No. 24-813

In the Supreme Court of the United States

CHEVRON USA INCORPORATED, ET AL.,
Petitioners,

v.

PLAQUEMINES PARISH, LOUISIANA, ET AL.,
Respondents.

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

BRIEF FOR THE STATE OF LOUISIANA AND THE LOUISIANA DEPARTMENT OF ENERGY AND NATURAL RESOURCES IN OPPOSITION

J. BLAKE CANFIELD
Executive Counsel
DONALD W. PRICE
Special Counsel
LOUISIANA DEPARTMENT OF ENERGY AND NATURAL RESOURCES
617 N. Third St.
Baton Rouge, LA 70802

ELIZABETH B. MURRILL
Attorney General
J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov

April 23, 2025

QUESTION PRESENTED

Whether the Fifth Circuit's fact-bound determination that Petitioners failed to satisfy the elements of the federal-officer removal statute, 28 U.S.C. § 1442(a)(1), warrants review by this Court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

BRIEF IN OPPOSITION

For some 12 years, Petitioners and other oil and gas companies have been trying to get out of Louisiana state court. They are in state court because they have been sued under Louisiana law over past "exploration and production activities"—"such as the use of dredged canals and earthen pits, the spacing of wells, and the lack of saltwater reinjection wells"—that harmed the Louisiana coast. Pet.App.21. They ostensibly fear juries composed of residents along the Louisiana coast. So, in case after case, they have ransacked the United States Code and the Constitution seeking some foothold for federal jurisdiction. "[F]ederal question, general maritime law, the Outer Continental Shelf Lands Act, and diversity jurisdiction"—nothing has worked. *Id.* at 5.

This Court saw their most recent attempt two years ago when it summarily denied a petition from many of the same Petitioners here. *See Chevron USA, Inc. v. Plaquemines Parish, La.*, No. 22-715 (U.S.). There, as here, industry complained that 28 U.S.C. § 1442(a)(1) allows them to remove on a federal-officer theory because they were aiding the United States during World War II by refining aviation fuel known as "avgas." There, as here, industry flanked their petition with amicus briefs from industry participants and retired military officials proclaiming the case's importance for both industry and national security. And there, as here, industry bemoaned the trials and tribulations of litigating in state court. All to no avail.

This year's petition is more of the same. This time, Petitioners claim to have identified a silver bullet: *contracts* with the federal government for the production

of avgas at Petitioners' refineries during World War II. Jurisdictional game over, say Petitioners. That is because one ingredient of avgas is crude oil—and these cases challenge Petitioners' exploration for, and production of, oil along the Louisiana coast. If you throw all that into the pot and stir, Petitioners conclude, this is "[a] civil action" against "any officer (or any person acting under that officer) of the United States ... for or relating to any act under color of such office[.]" 28 U.S.C. § 1442(a)(1). And voilà, this case belongs in federal court.

Petitioners lost this argument in two different district courts—and in the Fifth Circuit, too. It should meet the same fate here.

For starters, this case is profoundly uncertworthy. Petitioners portray this case as an ideal vehicle to resolve a supposed circuit split over whether § 1442(a)(1), as amended in 2011, embodies a "causal-nexus" requirement. But no such split exists. Virtually every court of appeals—including the en banc Fifth Circuit and the panel below—either outright rejects that concept or functionally does so by using "causal" language "more expansively." *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 295 n.8 (5th Cir. 2020) (en banc). Indeed, Petitioners do not identify any contrary cases. Despite pointing to the Eighth and Ninth Circuits, they admit that those courts fell in line after 2011 by "water[ing] down" their causal language. Pet.26. They accuse the Eleventh Circuit of obliquely taking a stricter view, but then they footnote earlier Eleventh Circuit authority adopting the very "connection or association" language applied by the Fifth Circuit below and others. *Id.* at 26 n.3 (citing *Caver v.*

Cent. Ala. Elec. Coop., 845 F.3d 1135 (11th Cir. 2017)); *see United States v. Files*, 63 F.4th 920, 923 (11th Cir. 2023) ("an earlier panel's holding is controlling"). That leaves two sentences baldly quoting the Second Circuit's statement that it "continues to apply the causal-nexus requirement." Pet.26 (quoting *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023)) (cleaned up). Perhaps they say no more because it is unclear what the Second Circuit actually means. Or, perhaps because Petitioner Exxon Mobil's own rejected theory of federal-officer removal in *Connecticut* itself—that its alleged misrepresentations about the effects of its own oil production (which the government supposedly directed) gave it a pass into federal court—demonstrates the absurdity of Petitioners' reimagination of the federal-officer statute. Either way, there is no circuit split, let alone one implicated by this case.

The removal issue in this case also is not exceptionally important. Even Petitioners admit that their request for review can be viewed as "idiosyncratic," Pet.34—*i.e.*, this is a fact-bound case that really only affects Petitioners themselves on unique facts. That is exactly right. Rather than present or dispute any serious issue of law, Petitioners seek to relitigate their facts hoping for a different outcome here notwithstanding a virtually uniform legal framework across the federal courts of appeals. That sort of one-off, error-correction function is not this Court's role or worth this Court's time. And Petitioners' and their amici's solemn intonations about national security and why "America needed" Petitioners during World War II (*id.*) do not change that: Simply determining whether Petitioners' harm to Louisiana must be adjudicated in state court or federal court will not end America as we

know it—just as America has not ended during the past 12 years the oil and gas industry has spent in state court.

Finally, even if the Court reached the merits, the Fifth Circuit rightly rejected Petitioners' view of the federal-officer removal statute. As everyone agrees, Petitioners are not sued over their refining of avgas—and their avgas refining contracts do not touch the production of avgas ingredients themselves. The Fifth Circuit thus correctly held that Petitioners failed to show that the charged conduct—Petitioners' exploration for, and production of, crude oil—does not "pertain" to Petitioners' contractual obligations to refine specific amounts of avgas. Otherwise, § 1442(a)(1) would establish a removal scheme with meaningless language and virtually no limits. That is not how statutory interpretation works—and, as a result, even Petitioners' merits arguments fail to justify this Court's intervention.

The petition should be denied.

STATEMENT OF THE CASE

The relevant facts are straightforward. Since 2013, a number of lawsuits against Petitioners and various other oil and gas companies have been pending in Louisiana state court. Pet.App.3. These lawsuits allege violations of Louisiana's State and Local Coastal Resources Management Act of 1978 (SLCRMA). *Id.* SLCRMA provides a cause of action against parties that fail to obtain coastal use permits, *i.e.*, permits required for activity in Louisiana's coastal zone that has a direct impact on the coast. *Id.* Although that permitting regime is retroactive, it exempts (as relevant

here) coastal uses that were "legally commenced" prior to SLCRMA's 1980 effective date. *Id.* These lawsuits allege that Petitioners *illegally* commenced "oil and gas exploration, production, and transportation operations" in Louisiana's coastal zone. *Id.* at 4. Accordingly, the lawsuits seek damages for the harm Petitioners caused to Louisiana's coastline. *Id.*

Over the past 12 years, Petitioners and others have tried and failed to remove these suits to federal court. *See id.* at 4–8. This is their latest attempt. Specifically, Petitioners claim that these lawsuits effectively challenge their production and use of crude oil "to comply with their World War II-era contracts with the government." *Id.* at 9. Those contracts required Petitioners (or their predecessors) to produce at their refineries certain amounts of avgas—of which crude oil is a component—to fuel American aircraft in World War II. *E.g.*, *id.* at 21 (describing exemplar contracts). These lawsuits do not challenge those refining activities or contracts. *See id.* ("as properly defined, the challenged conduct here pertains to [Petitioners'] exploration and production activities"). Those refining contracts also are "utterly silent" regarding where or how Petitioners would obtain the crude oil necessary to create avgas. *Id.* at 93. Indeed, they "did not direct, require, or even suggest that [Petitioners] produce [their] own crude in order to meet [their] contractual obligations." *Id.*

Nonetheless, Petitioners insist that the federal-officer removal statute gives them a lifeline to federal court via these refining contracts. *See* 28 U.S.C. 1442(a)(1) ("A civil action ... that is commenced in a State court and that is against" "any person acting under [a United States] officer ... for or relating to any

act under color of such office" "may be removed ...."). By their telling, they were acting under a federal officer in complying with their refining obligations (which are not challenged here)—and their exploration and production activities (which are challenged here) "relate to" their acting-under conduct.

Two separate federal district courts rejected that argument, reasoning that "the relevant refinery contracts lacked any connection to the oil production activities at issue" in these lawsuits. Pet.App.10; *accord id.* ("the oil production activities at issue in the lawsuit were not related to any refinery activities taken pursuant to Shell's federal contracts").

In the decision below, the Fifth Circuit affirmed. Relying on its recent en banc decision in *Latiolais*, the Fifth Circuit explained that, in 2011, "Congress broadened the scope of actions removable under § 1442(a)(1) given that the ordinary meaning of the phrase 'relating to' is 'a broad one' that normally means 'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" *Id.* at 18 (quoting *Latiolais*, 951 F.3d at 292). But Petitioners failed to meet that standard, the Fifth Circuit continued, because no such relationship exists between "the conduct challenged in [the] complaints and the relevant federal directives in [Petitioners'] refinery contracts." *Id.* at 19. Indeed, "[t]he lack of *any* contractual provision pertaining to oil production" is fatal, particularly since Petitioners had no "control over where their crude oil was refined" and had unbridled discretion to obtain oil however they wished. *Id.* at 30. Accordingly, the Fifth Circuit affirmed the dis-

trict courts' remand orders over Judge Oldham's dissent. The Fifth Circuit also declined to rehear the case en banc, with Judges Smith, Haynes, Ho, and Douglas not participating. *Id.* at 65.

REASONS FOR DENYING THE PETITION

The Court should deny the petition. It has none of the hallmarks of a certworthy case, not least because there is no circuit split and no serious claim of nationwide importance. Moreover, even on the merits, Petitioners have no serious argument that the Fifth Circuit erred—they just disagree with the outcome of subjecting their facts to a widely accepted legal framework. This is not the stuff of certiorari, and thus, the Court should deny the petition.

I. THIS CASE DOES NOT MEET THE COURT'S CERTIORARI CRITERIA.

A. There Is No Circuit Split.

Petitioners claim that there is a circuit split over whether § 1442(a)(1), as amended in 2011, embodies a "causal-nexus" requirement. No. For starters, that claim is deceptively oversimplified because Petitioners never specify what they mean by "causal nexus"—and, as Petitioners admit (Pet.26), courts use causal language differently. In fact, even Petitioners advocated for a causal-nexus requirement below—they just called it a "but-for test." CA5 Oral Arg. Audio at 39:04–50. That explains Petitioners' wildly overstated claims of an "entrenched circuit split." Pet.24. The circuits are not split—virtually all courts, including the Fifth Circuit below, agree that a strict form of whatever Petitioners view as a "causal-nexus requirement" is not

the law. Indeed, that is why Petitioners retreat to claiming that, in rejecting Petitioners' arguments, the Fifth Circuit backslid into "a category of its own." *Id.* at 27. That is just another way of saying Petitioners' dispute boils down to a fact-bound disagreement with how the governing law applies here. There is no circuit split warranting this Court's review.

1. Start with the common ground. Virtually every court of appeals—including the en banc Fifth Circuit and the panel below—either outright rejects the concept of a "causal-nexus requirement" or functionally does so by using "causal" language "more expansively." *Latiolais*, 951 F.3d at 295 n.8; *see* Pet.24 (admitting that "[a]t least six" circuits do so).

In the opinion below, the Fifth Circuit—citing its own en banc precedent in *Latiolais*—reaffirmed this position. It explained that "Congress broadened the scope of actions removable under § 1442(a)(1) given that the ordinary meaning of the phrase 'relating to' is 'a broad one' that normally means 'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" Pet.App.18 (quoting *Latiolais*, 951 F.3d at 292). For that reason, the Fifth Circuit's decision in *Latiolais* amended that court's approach "by abandoning the 'causal nexus' test and replacing it with the 'connected or associated with' test, which requires a defendant to show that 'the charged conduct is connected or associated with an act pursuant to a federal officer's directions.'" *Id.* (quoting *Latiolais*, 951 F.3d at 296). That new test appropriately "demonstrates the expanded scope" of § 1442(a)(1). *Id.* And that is the test the panel below applied in rejecting Petitioners' arguments.

If that description of the law sounds familiar, that is because it is precisely Petitioners' view of the law. They repeat that "[t]he ordinary meaning of the words 'relating to' is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" Pet.16 (ultimately quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)). Everyone agrees there. They proclaim that Congress "significantly broadened the scope of federal-officer removal." Pet.16. Again, everyone agrees there. And they urge that "it is enough that acts taken under color of federal office are 'connected or associated' with the conduct at issue in the case." *Id.* (citation omitted). Yes, consistent with this Court's decision in *Morales*, that is the Fifth Circuit's test and that of numerous other circuits.

2. So, where is the supposed circuit split? Petitioners struggle to say. They point to the Eleventh Circuit as "recently and repeatedly reaffirm[ing] its longstanding view that a defendant seeking federal-officer removal must establish a causal connection between the charged conduct and asserted official authority." Pet.26 (quoting *Georgia v. Meadows*, 88 F.4th 1331 (11th Cir. 2023)) (cleaned up). But the mere reference to "a causal connection" is not fatal because *even Petitioners* prefer a "but-for test." CA5 Oral Arg. Audio at 39:04–50. And more fundamentally, Petitioners footnote (Pet.26 n.3) earlier Eleventh Circuit precedent that post-dates Congress's 2011 amendment to § 1442(a)(1) and embraces the Fifth Circuit's (and other circuits') own understanding. Specifically, the Eleventh Circuit unequivocally holds that "[t]he phrase 'relating to' is broad and requires only 'a connection or association between the act in question and

the federal office.'" *Caver*, 845 F.3d at 1144 (internal quotation marks omitted). That understanding directly tracks the Fifth Circuit's decision in *Latiolais* and the opinion below—and, as the earlier precedent among others in the Eleventh Circuit, it is controlling, *see Files*, 63 F.4th at 923.

Petitioners also accuse the Eighth and Ninth Circuits of "[a]dding to the confusion" by "continu[ing] to use the phrase 'causal nexus.'" Pet.26. But they then give the game away by acknowledging that those courts "appear to have watered down their respective tests in light of Congress' 2011 amendment to § 1442(a)(1)." *Id.* And that understates the reality: Consistent with the Eleventh Circuit in *Caver* and the Fifth Circuit in *Latiolais*, the Ninth Circuit "read[s] [its] 'causal nexus' test as incorporating the 'connected or associated with' standard reflected in Congress's 2011 amendment and the Supreme Court's decisions." *DeFiore v. SOC LLC*, 85 F.4th 546, 557 n.6 (9th Cir. 2023). That is exactly the test Petitioners embrace here and that the Fifth Circuit and others have embraced. For its part, moreover, the Eighth Circuit directly invoked the Eleventh Circuit's decision in *Carver* to explain that, by "causal connection," the Eighth Circuit means a "lower, post-amendment standard" that "is identical to the 'relates to' standard described by the other circuits." *Minnesota v. Am. Petroleum Inst.*, 63 F.4th 703, 715 (8th Cir. 2023). Again, there is no split.

All Petitioners have left, therefore, are two unelaborated sentences quoting (Pet.25–26) the Second Circuit's statement that it "continues to apply the causal nexus requirement," *Connecticut*, 83 F.4th at 145 n.7

(cleaned up). Why do Petitioners say nothing more? Perhaps that is because it is unclear what the Second Circuit means by "the causal nexus requirement." Indeed, in the same footnote, the Second Circuit appears to understand any such requirement to be *consistent with* Congress's 2011 amendment. *See id.* (stating that the requirement was not "abrogated" by the 2011 amendment). And if, by that language, the Second Circuit means causation in the sense suggested by the Fifth, Eighth, and Ninth Circuits (among others), then that underscores the absence of any split.

But perhaps a more fundamental reason why Petitioners say no more about *Connecticut* is that *Connecticut* represents a sweeping body of case law that has uniformly *rejected* Petitioners' baseless, expansive view of § 1442(a)(1). *See Connecticut*, 83 F.4th at 143 (citing *Rhode Island v. Shell Oil Prod. Co.*, 35 F.4th 44 (1st Cir. 2022); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022); *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022); *County of San Mateo v. Chevron Corp.*, 32 F.4th 733 (9th Cir. 2022); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.), Inc.*, 25 F.4th 1238 (10th Cir. 2022)). *Connecticut* itself is illustrative. There, Connecticut claimed that Petitioner Exxon Mobil violated Connecticut law by "engag[ing] in a decades-long 'campaign of deception' to knowingly mislead and deceive Connecticut consumers about the negative climatological effects of the fossil fuels that Exxon Mobil was marketing to those consumers." 83 F.4th at 129. In response, Exxon Mobil tried to remove on federal-officer grounds, claiming (similar to here) that (a) under the United States's supervision and direction, it aided the United States by "providing fossil fuels that

support the national defense," and (b) Exxon Mobil's alleged campaign of deception "related to" those acts taken under color of office. *Id.* at 144–45. The Second Circuit easily rejected that "related to" argument: "[T]his case presents a total mismatch between the business practices that Exxon Mobil asserts were subject to federal control and supervision (its actual production of fossil fuels) and the business practices of which Connecticut complains (its marketing and public-relations campaigns to assuage consumers' fears about the environmental impacts of those fossil fuels)." *Id.* at 145.

That is the sort of absurdity that every federal court of appeals has rejected when Petitioners and their associates have tried to renovate § 1442(a)(1). Far from an "entrenched split" (Pet.30), therefore, the circuits largely agree on § 1442(a)(1) and emphatically disagree with Petitioners' attempts to remake § 1442(a)(1).

3. In the end, Petitioners' "circuit split" argument boils down to a claim that the decision below places the Fifth Circuit "in a category of its own," Pet.27—*i.e.*, Petitioners are unhappy with how the widely accepted legal framework played out for Petitioners in this case itself. Specifically, they claim that the Fifth Circuit—in applying the very test Petitioners advance and numerous courts have adopted—has now backslid "by adopting a particularly demanding sub-variant of the discarded causal-nexus text."[1] *Id.* And they claim

[1] Petitioners make a point of emphasizing that "the author of the en banc *Latiolais* opinion"—that is, Judge Jones—"join[ed] the en banc dissenters." Pet.27. Just as Members of this Court often vote to grant certiorari while ultimately voting to affirm,

that the decision below "cannot be reconciled with decisions from other circuits rejecting the causal-nexus test and faithfully applying the statutory text to allow for removal in the absence of any contractual direction." *Id.* at 27–28.

Petitioner's best case for this supposed conflict is a Third Circuit decision, *In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 466 (3d Cir. 2015) (cited at Pet.28). And it does not come close to helping them. The claim in *In re Commonwealth's Motion* was that *federal* public defenders exceeded their permissible scope of employment by enrolling in *state*-court post-conviction proceedings filed by their federal-habeas clients. *Id.* at 461. As the Third Circuit explained, this was an easy case for removal because "the acts complained of undoubtedly 'relate to' acts taken under color of federal office." *Id.* at 472. Most important, the public defenders' "employment with the Federal Community Defender is *the very basis* of the Commonwealth's decision to wage these disqualification proceedings against them." *Id.* (emphasis added). Put otherwise, "[t]he Commonwealth has filed these motions to litigate whether the Federal Community Defender is violating the federal authority granted to it"—*i.e.*, whether, by participating in state-court proceedings under color of federal office, the public defenders were exceeding their authority. *Id.* And "[a]s the Supreme Court has noted, whether a federal officer defendant

---

Petitioners have no way of knowing how Judge Jones would have voted on the merits. And what of the five judges who *joined Latiolais* and voted *against* rehearing here? Pet.App.65 (Elrod, C.J., and Stewart, Southwick, Graves, Higginson, JJ.).

has completely stepped outside the boundaries of its office is for a federal court, not a state court, to answer." *Id.*

On top of that, the Third Circuit emphasized that the public defenders' state-side representation of their clients "is closely related to [their] duty to provide effective federal habeas representation." *Id.* For, if their clients fail to preserve arguments and comply with state-court rules, that failure can have an "impact ... on a subsequent federal habeas petition" litigated by the public defenders. *Id.* And the Third Circuit reasoned that "[t]his impact is significant enough to convince us that the Federal Community Defender's actions in [state-court] litigation 'relate to' its federal duties for purposes of removal jurisdiction." *Id.*

In re Commonwealth's Motion was thus one of the easiest "related to" cases: The allegation was that the public defenders' federal scope of employment did not extend to representing federal clients in state court as well—and thus, the question was whether, by stepping into state court, a federal public defender exceeded her authority. The charged conduct—the act of stepping into state court to represent clients—was inextricably bound up in the nature of the public defender's "acts taken under color of federal office." *Id.* For the legality of that charged conduct could not be adjudicated without first identifying the scope of permissible acts in which the defender may engage.

That is nothing like this case—and it is unclear how Petitioners think otherwise. They insist that "the Third Circuit refused to treat the lack of any explicit federal direction to appear in state-court proceedings as dispositive" and that "no federal directive required

the public defender to appear in state post-conviction proceedings on behalf of its clients." Pet.28 (cleaned up). But the Fifth Circuit here did not require that Petitioners be subject to a "federal directive" to explore for, and produce, oil (*i.e.*, the charged conduct). The relevant "challenged conduct," the Fifth Circuit said, is Petitioners' "exploration and production activities," Pet.App.21; "the relevant federal directives" are those in Petitioners' "federal refining contracts." *Id.* at 21, 26. The central removal question was "whether the relationship between the two is sufficient for purposes of the 'connected or associated with' element of the federal officer removal test." Pet.App.26. And the Fifth Circuit specifically *rejected* the idea that Petitioners were required to show "a federal officer directed the specific oil production activities being challenged." *Id.* at 29. Petitioners' problem was simply that they could not show that their exploration and production activities "had a sufficient connection with directives in their federal refinery contracts," which said nothing about Petitioners' exploration and production. *Id.*

Petitioners' invocation (Pet.29) of *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249 (4th Cir. 2017), is even more puzzling. The claim in *Sawyer* was that a government contractor negligently failed to warn its employees about asbestos included in ship boilers. Key in that case were four facts: "the Navy was aware of the dangers of asbestos; [] it required the use of asbestos in boilers for which it contracted with [the contractor] to manufacture; [] it provided for a comprehensive set of warnings, but not all possible warnings; and [] [the contractor] complied with the Navy's requirements." *Id.* at 258. The Fourth Circuit thus had no difficulty concluding that the contractor's "alleged failure to give

[asbestos] warnings ... [was] clearly related to [its] performance of its contract with the Navy." *Id.* After all, "the Navy dictated the content of [the] warnings"—but not an asbestos warning—and the contractor "complied with the Navy's requirements." *Id.*

Here, too, it is difficult to see why Petitioners rely on *Sawyer*. They make much of the fact that the *Sawyer* court "allowed removal even though 'no federal officer provided any direction regarding whether to warn [the contractor's] workers in the shipyard's boiler shop about asbestos." Pet.29 (quoting *Sawyer*, 860 F.3d at 258). But that was because the actual federal-officer directive—build ship boilers with asbestos and specific warnings—was undisputed. The only remaining question was whether the plaintiff's allegation that the government contractor was negligent in not *departing from the Navy's specifications* by adding an asbestos warning itself "related to" that directive. Of course it did. Indeed, the panel below—hearkening back to *Latiolais*' similar facts—reiterated this point. *See* Pet.App.19 ("Latiolais's negligence claims were 'connected with' Avondale's 'installation of asbestos pursuant to directions of the U.S. Navy.'"). No such relationship exists here because of the total mismatch between the relevant federal directive (refine certain amounts of avgas) and the relevant charged conduct (Petitioners' oil exploration and production activities).

* * *

At bottom, Petitioners' claims of a circuit split are wildly wrong. Petitioners are just unhappy that a legal framework widely accepted across the country does not play out their favor in this case. That fact-bound, case-specific beef does not warrant this Court's review.

B. The Case Is Not Exceptionally Important.

This case also presents no profound issue of importance. Even Petitioners cannot help but acknowledge that this case (at least plausibly) is "idiosyncratic" given its unique focus on certain oil and gas exploration and production in years past. Pet.34. True. That is why Petitioners' lead "importance" argument is "this really matters to us." *See id.* at 32 (claiming "dire consequences facing petitioners in this case"). But every case that comes to this Court is important to the petitioning party—and that alone is not sufficient to justify certiorari. Petitioners are no exception.

Recognizing as much, Petitioners pivot, pointing to "the baleful implications of the decision below for federal contractors and the federal government." *Id.* By their (and their amici's) telling, "the uncertainty created by the panel majority's imposition of a causal-nexus requirement will inevitably have a chilling effect on the acceptance of government contracts." *Id.* (cleaned up). They and their amici also gravely warn that "the decision below will cause the private sector to think twice ... before supporting defense priorities in an hour of national need." *Id.* at 33.

With all due respect, this is pure lawyer-speak—the same lawyer-speak this Court read two years ago—devoid of any basis in reality. *See* Pet. for Writ of Cert. 31, *Chevron*, No. 22-715 (proclaiming that, "at the very moment when the government most needs swift and unqualified assistance from key industries to enable it to surmount a national emergency, its ability to direct and command those industries for the good of the Nation will be hamstrung"). (Petitioners may retort that they have retired Joint Chiefs-speak,

too, not just lawyer-speak. If so, read that brief (at 13–14)—with great respect for the former Chiefs' service, they do not offer a single factual citation to support their position that the decision below "may deter private parties from answering the call to help when needed most.")

The reality is that Petitioners and their associates have been in state court for over a decade in these cases. They have repeatedly tried and failed to remove these cases to federal court—just as they have tried and failed in over a half dozen other circuits to remove other cases, insisting that they "contribute[] significantly to the United States military by providing fossil fuels that support the national defense," *Connecticut*, 83 F.4th at 144; *see supra* Section I.A(2). That all Petitioners can muster 12 years later are citation-less worries about chilling contracts and undermining national security thus speaks volumes. If their worries were well-founded, they would tell the Court how, in fact, they now "demand some combination of extensive directions or expensive indemnification provisions" before contracting with the government, or how, in fact, they have been "chill[ed]" from entering into governmental contracts—simply because they have been exposed to liability in state court for over a decade. Pet.33. Instead, all they offer is hollow rhetoric.

The reality, moreover, is that, even if the Fifth Circuit below somehow returned to a stricter, pre-2011 removal regime, Petitioners' worries—if they existed at all—would be in the historical record. For that regime existed for decades after World War II and, according to Petitioners, continues to exist in half the country today. *But see supra* Section I.A(2) (explaining

Petitioners' errors). Yet the sky has not fallen for the oil and gas industry or for America's national security. That historical silence—and Petitioners' empty rhetoric today—underscore that this case does not come close to reflecting the sort of nationwide importance that requires time on this Court's docket.

II. The Fifth Circuit's Decision Is Correct.

The foregoing discussion demonstrates that Petitioners' failure to satisfy the certiorari criteria alone warrants the denial of the petition. But, even if the Court were to peek at the merits, that would confirm that denial is the proper route here. Specifically, Petitioners identify only two supposed errors in the Fifth Circuit's analysis, neither availing.

First, Petitioners claim that the Fifth Circuit "ask[ed] the wrong question" by inquiring "whether the challenged practices were 'connected or associated with' a specific directive in petitioners' federal contracts." Pet.21. "Instead," Petitioners say, the Fifth Circuit should have "assess[ed] whether petitioners' challenged oil-production practices were 'connected or associated' with petitioners' fulfillment of their federal contracts." *Id.*

It is difficult to see the daylight Petitioners apparently perceive between those two carefully wordsmithed lines, but it is not difficult to see that the Fifth Circuit below did not err. The federal-officer removal statute permits the removal of (a) "[a] civil action" commenced against (b) "any person acting under [a United States] officer" (c) "for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). That statute does not fit here for the obvious reason that

this lawsuit was filed against Petitioners—based on their exploration and production activities—who avowedly were *not* acting under a United States officer in exploring for, and producing, crude oil, since Petitioners' refining contracts are "utterly silent" on how Petitioners were to "gather[] the required component parts of avgas." Pet.App.51; *see* CA5 Oral Arg. Audio at 10:35–48 (Petitioner's counsel: "You look at the federally compelled activity under the contract, which I'll admit here is refining, and not production directly.").

For that reason, Petitioners rejigger the facts and the law to (a) reframe this lawsuit as one against them in their capacities as refining-contract parties (even though the lawsuit does not challenge refining activities), and then (b) ask whether the charged conduct—the exploration and production activities—"relates to" Petitioners' actions taken under the refining contracts. In this Court's words, do Petitioners' exploration and production activities "pertain" to their contractual obligation to refine specific amounts of avgas for the federal government? *Morales*, 504 U.S. at 383. The Fifth Circuit said no "given the lack of any reference ... pertaining to crude oil production in [Petitioners'] federal [refining] contracts." Pet.App.33; *see id.* at 31 ("the federal contracts here did not address crude oil production at all"); *id.* at 30 (emphasizing "[t]he lack of *any* contractual provision pertaining to oil production"). And that was the right result, for charged conduct, by definition, does not "pertain" to a contract that literally says nothing substantive about it.

If the rule were otherwise (as Petitioners urge), that would render meaningless the "for or relating to"

language in § 1442(a)(1) because virtually every remote and tenuous activity could be deemed related to a government contract. Below, Petitioners asserted that the independent requirement that they identify a "colorable federal defense" would "have a narrowing effect and weed out cases that would otherwise pass their near limitless interpretation of the 'connected or associated with' element." Pet.App.33. But, if that were the only limit on Petitioners' "related to" theory, then the "for or related to" language would do no work in the statute—the "colorable federal defense" requirement would be the only operative element. *See id.* at 34 (Petitioners "would read out of the statute the requirement that only civil actions 'for or relating to' acts taken under color of federal office are removable."). That violates Statutory Interpretation 101. *See, e.g.*, *Williams v. Taylor*, 529 U.S. 362, 404 (2000) ("It is ... a cardinal principle of statutory construction that we must give effect, if possible, to every clause and word of a statute." (cleaned up)).

And all this makes sense when turning back to the plain text of § 1442(a)(1). The heartland case for removal under that statute is one (unlike here) in which a defendant is sued regarding actions taken under the color of federal office. *See* § 1442(a)(1) ("[a] civil action ... that is commenced ... against ... any person acting under [a United States] officer). That case is removable whether the defendant is literally sued "for" such acts or for conduct "related to" such acts. *Id.* Either way, the universe of conduct that properly may be the basis for removal under § 1442(a)(1) is necessarily circumscribed by the nature of the defendant's acts under color of federal office. For that reason, the Fifth Circuit properly required Petitioners to "show [that

their oil and gas exploration and production] activities had a sufficient connection with directives in their federal refinery contracts," which established the outer boundaries of Petitioners' acts under color of federal office. Pet.App.29. They simply failed to do so.

Second, Petitioners briefly assert that the Fifth Circuit independently erred by considering only "the express language of the federal contracts themselves and declining to consider the broader regulatory background." Pet.22. This argument is just wrong. The Fifth Circuit *did* consider the regulatory background: It said that, "even if we considered [Petitioners'] extra-contractual sources, [Petitioners] are unable to connect the government's minimal regulation of crude oil production during World War II to their federal contracts for increased quantities of refined avgas." Pet.App.25. And the Fifth Circuit added a lengthy footnote reiterating that Petitioners' regulatory-background argument was a non-starter. *See id.* n.67. Petitioners do not acknowledge that independent, alternative holding, much less challenge it.

In sum, even on the merits, Petitioners have identified no error below that warrants this Court's review.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

J. BLAKE CANFIELD
Executive Counsel
DONALD W. PRICE
Special Counsel
LOUISIANA DEPARTMENT OF ENERGY AND NATURAL RESOURCES
617 N. Third St.
Baton Rouge, LA 70802

ELIZABETH B. MURRILL
Attorney General
J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov

April 23, 2025