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 A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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INTRODUCTION

Beginning in November, 2013, six Louisiana coastal parishes filed forty-two lawsuits seeking damages and other relief for violations of Louisiana's State and Local Coastal Resources Management Act of 1978, La. R.S. 49:214.21 *et seq* ("SLCRMA"). The SLCRMA mandated the development of a permitting program to regulate certain "uses" of Louisiana's coastal zone. The program went into effect on September 20, 1980. Each complaint in the forty-two lawsuits addresses the SLCRMA violations occurring on or after September 20, 1980 in a case-specific, geographically defined "operational area" of the coastal zone.

All forty-two lawsuits were initially removed on grounds of federal question, maritime, and diversity jurisdiction, and remanded in due course over the following five years. Just thirteen days after the last of the forty-two cases was remanded, all forty-two lawsuits were again removed on grounds of federal officer jurisdiction based on allegations of federal control of WWII crude oil production.[1] But petitioners' WWII crude production activities are not actionable under the SLCRMA, which was enacted thirty-three years after V-J Day. Rather, such activities are relevant only to the SLCRMA's "grandfather clause" exemption, which exempts from permitting requirements any "specific [coastal] uses legally commenced or established prior to the effective date of the coastal use permit program."[2]

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1. Also, federal question jurisdiction was urged again and rejected in the second round of removals. *Par. of Plaquemines v. Chevron USA, Inc.*, 7 F.4th 362 (5th Cir. 2021). This finding is not challenged here.

2. Quoting 43 La. Admin. Code Pt I, 701(J); see also La. R.S. 49:214.34(C)(2).

After the second round of removals, the Louisiana Eastern and Western Districts each designated a lead case and stayed their remaining cases based on defendants' assurances that the lead cases would "resolve jurisdictional issues that cut across all of the removed SLCRMA cases."[3] In *Plaquemines II*, a ruling issued over *five* years after the second round of removal notices, the Fifth Circuit found no federal officer jurisdiction in both lead cases.[4] This Court denied certiorari (143 S.Ct. 991), and the two lead cases were remanded.

Then, contrary to their previous assurances, defendants in eleven of the forty remaining cases urged an entirely new federal officer theory based on their WWII government refinery contracts (hereinafter the "refinery theory"), alleging that their refinery contracts were "related to" their production of crude because they refined *some* of the crude produced from the case-specific operational area defined in each of the eleven cases. The crude produced from the operational areas defined in the remaining twenty-nine cases was also refined by government-contracted refineries, but petitioners' newfound "refinery theory" did not fit the facts of these cases because it requires at least one defendant in each case to have coincidentally refined avgas using some of the crude produced from the case-specific "operational area." Stated differently, the crude produced from the "operational areas" defined in twenty-nine cases was refined by government-contracted refineries that were not coincidentally owned by at least one defendant in the case.

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3. *Plaquemines Par. v. Chevron USA*, 84 F.4th 362, 368 (5th Cir. 2023), quoting *Northcoast*, App.76.

4. *Plaquemines II*, 22-30055, 2022 WL 9914869 (5th Cir. Oct.17, 2022), *cert. denied* 143 S.Ct. 991.

In *Plaquemines II*, the Fifth Circuit found no federal officer jurisdiction even though Humble Oil's crude produced from the case-specific operational area was refined *by one of its corporate affiliates*.[5] Yet, in the eleven "refinery theory" cases, defendants insisted *Plaquemines II* is distinguishable based solely on the coincidental fact that some of the crude produced from the "operational areas" in those eleven cases was refined by the identical "vertically integrated" corporate entity that produced it. Such a coincidence, however, was merely reflective of the government's WWII crude allocation program.

Petitioners concede that the government regulated, but did not control, WWII crude production. No one acted under a federal officer in producing WWII crude. Petitioners also concede that ***after*** WWII crude was produced in the field, it was transported to refineries based on a government program that allocated crude to government-contracted refineries that produced critical war products like avgas. Importantly, petitioners do not contest the fact that under this program, the corporate identity of the crude producer (including its level of "vertical integration") had nothing whatsoever to do with where the crude was shipped or refined.

Practically all of the forty-two Louisiana coastal cases involve at least one "vertically integrated" defendant that operated a government-contracted avgas refinery. Yet, only the eleven "refinery theory" cases involve a corporate entity that refined the crude it produced from the case-specific operational area. But in these eleven cases, the refiner-defendants also refined massive amounts of crude they ***did not*** produce. While obviously it takes

5. *Id.*

more crude to produce more avgas (a tautological fact petitioners implausibly suggest is jurisdictionally outcome determinative), the same could be said of the "vertically integrated" government-contracted defendants in the remaining thirty-one coastal cases (including the two remanded in *Plaquemines II*) who did not refine the crude they produced from case-specific operational areas. In fact, as noted in the Fifth Circuit's majority opinion, Shell (a "refiner" defendant in the Cameron Parish case *sub judice*) did not refine the crude it produced in the operational areas defined in *nine of thirteen cases* in which it was sued.[6] In a word, petitioners' newfound "refinery theory" is based entirely on happenstance.

Accordingly, the Fifth Circuit's majority concluded, and the record confirms, that the production of crude oil used to refine avgas was entirely unrelated to the directives in WWII government refinery contracts. It should thus come as no surprise that these refinery contracts say nothing about how crude should be produced, or from whom it should be obtained. Quoting Judge Oldham's dissent, petitioners nonetheless argue that "'it is unclear how [petitioners] could have met their contractual obligations' *without* using the crude-oil production practices that respondents now claim were unlawful. App. 46." To the contrary, it could not be more clear, as Shell's refineries managed to meet their contractual obligations without refining the crude Shell produced in nine of the thirteen "operational areas" in which it produced WWII crude. In fact, the contractual obligations of all of the "vertically integrated" refiner-defendants in fully thirty-one of the forty-two Louisiana coastal cases (which include the petitioners) met their contractual obligations

6. App.38,fn.92.

without refining crude they produced from case-specific operational areas. The implausible logic of Judge Oldham's dissent presumes that Shell's decision during WWII to increase its crude production to meet the government's demand for avgas was focused on the four "operational areas" that were not defined or identified until three-quarters of a century later when Shell was sued in thirteen coastal lawsuits. Petitioners are not being sued by local governments "for actions undertaken to fulfill government contracts." Pet.2. The word "refinery" cannot be found in any complaint. During WWII, the government contracted for refined products, not crude oil. Judge Oldham's dissent opines, without a shred of supporting evidence, that "defendants here decided to increase production to meet their demand for the final [avgas] product." Petitioners' briefing points to no WWII era document that evidences any such corporate decision.

Neither Shell nor any other "vertically integrated" refiner had to produce its own crude to satisfy its WWII avgas contracts. Petitioners' crude oil "extraction efforts" were not "indispensable" to the fulfillment of their refinery contracts because the war triggered market demands for crude oil that were virtually unlimited, and the industry did not have to be pressured, directed, ordered, controlled, or cajoled to meet those demands.[7]

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7. ROA.23-30422.506 ("No Government agency had to compel [the oil industry] to do the job."); ROA.23-30422.28883 ("production of oil in [Louisiana] reached an all time high"); ROA.23-30422.46907 (Davies: "The war caused a heavy drain on the oil fields of this country."); see abundant evidence of practicing historians and government officials, ROA.23-30422.13843-14422. Shell's company magazine proclaimed: "Facing the demands of national defense, the petroleum industry merely asks how much of a product is needed, when and where. Its enormous capacity for performance

WWII crude was purchased on the open market by refineries from crude producers and from each other.[8] No government controls of crude production were required to ensure that refineries had access to the crude they needed. In fact, to the extent the federal government "minimally" regulated WWII crude production, the focus of these regulations was the conservation of crude oil reservoirs, not increased production.[9] During WWII,

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will not be exerted to the full under any conditions that can possibly arise."ROA.23-30422.14486.

8. ROA.23-30422.32255-32258 (SOLA refined crude from fifteen different producers); ROA.23-30422.31218-31239 (Pan American refinery purchased crude from dozens of producers); ROA.23-30422.28825-28826, ¶¶ 5(5)-5(6) (PAW directed crude to refineries without regard to refiner/producer affiliation); ROA.23-30422.31351,31377-31380, ¶¶ 8(E), 80-83 (integrated oil companies routinely bought and sold crude amongst themselves); ROA.23-30422.45069-72 (large quantities of crude purchased from non-owned producers); ROA.23-30422.28915 (Humble's Potash crude sent to competitors and affiliates); ROA.23-30422.28866, 28915 (Stanolind sent crude to various refiners); ROA.23-30422.7906-7 (Amerada crude sent to non-owned refineries).

9. The majority accurately characterizes federal WWII crude regulations as "minimal." App.25. The government set crude production rates that were conservation measures known as "allowables." These allowables were designed to limit production to avoid damage to oil reservoirs. Crude producers faced consequences only for producing more than their allowables, not less. The PAW set "maximum efficient rates" of production on a state-by-state basis, and allowed each state the discretion to allocate their total production under state conservation laws. No company was ever ordered to produce more crude at an "overly high" rate. See evidence cited at Fifth Cir. Docket 23-30422.Doc.84-1,ECFpp.53-54. PAW's Production Director explained that PAW "was faced with trying to supply an adequate quantity of crude oil over an indefinite period of time. No one knew when the war would end. Therefore, plans had to be made for a long war. It would have been careless to plan operations to produce at excessive rates in the early part of the war, to find later

the primary regulation of crude production was left to the states.[10]

The Louisiana coastal litigation has now been pending for almost twelve years. Subsequent to the Fifth Circuit's ruling in *Plaquemines II*, stay orders in *all* of the twenty-eight remaining Eastern District cases remained in effect until the Fifth Circuit lifted the stay in *Plaquemines Par. v. Exchange Oil & Gas Corp.*, 2023 WL 3001417 (E.D. La. Apr. 19, 2023), *vacating stay sub nom. Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362 (5th Cir. 2023). There, the Fifth Circuit found that Chevron could not show a "probability of success" in pursuing its "refinery argument" on appeal, noting that four district courts had concluded that WWII crude production and refinery activities "were not *in fact* related." *Id.* at 374. It detailed the extensive history of the Louisiana coastal cases, highlighting the district court's stinging remarks at oral argument after the Fifth Circuit's remand of *Plaquemines I*:

> Judge Feldman agreed with Plaquemines Parish at oral argument that it was "bordering on absurd" that jurisdictional litigation had delayed these cases for so long. He then added, "*Frankly, I think it's kind of shameful.*" That very same day, he reaffirmed his previous remand order, finding "[f]or a third time," that "these cases" do not "belong in federal court." See *Riverwood II*, 2022 WL 101401, at *1, *10.[11]

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that through excessive decline the capacity was insufficient to carry on." ROA.23-30422.21030.

10. *Id.*

11. *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 368 (5th Cir. 2023)(emphasis added).

These cases have never belonged in federal court. Petitioners' reliance on the one vote margin in the Fifth Circuit's polling on the motion for *en banc* rehearing is unavailing. When petitioners filed for rehearing, there were seventeen judges in active service on the Court, none of whom were disqualified. Only six voted for *en banc* rehearing.[12]

STATEMENT OF THE CASE

A. Legal Background

(1) State Law: In 1972, Congress enacted the Coastal Zone Management Act ("CZMA") "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations."[13] The CZMA "sought to entice coastal states to use their traditional authority over land use to further the national interest in comprehensive coastal management."[14] The intent of the CZMA "was to enhance state authority by encouraging and assisting the states to assume planning and regulatory powers over their coastal zones."[15] The CZMA allows states with

12. As shown at pp.29-30, *infra*, the majority's finding that the "acting under" element was satisfied is arguably inconsistent with the Fifth Circuit panel decision in *St. Charles II,* 990 F.3d 447, 455. Two of the judges who voted for rehearing here were on the *St. Charles II* panel, which may explain two votes for rehearing untethered to the "relating to" element.

13. 16 U.S.C. §1452(1).

14. Ann E. Carlson, Andrew Mayer, *Reverse Preemption*, 40 Ecology L.Q. 583, 596 (2013).

15. S. Rep. No.92-753, at 1 (1972), reprinted in 1972 U.S.C.C.A.N. 4776.

approved coastal management programs a large measure of control over federal land use, and over private land use subject to federal permitting.[16] The Louisiana legislature enacted the SLCRMA in 1978. After adoption of the SLCRMA implementing regulations in 1980,[17] NOAA approved Louisiana's coastal management program, which includes the SLCRMA and its regulations. The permitting program became effective on September 20, 1980.

The program requires that coastal use permits ("CUPs") be issued for certain non-exempt "uses" of the coastal zone, which presently includes all or part of twenty parishes. A "use" is defined as "any use or activity within the coastal zone which has a direct and significant impact on coastal waters." La. R.S. 49:214.23(13). "Uses" are divided into "uses of local concern" and "uses of state concern." La. R.S. 49:214.25(1), (2). Oil and gas "uses" are "uses of state concern." *Id.*

The SLCRMA's enforcement provision (La. R.S. 49:214.36(D)) provides that the "secretary [of the Louisiana Department of Energy and Natural Resources], the attorney general, an appropriate district attorney, or a local government with an approved program may bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and conditions of a coastal use permit." The consolidated cases heard by the Fifth Circuit below were brought by the governments of Plaquemines and Cameron Parishes. These local governments have state-

16. Carlson and Mayer, *supra*, at 596-97.

17. La. Admin. Code Pt I, 700, *et seq.*

approved local programs, and are thus empowered to enforce violations of the SLCRMA related to "uses of state concern," which include oil and gas uses.[18]

Petitioners mischaracterize respondents' claims. The parishes *do not* seek to "hold petitioners liable for activities that long pre-dated their ability to obtain a SLCRMA permit." Pet.8. The relief sought by the parishes is based solely on violations of issued coastal use permits after September 20, 1980, and violations arising from petitioners' failure to obtain such permits when required after September 20, 1980. The only pre-SLCRMA uses at issue here are uses continued ("carried out") after the permitting program became effective on September 20, 1980.[19] The parishes make no claims based on uses terminated before September 20, 1980.

The SLCRMA's "grandfather clause" exemption provides that "[i]ndividual specific uses legally commenced or established prior to the effective date of the coastal use

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18. *Par. of Plaquemines v. Total Petrochemical & Ref. USA, Inc.*, 64 F. Supp. 3d 872, 890 (E.D. La. 2014).

19. La. Admin. Code Pt I, 723 ("Permit Requirement. No use of state or local concern shall be *commenced or carried out in the coastal zone* without a valid coastal use permit or in-lieu permit unless the activity is exempted from permitting by the provisions of the SLCRMA or by Subsection B of this Section." (emphasis added)); *Louisiana Register*, 1980, Vol. 6, August Edition, page 495 ("[The SLCRMA permitting process] assures that uses which must be *carried out* in wetland areas are carried out in an environmentally sound manner *and* that the degradation of Louisiana's coastal resources by new activities is reduced to a minimum.")(emphasis added).

permit program shall not require a coastal use permit."[20] Oil and gas exploration activities in Louisiana date back to the early twentieth century. An oil and gas operator who "legally commenced or established" an "individual specific use" of the coastal zone prior to September 20, 1980 was not required to obtain a coastal use permit for that use. Illegally commenced or established pre-SLCRMA uses continued after the start of the permitting program required a coastal use permit. Petitioners' activities that pre-dated the SLCRMA, including their WWII activities, are thus relevant only to the application of the grandfather clause exemption. Conduct that predates the permitting program is not itself actionable, and the parishes have not argued otherwise.

Operators who qualified for the grandfather clause exemption were not required to obtain a coastal use permit for uses commenced before but also continued after the permitting program went into effect, and operators who did not qualify were merely required to obtain a coastal use permit for such uses. Uses terminated before the start of the permitting program are excluded from the program. Thus, contrary to petitioners' argument, respondents do not seek a retroactive application of the SLCRMA, and do not "insist" that petitioners are liable because "most, if

20. La. R.S. 49:214.34(C)(2); see also regulations, 43 La. Admin. Code Pt I, 701(J)("These guidelines [shall not] be interpreted so as to require permits for specific uses legally commenced or established prior to the effective date of the coastal use permit program nor to normal maintenance or repair of such uses."); and 43 La. Admin. Code Pt I, 723(B)(8)(a)("Blanket Exemption. No use or activity shall require a coastal use permit if: a. the use or activity was lawfully commenced or established prior to the implementation of the coastal use permit process . . .").

not all" of their pre-SLCRMA activities were not lawfully commenced.[21] If an illegally commenced pre-SLCRMA use was continued after September 20, 1980, and a permit for that use was issued and not thereafter violated, that use is not actionable. Also, any pre-SLCRMA use that was illegally commenced but terminated prior to September 20, 1980 is not actionable.

(2) Federal Officer Jurisdiction: "[T]o remove under section 1442(a), a defendant must show (1) it has asserted a colorable federal defense, (2) it is a 'person' within the meaning of the statute, (3) that has acted pursuant to a federal officer's directions, and (4) the charged conduct is connected or associated with an act pursuant to a federal officer's directions." *Latiolais v. Huntington Ingalls, Inc.,* 951 F.3d 286, 296 (5th Cir. 2020).

(3) Standard of Review: An order remanding a case removed under the federal officer removal statute is reviewed *de novo. St. Charles Surgical Hosp., L.L.C. v. La. Health Serv. & Indem. Co.*, 990 F.3d 447, 450 (5th Cir. 2021). However, the "district court's factual determinations made in the process of determining jurisdiction are reviewed for clear error." *U.S. Fire Ins. Co. v. Villegas,* 242 F.3d 279, 283 (5th Cir. 2001). The parties agreed that the Fifth Circuit's *Latiolais* opinion articulated the proper jurisdictional test. The Fifth Circuit majority's relatedness findings in the case were primarily factual.

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21. Respondent's allegation that "most, if not all" of petitioners' pre-SLCRMA activities were illegally commenced or established is set forth in paragraph 12 of their complaint, which affirmatively addresses and specifically cites the grandfather clause exemption, La. Admin Code. tit. 43, Pt I, 723(B)(8).

B. Factual Background

The oil and gas industry is divided into three sectors: "upstream" (crude production), "midstream" (transportation), and "downstream" (refining). The parishes' complaints are limited to "upstream" exploration and production ("E&P") activities.

WWII refinery contracts for the production of critical war products such as 100-octane gasoline ("avgas") did not address E&P operations. The federal government did not contract with anyone for the production of crude oil. WWII triggered market demands for crude oil that were virtually unlimited, and the industry did not have to be contracted, pressured, cajoled, or controlled to meet those demands.[22]

In 1945, the Standard Oil Company hired Dr. Charles Popple (Harvard Department of Business History) to compile a history of the company's wartime efforts. Titled *Standard Oil Company (New Jersey) in World War II*, his book concludes: "Throughout the war period the petroleum industry, voluntarily and without governmental pressure, successfully met all of the demands made upon it."[23] In a 1945 address to the American Petroleum Institute (API), Ralph Davies, Deputy Director of the Petroleum Administration for War ("PAW"), declared that industry cooperation during wartime was "done [] without compulsion. The broad war powers of the [PAW]

22. See fn.7, *supra.*

23. ROA.23-30422.33092. The record cites in this footnote and footnotes 24-27 *infra*, are to briefing pages in *Plaquemines II* (Docket No. 22-30055, Fifth Circuit), which in turn cite to the record pages in *Plaquemines II*.

have never been exercised because it has never been necessary to exercise them to get the job done."[24] In another address to the API, Secretary of the Interior Harold Ickes declared that "oil can best do its part in wartime with the least possible direction, and the least possible interference, by the government.[25] Frey and Ide's official history of the PAW concludes: "So it was that the combined forces of government and industry with a minimum of regulation and maximum of cooperation got from the ground the crude oil that was the indispensable raw material of victory."[26] As noted by historian Dr. Jay Brigham, "there is little in the contemporary accounts of World War II or in the historiography of the wartime economy that supports the assertion that the Federal government coerced American business and industry to support the war effort or produce for the wartime economy. On the contrary, contemporary commentators and participants in the wartime programs are virtually unanimous that the relationship was cooperative, and that the government left the production details largely to industry."[27] In *Plaquemines II*, the Fifth Circuit found that the government regulated, but did not control, WWII crude production.

The Texas Company and Gulf Oil Company (both predecessors of petitioner Chevron U.S.A., Inc.) operated numerous oil wells in the operational area defined in the complaint filed by Plaquemines Parish in this case. During WWII, some of the crude produced by these wells was

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24. *Id.*

25. *Id.*

26. ROA.23-30422.33093.

27. ROA.23-30422.33094.

refined at their government contracted refineries. But The Texas Company and the Gulf Oil Company also refined massive amounts of crude at these refineries that they did not produce. The Shell Oil Company operated numerous wells in the operational area defined in the complaint filed by Cameron Parish in this case. During WWII, some of this crude produced by these wells was refined at Shell's Houston refinery. But Shell's refineries, including its Houston refinery, refined massive amounts of crude that Shell did not produce. The refinery contracts acquired by petitioners contained no provisions requiring them to refine the crude they produced in the their case-specific operational areas, or the crude they produced anywhere else for that matter.

C. Proceedings Below

This certiorari application involves *Plaquemines Parish v. Total Petrochemical & Refining USA, Inc.,* App.66-67 ("*Total*"), and *Parish of Cameron v. Apache Corp. of Delaware,* App.126-149 ("*Apache*"). Adopting its reasoning in *Plaquemines Parish v. Northcoast Oil Company,* App.68-96, the district court in *Total* ordered remand, and the defendants appealed. The district court in *Apache* ordered remand, and the defendants appealed. The Fifth Circuit consolidated the *Total* and *Apache* appeals, and affirmed. Motions for panel and *en banc* rehearing were denied. The mandate was stayed pending the outcome of this proceeding.[28]

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28. The second round of removals also included allegations of federal question jurisdiction. The Fifth Circuit summarily rejected these allegations long before it decided *Plaquemines II* and the present appeals. See *Par. of Plaquemines v. Chevron USA, Inc.*, 7 F.4th 362 (5th Cir. 2021).

REASONS FOR DENYING THE PETITION

I. Majority Did Not Adopt A "Variant" Of The Pre-*Latiolais* Causal Nexus Test

Petitioners acknowledge that the Fifth Circuit in *Latiolais*, *supra,* correctly applied the 2011 amendment to §1442, thereby aligning itself with six of its sister circuits,[29] but argue that its opinion here adopts a "variant" of the causal nexus test "discarded" in *Latiolais* by requiring an "explicit 'directive pertaining to [petitioners'] oil production activities."[30] Not so. The fourth prong of the *Latiolais* test requires that "the charged conduct [be] connected or associated with an act pursuant to a federal officer's directions."[31] Contrary to petitioners' and Judge Oldham's reading of the majority's opinion (Pet.12;App.53), the majority did not find that "the outcome of the challenged conduct be contractually specified." To the contrary, the majority found that while "Defendants *need not show that a federal officer directed the specific oil production activities being challenged*, they still must show these activities had a sufficient connection with directives in their federal refinery contracts."[32] The majority concluded that the "lack of *any* contractual provision pertaining to oil production or directing Defendants to use only oil they produced is what distinguishes these cases from

29. "The Fifth Circuit [in *Latiolais*] was at the vanguard of recognizing the import of the 2001 amendment of the federal officer removal statute . . ." Pet.27.

30. See Pet. pp.i,2-3,13,15,23-24,28.

31. *Latiolais v. Huntington Ingalls*, 951 F.3d 286, 296 (5th Cir. 2020).

32. App.29 (emphasis added).

Latiolais."[33] In other words, the petitioners failed to satisfy the "relating to" prong of *Latiolais* because their refinery contracts contained *no reference at all* to crude production. The defendant in *Latiolais* was contractually required to use asbestos, whereas the petitioners here were not contractually required to refine the crude they produced.

Undeterred by the absence of any facts supporting a connection between their refinery contracts and crude production, petitioners insisted in their Fifth Circuit briefing that federal contractual direction need not "even generally address" the challenged conduct to be "related to" that conduct.[34] Petitioners claim they "are being sued by local governments in state court for, *inter alia*, actions undertaken to fulfill a federal contract." Pet.17. The *only* evidence petitioners point to in support of this argument is that they refined some of the crude extracted from the specific fields at issue in this case. However, there is *no evidence* that the crude produced in these fields was "extracted . . . to fulfill their [refinery] contracts." *Id.*

Seventy percent of WWII crude production went to civilians.[35] There is no evidence that petitioners sold crude oil to the government, and, unlike the federal contractor in *Sawyer*, no evidence that crude oil was produced "for the

33. *Id.*

34. Appellants' Opening Brief, 23-30422.Doc.156,ECF p.27 ("Congress chose to require only that the challenged conduct 'relat[e] to any act under' federal direction, 28 U.S.C. §1442(a)(1), not that federal direction must control or *even generally address that conduct*." (emphasis added)).

35. ROA.23-30422.31380.

government."[36] WWII refineries needed more oil to refine for both civilian and military use, so WWII E&P operators, including those who owned as well as those who did not own refineries, increased crude production. The Fifth Circuit in *Plaquemines II* held that to the extent crude producers had any relationship at all with the government, that relationship involved mere regulation.[37] As noted, this Court denied certiorari in *Plaquemines II.* No. 22-715.

There is no evidence that petitioners focused only on the oil fields located in the "operational areas" targeted in the eleven "refinery" cases when they allegedly decided to increase their WWII crude production. As noted, Shell refined its own crude in only four of the thirteen cases in which it was sued. The upshot of petitioners' refinery theory is that Shell, for example, extracted oil from four of its fields to "fulfill their federal contracts," but its crude extraction from nine other fields was not related to their federal contracts. It is, to say the very least, highly doubtful that Shell's purported contract-based motivation to increase production was presciently focused on only four operational areas of the coastal zone that were not defined until the present coastal suits were filed three quarters of a century after WWII. To make matters even worse, petitioners make no serious effort to explain why

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36. *Sawyer*, 860 F.3d 249, 255 (4th Cir. 2017). The Fourth Circuit's recent ruling in *Maryland v. 3M Co.* is distinguishable. Unlike the crude oil here, 3M sold products directly to the military under "rigorous specifications" that required PFAS. The court cautioned that the nexus element is "decidedly" not satisfied by "alleging only that the 'plaintiff's entire civil action in a general sense' is related to the defendant's federal work." 130 F.4th 380, 389 (4th Cir. 2025).

37. *Plaquemines Par. v. Chevron USA, Inc.*, 22-30055, 2022 WL 9914869, at *3).

crude refined by an oil company in-house is jurisdictionally distinguishable from crude refined by a corporate affiliate, such as Humble Oil's affiliate in *Plaquemines II*.

As petitioners would have it, §1442's "relating to" requirement can been satisfied by altogether ignoring the content of contractual directives. In *Plaquemines Parish v. Northcoast Oil Co.*, the district court notes that in "every case that the Court has reviewed, including the post-*Latiolais* decisions, that grounds federal officer removal on relatedness to a federal contract, examines the directives of that contract when determining whether . . . the plaintiff's claims relate to the directives of a federal officer."[38] This analysis of the jurisprudence is borne out in the cases cited by petitioners as exemplars of the correct relatedness analysis under the 2011 amendment.[39]

Petitioners assume that it is "self evident" that their "production activities undertaken to fulfill the [refinery] contract[s] were 'related to' their contractual refining obligations." Pet.17. When a fact is "self evident," it is manifest, obvious, and undeniable. Whether petitioners' "production activities [were] undertaken to fulfill" their refinery contracts is a highly contested and unproven fact that is nowhere near manifest, obvious, or undeniable. The majority's finding of a complete absence of facts supporting a relationship between petitioners' crude production and their refinery contracts in no way "underscores that [the majority] departed from the clear statutory text and effectively reinstated a particularly demanding variant of the causal-nexus text that Congress explicitly abrogated." Pet.17. Petitioners attempt to paint

38. 2023 WL 2986371 (E.D. La. Apr. 18, 2023), at *9.

39. See fn.53, *infra*.

the Fifth Circuit's findings of facts as errors of law, but the majority's failure to find factual support for petitioners' relatedness argument has nothing to do with its reading of the statutory text.[40] The majority faithfully applied *Latiolais.* In essence, petitioners' argument is that even though they can offer no factual support for the "relating to" element, such facts are unnecessary because the required "connection" is "self-evident" (*i.e.*, you can't make avgas without crude!), and therefore federal direction need not "even generally address" the charged conduct.[41]

It is impossible to determine whether "the charged conduct is connected or associated with an act pursuant to a federal officer's directions"[42] by altogether ignoring the content of the contractual directions. The relaxed causation requirement applied by the Fifth Circuit in *Latiolais* and by its sister circuits requires that the charged conduct be related to a federal officer's directions in a contract, not merely to the contract itself. This jurisprudence does not hold that just any federal contract will do.

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40. In lockstep with petitioners, Amici assume without evidence that wartime crude production was increased to satisfy refinery contracts. See Chamber of Commerce Amicus, p. 3; API Amicus, p. 12; Myers and Mullen Amicus, p. 6. This assumption cannot be squared with the fact that seventy percent of WWII crude was produced for civilian consumption, and the fact that a large portion of the military's thirty percent was not refined into specialty products such as avgas, but was refined into standardized petroleum products used by the military. See also, fn. 71, *infra*.

41. See fn.34, *supra.*

42. *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 296 (5th Cir. 2020).

II. The Allocation Program

Petitioners admit the PAW "control[ed] the allocation . . . of crude."[43] The unrefuted evidence of the PAW's allocation program shows that ***after*** crude was produced without federal direction in the field, the PAW programmed its distribution and transportation to refineries that made war products, and that a particular refiner's production of crude played no part in whether it was allocated that crude by the PAW. Defense expert Gravel explained: "PAW's crude oil assignments [to refineries] took into consideration a range of factors, including efficiency of transport of both crude and refined products, capacity of the refinery to handle the volume of crude, and the types of war products that could be made from select crudes."[44] Absent from Gravel's list of "factors" are the refiner's role in producing the crude, and its relationship or affiliation, if any, with the crude producer.

Gravel also notes that the PAW "allocated crude oil . . . on the basis of obtaining the maximum amount of critical war products from the minimum run of crude oil."[45] Plaintiff's expert Brigham similarly explains that "after crude was produced at a well, it was allocated to refineries *not on the basis of which company owned the crude*, but 'providing first for the minimum quantities estimated to be necessary to assure maximum output of war products.'"[46] Based on this uncontested evidence, the majority concluded that "[i]n allocating the crude oil, the PAW considered neither the practices of the producer

43. 23-30422.Doc.57,ECF p. 32.

44. ROA.23-30422.28861-64, ¶¶ 65,68.

45. ROA.23-30422.28826.

46. ROA.23-30422.13853-55.

nor whether the company that produced the crude had an affiliated refinery."[47] The majority found that the PAW's crude allocation program "severed" any link between crude production and refining.[48] Judge Oldam's dissent ignores this severed link by redefining the supply chain as a series of connected links that, conveniently, excludes the allocation program.[49]

III. There Is No Circuit Conflict

Petitioners claim the majority's opinion conflicts with *In re Commonwealth's Motion to Appoint Counsel* because the Third Circuit there found that the "relating to" requirement does not require an "explicit" or "specific" contractual directive pertaining to the challenged conduct. Pet.24-25;28. But the majority likewise did not find that an "explicit" or "specific" directive was required. More to the point, *Commonwealth's Motion certainly does not hold* that removal is permissible when, as here, the federal directive does not address the challenged conduct at all.

Commonwealth's Motion did not, as petitioners imply, merely rely on the impact that state post-conviction proceedings would have on subsequent federal habeas proceedings in finding the "relating to" requirement was satisfied. The Federal Community Defender, a nonprofit entity created by the Criminal Justice Act (CJA), is expressly delegated authority to provide representation

47. App.35-36.

48. App.36.

49. App.53. Judge Oldham concludes: "Defendants used certain exploration and production practices because of increased need for crude oil (link one), and there was increased need because of the refining contracts (link two)." 23-30422.Doc.84-1,ECF pp.51-57.

under the CJA.[50] As the Third Circuit explained, "the Federal Community Defender attorneys' employment with the Federal Community Defender is the very basis of the Commonwealth's decision to wage these disqualification proceedings against them. The Commonwealth has filed these motions to litigate whether the Federal Community Defender is violating the federal authority granted to it."[51] The Third Circuit went on, "As the Supreme Court has noted, whether a federal officer defendant has completely stepped outside of the boundaries of its office is for a federal court, not a state court to answer."[52] Petitioners, on the other hand, have failed at every turn to point to any "federal authority" granted them regarding crude production.

All of the contract cases cited by petitioners as having abandoned "the causal nexus requirement embodied in the earlier version of the statute" require an examination of the content of the federal contractual directives in determining whether the challenged conduct is "related to" the contract.[53] None of these cases— nor any other

50. *In re Commonwealth's Motion*, 790 F.3d at 469.

51. *Id.* at 472.

52. *Id.*

53. See cases cited at Pet.24,27: *Moore v. Electric Boat,* 25 F.4th 30, 36 (1st Cir. 2022) ("The Navy dictated the use of asbestos, workplace safety measures, and the posting of warnings . . . "); *Sawyer,* 860 F.3d 249, 258 (4th Cir. 2017)("[T]he Navy dictated the content of warnings . . ."); *Bd. of Cnty. Commissioners of Boulder Cnty.*, 25 F.4th 1238, 1253 (10th Cir. 2022)("OCS leases do not require Exxon to tailor fuel production to detailed government specifications aimed at satisfying pressing federal needs.") *Minnesota v. Am. Petroleum*, 63 F.4th 703, 715 (8th Cir. 2023)(Defendants' "production of military-grade fuel, operation of federal oil leases,

case cited by petitioners—hold that the relatedness requirement is satisfied regardless of the content of the directives of a federal contract so long as the contract itself can be labeled a "federal contract."

The alleged circuit conflict urged by petitioners is illusory. The primary source of the "split" is the Second Circuit. But in both *Tong v. Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023), and *Veneruso v. Mt. Vernon Neighborhood Health Ctr.*, 586 F.App'x 604 (2d Cir. 2014), the court found that the defendant was not "acting under" a federal officer. In *Tong*, the charged conduct occurred after World War II, but the court found that neither OCS leases nor post-WWII fuel supply to the military satisfied the "acting under" requirement. The court went on to state: "[A]ssum[ing] arguendo that [the removing defendant] could satisfy the [acting under] prong by virtue of its contracts to supply fuel to the military, it would clearly fail the second prong." 83 F.4th at 144. So its invocation of a causal requirement is pure *dicta*.

Veneruso is a summary opinion that (purportedly) does not have precedential effect. Nevertheless, the court's holding was that the defendant, Mount Vernon, "failed to demonstrate that it was acting under the direction of a federal officer when it received Surplus Distributions for CCHP." 586 F.App'x at 607. Having made that conclusion, the court goes on to state, "As a result, it is plain that the

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and participation in strategic energy infrastructure" is unrelated to "their marketing activities to the general public."); *D.C. v. Exxon Mobil Corp.,* 89 F.4th 144, 156 (D.C. Cir. 2023)(same); *Baker,* 962 F.3d 937, 945 (7th Cir. 2020)("[A]t least some of the pollution *arose from the federal acts*."); *DeFiore,* 85 F.4th 546, 557–58 (9th Cir. 2023) (challenged acts occurred while guards "discharged their security duties for the Combatant Commander . . .").

requisite 'causal connection' between the acts for which Mount Vernon is being sued and the asserted federal authority is lacking." 586 F.App'x at 608. So again, this statement is purely *dicta*.

The Eleventh Circuit authority is even weaker. While the court in *Georgia v. Meadows*, 88 F.4th 1331 (11th Cir. 2023), used "causal nexus" language, its ultimate finding was that the charged conduct was not under the color of the defendant's federal office, as the White House chief of staff has no authority over state elections. The court concluded, "Meadows cannot establish that any of these acts [the charged conduct] related to his federal office." 88 F.4th at 1349. "Relating to," is, of course, the precise test the petitioners are pressing in their certiorari application. Pet.14. *Georgia v. Clark*, 119 F.4th 1304 (11th Cir. 2024), also does not help petitioners. It summarily rejects the appeal based on the *Meadows* precedent. The pinpoint cited pages all appear in a concurring opinion, which obviously did not get two votes from the panel.

Petitioners argue that two Ninth Circuit cases and one Eighth Circuit case suggest splits as well. Both of the Ninth Circuit cases, *DeFiore v. SOC LLC*, 85 F.4th 546 (9th Cir. 2023), and *Goncalves v. Rady Children's Hospital San Diego*, 865 F.3d 1237 (9th Cir. 2017), use "causal nexus" language in stating the applicable test, but both cases *reverse* remands ordered by the district courts, finding that the defendants were acting under federal officers. In *DeFiore*, the district court found no causal nexus (and no colorable federal defense), and thus remanded. The Ninth Circuit reversed. It compressed the requirements of "acting under" and "causal nexus" into a single "causal nexus" requirement with two subparts: "acting under" and "causally connected." 85 F.4th at 554. The court found that

because the defendants were common law agents of the federal government (as contractors recruiting war zone security personnel for the Department of Defense), they were acting under federal officers. Noting the low hurdle erected by the causal connection requirement, *i.e.*, that it "resulted from" their work for DOD, the court found that this requirement was met as well. 85 F.4th at 557. In *Goncalves*, the court stated that the causal connection hurdle is "quite low," 865 F.3d at 1244, and said, "The only real question for this prong is whether, in seeking subrogation, the Blues 'acted under' a federal officer." 865 F.3d at 1245. It found they did.

In *Ellison v. American Petroleum Institute*, 63 F.4th 703 (8th Cir. 2023), the Eighth Circuit, after citing the Removal Clarification Act of 2011, explicitly states that the language they were using took the statutory language into account: "Though we have continued to describe the standard in terms of 'causal connection,' … the causal connection required by §1442(a)(1) is for the activity to relate to a federal office." 63 F.4th at 715. This "relating to" language is the precise test urged by the petitioners. Nevertheless, the court found that even this more lenient standard still was not met.

There is no extant certiorari-worthy circuit split. Different circuits divide the *Watson* test into different parts, expressed with different modifiers, but all of the circuits recognize, and apply, the expansion of federal officer removal brought about by the 2011 amendment.

IV. Regulatory Background Irrelevant To "Relating To" Element

Petitioners argue the majority erred "by declining to consider the broader regulatory background" in applying the "relating to" element. Pet. 22. While conceding that the "acting under" element cannot be satisfied by regulatory compliance, petitioners argue that WWII regulations "ensured" that they "would refine crude from the[] specific fields [at issue] into avgas." Pet.22-23. But there is no evidence anywhere of any such "*regulation.*" Petitioners rely solely on Judge Oldham's dissent at App.54-55 for this dubious proposition, which in turn cites no evidence at all on this point. Federal regulations were not required to ensure that defendants produced a "gargantuan" amount of WWII crude. To the contrary, WWII regulations were designed to restrain production by establishing maximum efficient production rates to avoid damage to oil reservoirs because, according to PAW's Director of Production, "[n]o one knew when the war would end," and thus "plans had to be made for a long war."[54]

This Court in *Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142 (2007), held that federal direction cannot be premised on mere compliance with the law. Yet, in the face of *Watson,* petitioners argue that WWII regulations implicitly supply the requisite federal direction when a contract "leaves such matters [as crude production] unaddressed" because WWII "regulation of crude-oil production obviated the need for individual refinement contracts to include additional direction about where and how the necessary crude oil should be procured." Pet.22-23. This argument turns *Watson* on its head, and to accept

54. See fn.9, *supra.*

it effectively overturns *Watson*, a unanimous decision. Moreover, by relying on non-specific regulations that do not in fact exist to support both the federal direction and "connection" elements of their removal theory, petitioners have (perhaps unwittingly) expressly jettisoned their erstwhile strongly held belief that it is "impermissible" to conflate the "acting under" and "relating to" elements. App.16;91.

Petitioners argue that "[i]n carrying out [the crude allocation] program, 'the government designated the three fields at issue here as 'Critical Fields Essential to the War Program,' in part because they produced crude oil that was particularly suited for making avgas.'" Pet.20, citing App.23. The PAW's "Critical Fields" designation was merely the product of a PAW field survey entitled "Preliminary Survey Listing Critical Fields Essential to the War Effort."[55] The designation appears nowhere in the regulations. None of the refinery contracts in this case mention the fields at issue, much less a specific "Critical Field." The primary focus of the PAW's designation of "Critical Field[s]" was their geographical location and susceptibility to sabotage.[56] Appellate courts have treated similar federal designations as meaningless.[57] Tellingly, the Fifth Circuit found no federal officer jurisdiction in *Plaquemines II,* even though the Potash Field in that case was classified as a "Critical Field" in the PAW's survey.[58]

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55. ROA.23-30422.7900,10054.

56. ROA.23-30422.30246,30250,13848.

57. *Mitchell,* 24 F.4th 580; *Buljic,* 22 F.4th 730; *Maglioli,* 16 F.4th 393.

58. Defendants Opening Brief, *Plaquemines II* (No. 22-30055), page 24.

V. Even The "Acting Under" Element Is In Doubt

The majority found that the petitioners "acted under" federal directives in their refinery contracts. Removal by a private party under §1442 must be based on a "civil action . . . that is commenced in a State court and that is against or directed to . . . any person acting under [a federal officer] . . . for or related to any act under such office . . ."[59] While petitioners spill much ink on their "vertically integrated" structures, the crux of their argument is that their status as a "person" under §1442 allows them to remove based on any activity they conducted as a "person." But the Fifth Circuit in *St. Charles II* has cautioned, rightfully so, that a "person" who acts under a federal officer for some purpose does not necessarily act under that officer for all purposes.[60] Put another way, a "person" who "acts under" a federal officer does not "act under" that officer for everything he does. A person who "acts under" a federal officer in refining does not "act under" that officer in producing crude. The majority found that petitioners'"oil production and refining sectors were "two entirely separate operations requiring different skills, and different operations at different locations."[61]

The distinction between a crude producer who refined crude from a particular "operational area" and a crude producer who did not is a distinction without a difference. Under petitioners' refinery theory, if a single barrel of WWII Potash Field crude had been refined in Humble's

59. 28 U.S.C. §1442.

60. *St. Charles II,* 990 F.3d 447, 455 ("[W]e did not hold in *St. Charles I* that BCBS 'acts under' the direction of OPM for all purposes.").

61. App.35, fn.86.

Baytown refinery, *Plaquemines II* would have been decided differently. As the district court in *Northcoast* noted:

> So, in no way did the government direct Gulf to produce its own crude, and in no way did Gulf agree to do that as part of the agreement. The agreement does not even allude to the possibility of Gulf producing its own crude to fulfill the contract. . . .Gulf had complete latitude under the contract to forego producing any crude and instead to buy it on the open market.[62]

Even though some of the crude in *Plaquemines II* was refined into avgas, the Fifth Circuit found no factual support for the "acting under" element. Judge Oldham responded to the majority's view that *Plaquemines II* controls the result here by blaming the *Plaquemines II* defendants (some of whom are also defendants here) for failing to argue that the "acted under" element was supported by their refinery contracts.[63] But even if the *Plaquemines II* defendants had urged such an argument, they could not have shown that *they* "acted pursuant to a federal officer's directions" because no *Plaquemines II* defendant refined the crude it produced from the operational area in the case.

VI. Prices And Taxes Irrelevant

In their motion for rehearing in the Fifth Circuit, petitioners fault the majority for "overlooking" contractual references to crude prices and taxes in applying *Latiolais*'

62. App.93.

63. App.55, fn.4.

"connection" test.[64] But petitioners likewise "overlooked" those references in their prior Fifth Circuit and district court briefing. These crude price and tax references are not even tangentially related to the crude production *activities* at issue here.

VII. No Temporal Relatedness

As noted, petitioners' WWII conduct is relevant only to the grandfather clause exemption. The challenged conduct is petitioners' failure to obtain permits for coastal uses on or after September 20, 1980, thirty-five years after their WWII refinery contracts expired. These contracts are simply too "remote" in time from the "charged conduct" to satisfy the "relating to" standard. The phrase "relating to" is not limitless. Justice Scalia has emphasized that this phrase does not include "tenuous, remote, or peripheral" relationships.[65] Any federal authority asserted during WWII cannot be "related to" an activity that violated a permitting scheme that did not even exist when the authority was asserted. Typically, courts before and after the 2011 amendments have required the charged conduct and the asserted official authority to be contemporaneous.[66]

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64. Rehearing Motion, 23-30422. Doc.155,ECF pp.19-20.

65. *Morales v. Trans World,* 504 U.S. 374, 390 (1992).

66. See, *e.g., Papp v. Fore-Kast Sales*, 842 F.3d 805, 810 (3d Cir. 2016)(§1442 permits removal "provided the allegedly culpable behavior took place while the defendant was acting under the direction of a federal officer or agency."); *In re Methyl Tertiary Butyl Ether ("MTBE") Products Liab. Litig.*, 488 F.3d 112, 124–25 (2d Cir. 2007)("Critical under [§1442] is to what extent defendants acted under federal direction at the time they were engaged in the conduct now being sued upon.").

VIII. The Majority's Opinion Does Not Undermine The Protections Afforded By §1442

Quoting Judge Oldham's dissent, petitioners argue that "[f]orgoing the challenged crude exploration and production practices would have hampered the federal interest in refined avgas explicitly outlined in the contracts." Pet.19. In response, the majority notes that "Defendants point to no evidence, aside from their statuses as vertically-integrated companies that needed to refine increased quantities of avgas, to support this assertion."[67] The federal interest in refined avgas was in fact served by the allocation program, which distributed crude to refiners under procedures that ignored the refiner's crude production activities and allowed crude to be efficiently distributed and purchased on the open market.[68]

The specter of hostile state courts alluded to in Judge Oldham's dissent cannot be reconciled with his prior view that "[t]here's nothing wrong with a plaintiff's desire to litigate his claims in state court. Those courts are generally the equals of federal ones, and when it comes to questions of state law specifically, the state courts are superior."[69] The very purpose of the CZMA was to cede federal power to the states to manage coastal zone resources.[70]

Petitioners argue that they were government

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67. App.37.

68. *Id.* ("their refineries regularly relied on crude oil produced by other companies").

69. *Durbois v. Deutsche Bank*, 37 F.4th 1053, 1060 (5th Cir. 2022).

70. See fn.15, *supra*.

contractors providing goods the government would otherwise need to produce itself. Pet.6;31. Regardless of whether the government would otherwise need to produce avgas, the government would never have needed to produce crude oil for "itself." There is no evidence the government ever drilled for or produced oil,[71] nor any evidence that the crude that petitioners needed to produce avgas could not have been obtained on the open market, or via the allocation program. Like the poultry processing at issue in *Glenn v. Tyson*, crude production has "always been a private task—not a governmental one,"[72] and has never been the task of a "federal superior." Besides, even if the government had directly purchased WWII crude, government purchases of off-the-shelf commodities like crude oil would not support federal officer jurisdiction.[73]

These coastal lawsuits will not result in "massive recoveries" or "windfalls" for local governments. Any recovery by the parishes must be applied to "integrated coastal protection" under the SLCRMA. La. R.S. 49:214.36(O)(2). And petitioners' and Amici's arguments that the majority's opinion will somehow cause potential contractors to shy away from the Pentagon's usual largesse during wartime is both rank speculation, and an implausible counterfactual. This country fought two world wars, wars in Vietnam and Korea, and two

71. Chevron conceded in *Mayor & City Council of Baltimore v. BP P.L.C.*, 2022 WL 1039685, at *34 (4th Cir. Apr. 7, 2022), that "the government relies upon private companies because it does not have its own oil and gas engineers or drilling equipment."

72. 40 F.4th 230, 236 (5th Cir. 2022), *cert. denied*, 143 S.Ct. 776.

73. *Mayor & City Council of Baltimore, supra,* at *28. *Winters v. Diamond Shamrock*, 149 F.3d 387, 398–400 (5th Cir. 1998)(Agent Orange different from "off the shelf" herbicides sold.).

Middle East wars when the causal nexus requirement was considerably more onerous than it is today, and yet history records no contractor "hesitan[cy] to assist the federal government in the performance of its duties"[74] or fears of "hostile state courts" during those conflicts. The calamitous consequences of the majority's ruling predicted in Amici's briefing are mere lawyer driven concoctions that bear no relationship to reality, ignore the majority's faithful application of the 2011 amendment as interpreted in *Latiolais*, and presume an endemic hostility in state courts Judge Oldham believes are "superior" when it comes to questions of state law.[75]

74. Quoting Amicus Brief of U.S. Chamber of Commerce, p. 9.

75. *Durbois v. Deutsche Bank, supra*, at 1060.

CONCLUSION

Certiorari should be denied.

Respectfully submitted,

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