the burden of showing a causal connection even before 2011 had been "minimal." *Id.* at 295. By adding the phrase "or relating to," the Act merely expanded the universe of civil actions and criminal prosecutions eligible for removal under § 1442 to include those actions that "stand in some relation" to, or have an "association with," acts taken under color of federal office. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992).

As the petition explains (at 24-25), the circuits are deeply split on the meaning of "for or relating to" in § 1442. A majority of the circuits to have considered the issue have concluded that the stricter, pre-2011 "causal connection" requirement no longer applies, and that some "connection" or "association" with federal office suffices for federal-officer removal. For a moment,

the Fifth Circuit appeared to be in that majority. After nearly a decade of continuing to require a "causal nexus" despite the 2011 Act, *see, e.g.*, *IntegraNet Physician Res., Inc. v. Tex. Indep. Providers, L.L.C.*, 945 F.3d 232, 241 (5th Cir. 2019), the court, sitting *en banc*, abandoned that requirement in *Latiolais*, which held that a causal nexus was no longer required "after Congress amended section 1442(a) to add 'relating to.'" 951 F.3d at 296. *Latiolais* replaced the causal-nexus test with the requirement that "the charged conduct [be] connected or associated with an act pursuant to a federal officer's directions." *Id.*

If *Latiolais* aligned the Fifth Circuit with the majority of circuits, the panel majority's decision threw the court of appeals back out of joint. It resurrected the court's old nexus requirement—a requirement that at least six circuits have expressly abandoned, *see* Pet. 24—under which the removability of an action depends on whether there is a "sufficient" "relationship between" the conduct challenged in an action and "the relevant federal directives" found in the four corners of the federal contracts at issue. Pet. App. 19. Despite its recognition that federal-officer removal does not require "alleged conduct [to be] precisely dictated by a federal officer's directive," Pet. App. 14, that is in substance what the court of appeals imposed in scrutinizing whether the alleged conduct here is "sufficiently" connected to a relevant directive by a federal officer in the federal contract. According to the panel majority, a federal contract must spell out the conduct that gives rise to federal-officer removal jurisdiction; if an act is committed to the contractor's exercise of discretion in carrying out the federal contract, that is not "related" enough to give rise to jurisdiction. *E.g.*, Pet. App. 29-30

(no sufficient connection between challenged conduct and federal contract, given the "lack of any contractual provision pertaining to" the sourcing of crude oil used to make contracted-for refined petroleum products, and defendants' "complete latitude" in sourcing).

1. The panel majority's construction of "for or relating to" is textually baseless and runs counter to the purpose of the Removal Clarification Act, which was to "broaden the universe of acts" that qualify for removal. H.R. Rep. No. 112-17, at 6 (2011). Before the Act, the word "for" had already covered actions that "gr[ew] out of conduct under color of office." *Willingham*, 395 U.S. at 407. Under the "for" standard, courts considered "whether the government specified" the conduct that gave rise to the plaintiff's claims. *E.g.*, *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398-99 (5th Cir. 1998), *cited approvingly by Watson*, 551 U.S. at 153. The Fifth Circuit should have abandoned any semblance of a "specific" or "relevant" federal-directive requirement when it shed the causal-nexus test in *Latiolais*. By searching for a "relevant federal directive," *e.g.*, Pet. App. 19, the Fifth Circuit restored its now-too-restrictive, pre-2011 standard—which did not account for the phrase "relating to." As at least two circuits have recognized, the demand for a "relevant federal directive" cannot be squared with the plain text of the "relating to" prong of § 1442(a). *See In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 470 (3d Cir. 2015) (rejecting that the federal public defender "is required to allege that the complained-of conduct *itself* was at the behest of a federal agency"); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017) (holding that "the district court went beyond what

§ 1442(a)(1) requires" by "demanding a showing of a specific government direction").

2. The panel majority's holding is also unmoored from the realities of federal government contracting. While the government often lays out in fine print how it wants a contractor to provide its goods or services, in many other instances, the government leaves those details to the discretion of the contractor. For example, when the government directs a contractor to manufacture a product, it can provide "design specifications," which "describe in precise detail the materials to be employed and the manner in which the work is to be performed"; the contractor has "no discretion to deviate from the specifications." *Blake Constr. Co. v. United States*, 987 F.2d 743, 745 (Fed. Cir. 1993). Or, the government can provide performance specifications, which "specify the results to be obtained, and leave it to the contractor to determine how to achieve those results." *Stuyvesant Dredging Co. v. United States*, 834 F.2d 1576, 1582 (Fed. Cir. 1987). A contractor carrying out performance specifications is "expected to exercise his ingenuity in achieving [the] objective or standard of performance, selecting the means and assuming a corresponding responsibility for that selection." *Blake Constr.*, 987 F.2d at 745 (citation omitted). Performance specifications "anticipate a contractor's exercise of discretion," *Fireman's Fund Ins. Co. v. United States*, 92 Fed. Cl. 598, 652 (2010), as it is possible "nothing in the contract's description [will] dictate[] the '*manner*' in which [the contractor] must perform." *P.R. Burke Corp. v. United States*, 277 F.3d 1346, 1357 (Fed. Cir. 2002).

Regardless of whether the government has given a contractor no discretion or complete discretion, the con-

tractor's function is the same: "to assist, or to help carry out, the duties or tasks of the federal superior." *Watson*, 551 U.S. at 152. That includes, as here, when a private contractor "help[s] the Government to produce an item that it needs." *Id.* at 153. A contractor's actions do not lose their "connection" or "association" with a federal contract simply because the contractor exercised discretion in how to fulfill the contract.

"[D]emanding a showing of a specific government direction," as the panel majority did here, goes "beyond what [the federal-officer removal statute] requires, which is only that the charged conduct *relate to* an act under color of federal office." *Sawyer*, 860 F.3d at 258. For a case to be "for or relating to" actions taken under color of federal office, a federal contractor need only demonstrate that a claim against it arose from actions that "resulted from [its] work" for the government. *E.g.*, *DeFiore v. SOC LLC*, 85 F.4th 546, 557 (9th Cir. 2023). That relationship is enough for removal "even if [the contractor] perform[s] the same service jointly for the federal government and private entities." *Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 193 (1st Cir. 2024). The Fifth Circuit's search for a "relevant federal directive" within the four corners of a federal contract is too exacting for both the text of the removal statute and the modern realities of federal government contracting.

3. Without access to the robust protections of a federal forum, a prospective federal contractor may find itself hesitant to assist the federal government in the performance of its duties. Being forced to defend against a "scattering of … claims throughout the state courts" over work performed for the federal government will "have a chilling effect" on the "acceptance of

government contracts." *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 134 (2d Cir. 2008). Just as federal officials needed access to a federal forum to "assert federal immunity defenses" at the incipience of the federal-officer removal statute, *Watson*, 551 U.S. at 150-51, contractors, too, require a federal forum free of "local prejudice," *id.* at 150, so that they have a fair opportunity to invoke federal immunity and other federal defenses. *See, e.g.*, *Express Scripts*, 119 F.4th at 187-88 (Puerto Rico cannot deprive a federal contractor of the right to have its "immunity litigated in federal court" by disclaiming claims based on acts under color of federal office); *see also* Jeffrey A. Belkin & Donald G. Brown, *The Soldier of Fortune in Federal Court: An Analysis of the Federal Officer Removal Statute*, 22 No. 6 Andrews Gov't Cont. Litig. Rep. 1, at *2 (July 28, 2008) (noting that "removal under the [federal-officer removal] statute and immunity for a government contractor are closely related issues").

The panel majority's cramped reading of "for or relating to" will deprive a great many contractors of that forum. Indeed, the Fifth Circuit's too-taxing standard invites a peculiar outcome where a "barebones" federal contract that commits considerable discretion to a federal contractor may be good enough for federally conferred immunity, but not for federal-officer removal under a "liberally construed" statute, *Watson*, 551 U.S. at 147. *E.g.*, *Taylor Energy Co., L.L.C. v. Luttrell*, 3 F.4th 172, 174-76 (5th Cir. 2021) (derivative sovereign immunity for federal contractor whose "barebones" statement of work "provide[d] goals and tasks for [the contractor] to propose and accomplish with the approval of the [federal officer]," because "the contractor's work was 'done pursuant to a contract with the United

States Government'" (quoting *Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 19 (1940))).

And the safeguards offered by a federal forum extend beyond just substantive defenses like immunity. For example, access to a federal forum may ensure that a contractor does not find itself defending a lawsuit in an inconvenient jurisdiction just because a state court refuses to allow the case to be heard elsewhere. *E.g.*, *Magnin v. Teledyne Cont'l Motors*, 91 F.3d 1424 (11th Cir. 1996) (affirming (1) denial of motion to remand case removed under § 1442 and (2) dismissal for forum non conveniens, as Alabama was not a convenient forum for an aviation accident that happened in France, even though the defendant manufacturer was based in Alabama). Or, when a contractor faces a putative class action for work done under a federal officer, the contractor can find comfort in the fact that a federal court will apply the rigors of Federal Rule of Civil Procedure 23, and not yield to more relaxed legal standards that may favor putative class plaintiffs. *E.g.*, *Crutchfield v. Sewerage & Water Bd. of New Orleans*, 829 F.3d 370 (5th Cir. 2016). In denying access to federal court absent a "relevant federal directive," the panel majority's decision risks depriving federal contractors of these protections.

4. The panel majority should not have denied petitioners a federal forum here. Respondents' actions "relate to," *i.e.*, are connected to or associated with, acts that petitioners undertook during the Second World War in fulfilling federal contracts for avgas and other refined petroleum products. At the time, oil was considered "a bulwark of our national security," Nat'l Petroleum Council, *A National Oil Policy for the United States* 1 (1949), without which the armed services

"could neither fight nor live." John W. Frey & H. Chandler Ide, *A History of the Petroleum Administration for War* 1941-1945, at 1 (U.S. Gov't Printing Office 1946) ("*PAW History*"). Every aspect of the oil industry—from exploration, to production, and, eventually, refining—was overseen by the Petroleum Administration for War ("PAW"), which possessed a "broad delegation of war authority," with the power to "issue and enforce necessary orders and directives regulating all the operations of the vast petroleum industry." *PAW History* at 44-45.

Petitioners had little choice but to accede to PAW's demands: "PAW told the refiners what to make, how much of it to make, and what quality." *PAW History* at 219. PAW left no "freedom to make a choice between contracting and not contracting." *Exxon Mobil Corp. v. United States*, 108 F. Supp. 3d 486, 496 (S.D. Tex. 2015).

And to meet the unprecedented wartime demand for refined petroleum products, petitioners "increas[ed] their own exploration and production of crude." Pet. App. 45. After all, in order to produce avgas, petitioners had to obtain their raw materials from *somewhere*. *Id.* (explaining that "defendants could not simply snap their fingers and, voilà, make avgas"). Had petitioners failed to deliver what PAW had demanded, PAW would simply have seized petitioners' refineries and completed the job itself. *Exxon Mobil*, 108 F. Supp. 3d at 496.

These facts plainly suffice for federal-officer removal. Petitioners' exploration and production activities were part of their "effort to assist, or to help carry out, the duties or tasks of the federal superior"—namely, the production of refined petroleum products. *Watson*,

551 U.S. at 152. That PAW did not specifically direct petitioners to produce the crude oil used to make the government's refined petroleum products does not matter. There is a direct link between petitioners' exploration and production activities and the government contracts requiring petitioners to make avgas for the wartime effort. That connection was all that was needed to show respondents' claims were "for or relating to" petitioners' wartime work for the federal government. The panel majority erred by requiring more.

II. The availability of federal-officer removal is a significant question for the wide variety of businesses that can act under federal officers.

The availability of removal to federal officers and those acting under them is an issue with broad nationwide significance. As this Court has long recognized, the removal statute protects persons working for the federal government from state courts that may be hostile to the work they are doing. The federal government "can act only through its officers and agents, and they must act within the States." *Willingham*, 395 U.S. at 406 (quoting *Tennessee v. Davis*, 100 U.S. 257, 263 (1880)).

1. "The federal officer removal statute has had a long history." *Willingham*, 395 U.S. at 405. The statute's earliest predecessor was a customs law enacted during the War of 1812, when several New England states opposed efforts to embargo trade with England. *Id.* The statute included a removal provision designed "to protect federal officers from interference by hostile state courts," permitting customs officers "to remove to the federal courts any suit or prosecution commenced

because of any act done 'under colour' of the statute." *Id.* Similar statutes protecting customs and revenue officers were passed in 1833 (in the face of state nullification efforts) and again during the Civil War. *Id.* at 405-06. The current statute was enacted in 1948, *see id.* at 406, and was amended as recently as 2011 to broaden its scope, *see* Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545.

"The purpose of all these enactments is not hard to discern": to ensure robust access to federal court for the "officers and agents" through whom the federal government must act. *Willingham*, 395 U.S. at 406. In cases where those officers and agents stand charged with liability for acts undertaken "within the scope of their authority," "if their protection must be left to the action of the State court," then "the operations of the general government may at any time be arrested at the will of one of its members." *Id.* (quoting *Davis*, 100 U.S. at 263).

Historically, all of these statutes provided a federal forum not just to federal officers themselves, but also to private parties assisting them. *See Watson*, 551 U.S. at 147-49 (discussing history of current statute and its predecessors). Well over a century ago, this Court recognized that "the protection which the law thus furnishes to the marshal and his deputy, also shields all who lawfully assist him in the performance of his official duty." *Davis v. South Carolina*, 107 U.S. 597, 600 (1883); *see also Maryland v. Soper*, 270 U.S. 9, 30 (1926) (citing *Davis* for the proposition that a private individual "acting as a chauffeur and helper to [federal] officers under their orders" had "the same right to the benefit of [the removal statute]" as the officers themselves).

Today's statute extends removal rights to "any officer (or any person acting under that officer) of the United States or of any agency thereof," in any action "for or relating to any act under color" of federal office. 28 U.S.C. § 1442(a)(1). And this Court has made clear that the statute must be "liberally construed to give full effect to the purposes for which [the statute] w[as] enacted," *Colorado v. Symes*, 286 U.S. 510, 517 (1932), and that removal must not be "frustrated by a narrow, grudging interpretation." *Willingham*, 395 U.S. at 407. As a result, its protection extends to many different types of persons working for the federal government.

2. Private businesses working with the government have long relied on the federal-officer removal statute's protections in a remarkable variety of different contexts. *See generally* 14C Wright & Miller, Fed. Prac. & Proc. Juris. § 3726 (4th ed. 2022) ("[T]he statute has been applied in cases involving a wide spectrum of civil and criminal substantive contexts, and the right to remove has been invoked by a tremendous variety of federal officers and persons acting under the direction of federal officers.") (footnotes omitted).

Federal contractors of various stripes frequently remove under § 1442 when they are named in lawsuits relating to their work for the government. As this Court acknowledged in *Watson*, "lower courts have held that Government contractors fall within the terms of the federal officer removal statute, at least when the relationship between the contractor and the Government is an unusually close one involving detailed regulation, monitoring, or supervision." 551 U.S. at 153.

Military contractors in particular have invoked the federal-officer removal statute in numerous cases (for

example, asbestos and other toxic tort litigation). Such contractors include manufacturers of military hardware such as helicopters, submarines, and warships;[2] manufacturers of chemicals and chemical components of other supplies;[3] administrators of military health care programs;[4] and other providers of services to the military,[5] including banks that operate

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[2] *See Moore v. Elec. Boat Corp.*, 25 F.4th 30, 32 (1st Cir. 2022) (submarines); *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 289 (5th Cir. 2020) (en banc) (naval vessels); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 252 (4th Cir. 2017) (boilers for naval vessels); *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 809 (3d Cir. 2016) (aircraft); *Ruppel v. CBS Corp.*, 701 F.3d 1176, 1178 (7th Cir. 2012) (turbines for naval vessels); *Gordon v. Air & Liquid Sys. Corp.*, 990 F. Supp. 2d 311, 314 (E.D.N.Y. 2014) (turbines and steam generators for warships); *Malsch v. Vertex Aerospace, LLC*, 361 F. Supp. 2d 583, 584 (S.D. Miss. 2005) (helicopters); *Akin v. Big Three Indus., Inc.*, 851 F. Supp. 819, 823-24 (E.D. Tex. 1994) (jet engines); *Fung v. Abex Corp.*, 816 F. Supp. 569, 573 (N.D. Cal. 1992) (submarines).

[3] *See, e.g.*, *Maryland v. 3M Co.*, --- F.4th ----, 2025 WL 727831, at *8-9 (4th Cir. Mar. 7, 2025) (firefighting foam for the military); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 939-41, 942, 946-47 (7th Cir. 2020) (various "critical wartime commodities" during World War II, including zinc oxide and lead carbonate); *Genereux v. Am. Beryllia Corp.*, 577 F.3d 350, 353-54, 357 & n.9 (1st Cir. 2009) (beryllium oxide ceramics used in nuclear weapons, radar tubes, jet brake pads, and jet engine blades); *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 138-39 (2d Cir. 2008) (Agent Orange).

[4] *Holton v. Blue Cross & Blue Shield of S.C.*, 56 F. Supp. 2d 1347, 1350-52 & n.3 (M.D. Ala. 1999) (administrator of medical program for dependents of military personnel).

[5] *See Hagen v. Benjamin Foster Co.*, 739 F. Supp. 2d 770, 773 (E.D. Pa. 2010) (civilian contractor that employed machinist who worked on Navy vessel); *McMahon v. Presidential Airways, Inc.*, 410 F. Supp. 2d 1189, 1192 (M.D. Fla. 2006) (contractor that flew planes for Department of Defense in Afghanistan).

on military bases.[6]

Another notable category of cases concerns private businesses working with federal health care programs outside the military context. In a number of cases, courts have found private companies that contract to administer Medicare benefits to be "acting under" federal officers. *See, e.g.*, *Peterson v. Blue Cross/Blue Shield of Tex.*, 508 F.2d 55, 57 (5th Cir. 1975); *Einhorn v. CarePlus Health Plans, Inc.*, 43 F. Supp. 3d 1268, 1270 (S.D. Fla. 2014); *Freeze v. Coastal Bend Foot Specialist*, No. C-06-481, 2006 WL 3487405, at *3 (S.D. Tex. Dec. 1, 2006); *Pani v. Empire Blue Cross Blue Shield*, No. 93 Civ. 8215 (SHS), 1996 WL 734889, at *1 (S.D.N.Y. Dec. 23, 1996), *aff'd*, 152 F.3d 67 (2d Cir. 1998); *Grp. Health Inc. v. Blue Cross Ass'n*, 587 F. Supp. 887, 891 (S.D.N.Y. 1984). The same has been held of companies administering health benefits for federal employees. *See Goncalves ex rel. Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1243-51 (9th Cir. 2017); *Jacks v. Meridian Res. Co., LLC*, 701 F.3d 1224, 1232-35 (8th Cir. 2012), *abrogated in part on other grounds by BP p.l.c. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532 (2021); *Anesthesiology Assocs. of Tallahassee, Fla., P.A. v. Blue Cross Blue Shield of Fla., Inc.*, No. 03-15664, 2005 WL 6717869, at *2 (11th Cir. Mar. 18, 2005).

Other contractors have also availed themselves of the protections of the federal-officer removal statute. For example, a business hired to eliminate toxic mold from an air-traffic control tower was held to be "acting under" the Federal Aviation Administration and, on

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[6] *Texas ex rel. Falkner v. Nat'l Bank of Com. of San Antonio*, 290 F.2d 229, 231 (5th Cir. 1961); *First Nat'l Bank of Bellevue v. Bank of Bellevue*, 341 F. Supp. 960, 961-62 (D. Neb. 1972).

that basis, successfully removed a negligence lawsuit. *Bennett v. MIS Corp.*, 607 F.3d 1076, 1088, 1091 (6th Cir. 2010). Businesses relying on § 1442 have also included federal land banks operating under the Farm Credit Administration, which exist only to "further a government interest";[7] and telecommunications companies that provide information to federal law-enforcement or national-security authorities.[8]

Contractors are not always for-profit businesses: nonprofits and individuals also benefit from the protection of § 1442. For example, attorneys providing legal services to disadvantaged individuals have availed themselves of the removal statute. *See In re Commonwealth's Motion*, 790 F.3d at 462-63, 468, 472 (the Federal Community Defender Organization for the Eastern District of Pennsylvania, which provided legal services pursuant to the Criminal Justice Act, was "acting under" the Administrative Office of the U.S. Courts); *Gurda Farms, Inc. v. Monroe Cnty. Legal Assistance Corp.*, 358 F. Supp. 841, 842-47 (S.D.N.Y. 1973) (nonprofit providing legal advice to migrant workers was "acting under" the Office of Economic Opportunity); *see also Bell v. Thornburg*, 743 F.3d 84, 89 (5th Cir. 2014) (permitting "private citizen[]" serving as standing Chapter 13 trustee under the Bankruptcy Code to remove under § 1442).

3. Removal under § 1442 is important to these persons working under the federal government—individuals, nonprofits, and for-profit businesses alike.

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[7] *Mansfield v. Fed. Land Bank of Omaha*, No. 4:14-CV-3232, 2015 WL 4546610, at *5 (D. Neb. July 28, 2015).

[8] *Camacho v. Autoridad de Telefonos de Puerto Rico*, 868 F.2d 482, 486-87 (1st Cir. 1989); *In re Nat'l Sec. Agency Telecomms. Records Litig.*, 483 F. Supp. 2d 934, 943 (N.D. Cal. 2007).

That is especially so when the work is risky or politically controversial.

One prominent example, the Agent Orange litigation, *see Isaacson*, 517 F.3d at 138-39, took place against the backdrop of the government's controversial decision to use herbicides in the Vietnam War. And the conflict itself was the subject of considerable debate, to say the least. *See, e.g.*, *Vietnam Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104, 119 (2d Cir. 2008).

Similar examples abound. One involved a challenge to a controversial practice of sharing customer phone records with the National Security Agency—a case in which the United States was prepared to intervene to ensure its interests were adequately protected. *See Nat'l Sec. Agency Telecomms. Records Litig.*, 483 F. Supp. 2d at 945. In yet another case, Pennsylvania state courts sought a blanket disqualification of federally-funded lawyers from state habeas proceedings, animated by what one circuit judge concluded was "simple animosity or a difference in opinion regarding how capital cases should be litigated." *In re Commonwealth's Motion*, 790 F.3d at 486 (McKee, J., concurring). And this petition involves climate change, a topic that has become the subject of significant political disagreement. *See Nat'l Review, Inc. v. Mann*, 140 S. Ct. 344, 346 (2019) (Alito, J., dissenting from denial of certiorari) ("[T]he controversial nature of the whole subject of climate change exacerbates the risk that the jurors' determination will be colored by their preconceptions on the matter.").

In such politically charged cases, there is a significant risk that state officials will disagree with the deci-

sions of the federal government. Such political disagreements (over the War of 1812 and the federal trade embargo of England) are, in fact, what prompted Congress to enact the earliest predecessor of § 1442 in 1815. *See Willingham*, 395 U.S. at 405.

The value of the protection afforded by § 1442 to private businesses—and the drawbacks of narrowly construing the statute to preclude removal—have not escaped judicial attention. One district judge, who presided for decades over multi-district litigation concerning Agent Orange, made the following observation:

> If cases such as those in this present wave of Agent Orange claims were scattered throughout state courts, manufacturers would have to seriously consider whether they would serve as procurement agents to the federal government. Since the advent of the Agent Orange litigation in 1979, mass tort law has become more hazardous for defendants. While on balance state tort law does more good than harm, its vagaries and hazards would provide a significant deterrent to necessary military procurement.

In re "Agent Orange" Prod. Liab. Litig., 304 F. Supp. 2d 442, 451 (E.D.N.Y. 2004) (Weinstein, J.) (denying motion to remand; holding that case was removable under § 1442), *aff'd sub nom. Isaacson*, 517 F.3d at 129.

For private businesses "acting under" federal officials, the importance of a federal forum is particularly strong. Given that their activities were conducted un-

der federal supervision, they should not be the ones to bear the brunt of political disagreements over federal policy choices. And so it is hardly surprising that, as noted above, a variety of different businesses have availed themselves of removal under § 1442.

But the entrenched split on whether the federal-officer removal statute continues to require a showing of a causal nexus has left federal contractors uncertain about where they can avail themselves of removal for civil actions relating to their federal work. That uncertainty is particularly pronounced where, as here, a federal contractor's work takes place over several years and has effects that reach virtually every corner of the United States. If the contractor is ever sued over that work by a private plaintiff, it should have the same ability to access a federal court, regardless of whether suit is brought in Louisiana, Pennsylvania, Maryland, or elsewhere. *Compare* Pet. App. 19, 29 (searching for a "relevant federal directive"), *with In re Commonwealth's Motion*, 790 F.3d at 470 (federal-officer removal statute does not require plaintiff to show that "the complained-of conduct *itself* was at the behest of a federal agency"), *and Sawyer*, 860 F.3d at 258 (federal-officer removal statute does not require "a showing of a specific government direction"). This Court should grant certiorari to resolve the conflict among the circuits on the meaning of "for or relating to," and restore uniform access to federal courts for federal contractors.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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