No. 24-813

IN THE

Supreme Court of the United States

CHEVRON U.S.A. INCORPORATED, *et al.*,

Petitioners,

v.

PLAQUEMINES PARISH, LOUISIANA, *et al.*,

Respondents.

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

BRIEF OF *AMICI CURIAE* OIL AND GAS ASSOCIATIONS IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*

The American Petroleum Institute ("API"), American Fuel & Petrochemical Manufacturers ("AFPM"), American Exploration & Production Council ("AXPC"), Louisiana Mid-Continent Oil & Gas Association ("LMOGA"), Texas Oil & Gas Association ("TXOGA"), and Western States Petroleum Association ("WSPA") (collectively referred to as "amici") hereby submit this *amicus curiae* brief in support of Petitioners.[1]

Formed in 1919, API is a national trade association that represents nearly 600 member companies supporting all segments of the oil and natural gas industry. API and its members are committed to ensuring the industry remains strong, viable, and capable of meeting the energy needs of our nation in a safe and environmentally responsible manner.

AFPM is a national trade association representing most American refining and petrochemical companies. These industries provide jobs, directly and indirectly, to more than three million Americans, contribute to our economic and national security, and enable the production of thousands of vital products used by families and businesses throughout the United States. AFPM is committed to the development of sound policies that enable its members to supply the fuel and petrochemicals that growing populations need to thrive in an environmentally sustainable way.

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[1] Pursuant to Supreme Court Rule 37(6), undersigned counsel certifies that (A) no party's counsel authored this brief, in whole or in part; (B) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (C) no person, other than the *amici curiae* or their members, contributed money that was intended to fund preparing or submitting this brief.

AXPC is a national trade association representing 29 of the largest independent oil and natural gas exploration and production companies in the United States. AXPC companies are among the leaders across the world in the cleanest and safest onshore production of oil and natural gas, while supporting millions of Americans in high-paying jobs and investing a wealth of resources in our communities. Dedicated to safety, science, and technological advancement, AXPC's members strive to deliver affordable, reliable energy while positively impacting the communities in which they live and operate.

LMOGA is a trade association formed in 1923 that represents all sectors of the oil and natural gas industry of the second-largest oil-producing and fourth-largest gas-producing State in the nation, Louisiana. The State ranks second in the nation in crude oil refining capacity. LMOGA members operate sixteen refineries and numerous production facilities, natural gas plants, liquefied natural gas export terminals, compressor stations, pipelines, and product terminals throughout Louisiana. LMOGA members strive to serve the nation's oil and gas needs in a safe, responsible manner.

TXOGA is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces approximately 90 percent of Texas's crude oil and natural gas and operates the vast majority of the state's refineries and pipelines. In fiscal year 2024, the Texas oil and natural gas industry supported over 490,000 direct jobs and paid $27.3 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders.

WSPA is a non-profit trade association that represents a large portion of the petroleum exploration, production, refining, transportation, and marketing companies in Arizona, California, Nevada, Oregon, and Washington. Founded in 1907, WSPA is dedicated to ensuring that Americans continue to have reliable access to petroleum and petroleum products through policies that are socially, economically, and environmentally responsible.

Amici's interest in these cases stems from the historical relationship between the oil and gas industry and the federal government during World War II ("WWII"). As discussed below, during that time of unlimited national emergency, the federal government called upon private oil and gas companies to meet unprecedented demands for refined petroleum products necessary to fuel American war machines. Specifically, the federal government contracted with oil and gas companies to produce massive quantities of specialized refined products, particularly aviation grade fuel ("avgas"), while at the same time exercising pervasive control over the crude oil exploration and production necessary to create those refined products.

Respondents now seek to impose liability on those same oil and gas companies for actions they took to carry out those federal contracts more than 70 years ago during a time of war. The federal officer removal statute at 28 U.S.C. § 1442(a)(1) exists to ensure that those accused of wrongdoing while acting under federal direction, like Petitioners here, can have their case heard in federal court. The Fifth Circuit's decision in *Plaquemines Parish v. BP America Production Co.*, 103 F.4th 324 (2024), reproduced in Petitioners' Appendix to the Petition for Certiorari at Pet.App.1-63, improperly denies that promised federal forum.

The amici agree with Petitioners that the Fifth Circuit correctly concluded Petitioners were "acting under" a federal officer during the course of their federal contracts to supply unprecedented wartime amounts of avgas, Pet.App.16, but that the Fifth Circuit erred in concluding Petitioners' crude oil production, as conducted in coordination with the Petroleum Administration for War ("PAW"), was not "connected or associated with" the same federal contracts, Pet.App.26, 29.

In this brief, the amici highlight the necessary historical background of PAW and show that the depth and breadth of federal control of the crude oil exploration and production and its subsequent refinement during WWII facilitated every action and decision made by Petitioners to fulfill their government contracts. PAW was just as focused on extracting crude oil with maximum efficiency as it was on producing sufficient avgas for WWII. The Fifth Circuit erroneously concluded that PAW's pervasive control over crude oil production and distribution, for the purposes of meeting wartime demand, somehow severed the causal connection between crude oil production and government contracts to refine that crude oil into avgas. Pet.App.35-36. It did not. Ultimately, the historical record shows that the oil industry was recruited into service of the federal government's objectives and acted within a tightly controlled regulatory framework focused entirely on maximizing and controlling crude oil production to support avgas refining activities for wartime use. Under those circumstances, Petitioners' wartime crude oil production efforts are plainly "related to" their wartime avgas production contracts with the federal government, and warrant a federal forum under § 1442(a)(1).

SUMMARY OF ARGUMENT

WWII, "from beginning to end, was a war of oil." *See* Petroleum Administration for War, *A History of the Petroleum Administration for War, 1941–1945*, at 1 (John W. Frey & H. Chandler Ide eds., 1946) https://books.google.com/books/about/A_History_of_the_Petroleum_Administratio.html?id=oNfNAAAAMAAJ (hereinafter, "PAW History"). Between 1941 and 1945, the United States produced "one-fifth of all the oil that had been produced in this country since the birth of the [oil] industry in 1859." PAW History at 1. Production of nearly six billion barrels of oil to fight and win the war, *id.*, required extraordinary coordination of America's oil industry—an industry that until that point had been the target of such energetic antitrust enforcement that "[o]il men hesitate[d] to lunch with a competitor, for fear of an anti-trust investigation." Max W. Ball, *Fueling a Global War – An Adventure in Statecraft*, 45 Ohio J. Sci. 29, 33 (1945).

Indeed, the oil industry was called to actions "that in war are called cooperation but in peace are called collusion." Ball, *supra*, at 33. The industry was so effectively commandeered into the war effort that PAW sought an antitrust exemption from the Department of Justice to coordinate supply, pricing, transportation, refining, and distribution. *See* PAW History at 3, 382-84.

The federal government successfully enlisted industry to help build a petroleum defense through the formation of a new, independent agency, the PAW. PAW worked hand in glove with the oil industry at every level to maximize and control crude oil production to support avgas refining activities for wartime use. This special contractual and practical relationship between PAW and the oil industry ensured that production,

refining, transport, and distribution of oil proceeded apace with the needs of the war.

Because avgas is refined directly from crude oil, the production of crude oil was necessary to fulfilling the government's wartime contracts. These wartime contracts to produce avgas fall squarely within the ambit of the federal officer removal statute. That statute provides federal jurisdiction over civil actions against "any person acting under [an] officer" of the United States "for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). The Fifth Circuit correctly concluded that Petitioners were "acting under" federal direction in producing avgas because they had contracts with the federal government to produce that avgas to meet the federal government's unparalleled needs for fuel during WWII. Pet.App.16-17. However, the Fifth Circuit erred in concluding that the same avgas contracts were not *related to* the production of crude oil used to produce that avgas because PAW's involvement and control over crude oil production allegedly "severed any connection between [Petitioners'] production and refinement activities." Pet.App.36.

This was in error. PAW's involvement did not "sever" any such connection. On the contrary, PAW's pervasive involvement in both the avgas contracts and the crude oil production necessary to satisfy those contracts only confirms that crude oil production is "for or relat[ed] to" the avgas contracts as required to invoke federal officer jurisdiction under 28 U.S.C. § 1442(a)(1).

ARGUMENT

I. Every Single Stage of the Oil Supply Chain Process Was Inextricably Connected and Controlled to Meet Wartime Needs

The historical record makes clear that refining sufficient amounts of crude oil into avgas required harmony, coordination, and cooperation between government and industry at the exploration, production, transportation, and refinement stages. Decisions made at the exploration and production stages necessarily informed how much avgas could actually be produced, and vice versa. For maximum efficiency, the government created PAW as a time-limited means to an end to create a source of stability during a time of chaos. "It was PAW's responsibility to direct and coordinate the job; it was the industry's responsibility to do the job." PAW History at 192. Under PAW's direction and control, industry played its role to ensure that the refineries had the crude oil needed to produce aviation gasoline and hundreds of other petroleum products the government needed to fight the war. *See* Ball, *supra*, at 37; PAW History at 3, 40.

A. Overview of the petroleum supply chain.

World War I demonstrated that modern warfare depended on massive quantities of oil, especially from America. PAW History at 8, 171-72. The domestic oil industry expanded rapidly in the decades following the end of World War I. *Id.* at 9, 171. Civilians quickly became accustomed to having oil-burning products and equipment integrated into their everyday life, from domestic heating at home to using cars for personal transportation. *Id.* at 9-12, 171. New low-hanging fruit discoveries in Texas, Louisiana, and the Gulf region expanded the crude supply and

advancements in refining technology allowed that crude to be converted into gasoline, diesel, and other fuels essential for both civilian and military use. *See id.* at 172, 174-75.

The oil and gas industry before WWII was vastly different than today. The prewar years of 1941 consisted of approximately 400 refineries scattered across the nation, some with a capacity as low as 50 barrels per day, and supported by an uncoordinated hodgepodge of pipelines. *See id.* at 192. The largest concentrations of refineries were the Texas and Louisiana Gulf Coast, the New York-Philadelphia area, the vicinities of Chicago and St. Louis, and California. *Id*. The total avgas capacity of those refineries was about 40,000 barrels per day. *Id*. at 191.

In 1941, the U.S. faced the seemingly impossible task of raising avgas output from 40,000 barrels per day to the 514,000 barrels per day ultimately needed to win the war, and to do so "in spite of shortages in manpower and materials, in spite of deficiencies in crude oil[,] … in spite of the necessity for turning out new kinds of products, … in spite of all handicaps." *Id*. at 191-192. "It was PAW's job" to try and pull off this remarkable feat, and it required control and organization of every aspect of the production chain, from exploration, to drilling, to production, to transportation, to refining. *Id*. at 192. The result was "without question one of the greatest industrial accomplishments in the history of warfare." *Id.* at 191.

B. Creation and authority of PAW.

Crude oil was an essential raw material for producing avgas, a specialized petroleum product that was critical for the military's air power. Although the concept for extracting and refining crude oil was

simple, the actual execution became more complex with the onset of WWII and the massive, ever-evolving and ever-expanding need for avgas. Government leaders had to think about how much crude oil was available, the quality and kinds of crude that could be obtained, at what pace crude oil could be produced without suffering rapid declines in productivity capacity, and how to move the crude oil efficiently to refineries to produce avgas at the necessary quantities for war. *Id.* at 176, 215.

Before government intervention, those in industry were left to their own devices as to how much crude oil to drill and refine without fear of oversight and regulations from the government. *See id.* at 12. Because industry only needed to meet the demands of civilian need for petroleum, they were lulled into a false sense of security as to how easy it would be able to ramp up production during time of war. *Id.* at 15-16. But with World War I still fresh in their minds, government leaders had "grave misgivings" as to the adequacy of U.S. production capabilities during wartime conditions. *Id.* at 16. They foresaw the trouble that would come if the government did not step in to coordinate and regulate the oil industry because industry could not be trusted to maximize production of avgas at a pace necessary to win future wars driven by more destructive and powerful war machines. *Id.*

Government officials were particularly concerned with production of avgas, which "was the most critically needed refinery product during WWII and was essential to the United States' war effort." *Shell Oil Co. v. United States*, 751 F.3d 1282, 1285 (Fed. Cir. 2014) (internal quotation marks and citation omitted). "[P]roduction development, insofar as the location of existing oil fields and pools would permit, had to be

planned in harmony with the refining branch of the industry as well, because the need was not only for enough crude but the kinds needed for aviation gasoline and other war products." PAW History at 176. To complicate the situation, steel was a necessary component for drilling exploratory wells, pipelines, and barrels, but was in short supply. *Id.* at 178-179.

Government leaders were afraid that "[i]f [industry was] allowed free rein . . . undirected competition would inevitably give rise to an unbalanced production and flow of supplies resulting in failure to meet essential war requirements[.]" *Id.* at 16. The risk of allowing industry to operate as usual became too great, and the government realized it needed to step in to provide "[c]entralized planning and direction" by creating a new agency with authority to "coordinate and centralize the war policies and actions of the Government relating to petroleum." *Id.*; Exec. Order No. 9276, 7 Fed. Reg. 10091, 10091 (Dec. 2, 1942).

In May 1941, the Office of Petroleum Coordinator for National Defense was established by presidential letter. PAW History at 1. On December 2, 1942, it became PAW—an independent, centralized agency with war powers. *See* Exec. Order No. 9276, 7 Fed. Reg. 10091. "PAW was the central source of authority in matters of oil supply." PAW History at 3. It was created for the sole purpose of "ensuring 'adequate supplies of petroleum for military, or other essential uses' and '[effecting] the proper distribution of such amounts of materials.'" *Shell Oil Co.*, 751 F.3d at 1286 (quoting Exec. Order No. 9276, 7 Fed. Reg. at 10092); *see also* PAW History at 49, 219.

A steady and reliable source of crude oil being directed to the production of avgas was a matter of survival during WWII. By putting PAW at the head of

the oil and gas supply chain process, the government could effectively mobilize and oversee all stages of oil production, refinement, transportation, and distribution of petroleum products, all of which served as the backbone of the nation's military efforts. *See* PAW History at 15. With the help of industry, PAW surveyed oil reserves in the United States and discovered that "the Nation's productive capacity, although somewhat higher than current production, might not be adequate to meet rapidly rising war demands and could not be maintained without further drilling." *Id.* at 173-74. As discussed further below, PAW took action to develop an exploration program that would "provide new sources of oil to compensate for the natural decline in producing fields" and "would give the most oil and gas per ton of steel in the form of sustained productive capacity." *Id.* at 175, 179.

In short, crude oil was produced, prioritized, and refined for the federal government's wartime needs. To do so, "the Government exercised substantial wartime regulatory control over almost every aspect of the petroleum industry." *Shell Oil*, 751 F.3d at 1285. PAW's oversight of crude oil exploration and production was key to ensuring that the U.S. could meet wartime aviation fuel needs. PAW could impose obligatory product orders on private companies under threat of criminal sanctions or government takeover. *Id.* Facilities had to prioritize government military contracts above all other contracts. *Id.* And if raw materials were scarce, the government could regulate supply chains to ensure continuing production. *Id.*

C. The integration between PAW and the oil industry ensured federal participation and supervision.

The government did not hesitate to maximize PAW's authority to control and manage every aspect of the oil industry. PAW History at 44-45. The relationship between PAW and industry was one of highly managed coordination, in which PAW relied on industry's existing infrastructure, expertise, and workforce as a tool to ensure national wartime objectives were met. Although it was "often all but impossible to say where one left off and the other began, . . . it was always the role of [PAW] to determine plans and policies, to direct and supervise operations requisite to their fulfillment, and to assume over-all governmental responsibility for all aspects of the oil program." *Id.* at 2. Industry was expected to follow the regulatory framework that PAW had established for crude oil production.

Backed by its sweeping war power authorization, PAW primarily carried out its mandate through recommendations and directives, which "cleared the way . . . for the comprehensive mobilization of all branches of the petroleum industry . . . while, at the same time, providing for appropriate Government participation or supervision at all stages." *Id.* at 42-43.

Over the course of the war, PAW or its predecessor agencies issued 80 directives and recommendations that established priorities or objectives for industry and others. *Id.* at 42. Of those, "56 [were addressed] to the petroleum industry as a whole or to branches thereof, 9 to specifically enumerated oil companies, and 30 to some one or more of the petroleum industry Committees that had been created by PAW." *Id.* at 41. The directives covered diverse subjects. Some "were for the purpose of bringing about some alteration or

adjustment in industry operations in order to conserve materials or manpower, to expedite production and equitable distribution of petroleum products, and to assure most efficient utilization of petroleum facilities." *Id.*

Given the magnitude and complexity of the military's ever-growing appetite for oil, the government realized that "the fullest possible utilization would have to be made of the resourcefulness, ingenuity, and initiative of the industry itself." *Id.* at 15. Thus, PAW was organized "along functional lines paralleling the principal functions of the petroleum industry itself." *Id.* PAW was structured like a vertically integrated oil company, with divisions for production, refining, supply, transportation, and distribution. *Id*. at 308-10. And critically, PAW used the aforementioned industry committees to "advise and assist Government," so that "the full resources of the industry would thus be enlisted on a cooperative basis; at the same time, orders and regulations [were] kept to a minimum, and the greatest possible reliance placed upon voluntary compliance and support." *Id.* at 15.

PAW's relationship with industry committees was formalized with Recommendation 7 (issued in August 1941). *Id.* at 59. Under Recommendation 7, industry committees operated as extensions of PAW itself, relieving the agency from the need to create an elaborate organization and ensuring speed and efficiency. *Id*. at 61. The creation of industry committees was particularly helpful for PAW because they gave the government access to technical knowledge that informed quick wartime planning, ensuring that petroleum production and allocation was managed efficiently and responsively to the day-by-day changes during war time. *Id.* at 43. But industry committees were not

simply informative or advisory bodies. *Id*. at 61. They "shouldered a tremendous burden of arduous and time-consuming work in carrying out under Governmental supervision or direction, the terms of plans and programs that had been approved by PAW." *Id*.

Doing so, the industry committees "operated, under the various recommendations, directives and orders, and subject to the clearance procedure and supervision [of PAW] . . ., in a very real sense as extensions of the Government agency." *Id.* PAW used the committee mechanism to direct and control the oil industry, including exploration and production. For example, industry committees would regularly meet to "compile and review detailed data on productive capacities by fields and pools," which informed PAW's decision to issue monthly production rate certifications designed to equitably distribute crude production in line with productive capacity. *Id.* at 177. And critically, while industry committees provided the government with "plans or proposals," "[n]o action beyond advice and suggestions was to be taken until formal clearance and approval by Government was given." *Id.* at 59.

D. PAW exercised its authority to negotiate contracts and control performance of those contracts.

Meeting the government's massive demand for avgas required refineries to invest millions of dollars to expand productive capacity. *Id.* at 361. But to justify such a significant investment, refiners needed assurance—through firm, multi-year government contracts—that there would be continued demand for the increased refining capacity. *Id.* However, the Army and the Navy lacked authority to contract for a period longer than the current fiscal year. *Id.* After a few years of workarounds through other agencies, by 1942

"it became obvious that it would be necessary to integrate more closely the purchasing arrangements with the extraordinary operations required to provide the necessary quantities of product." *Id.* The government realized that contracts alone would not enable industry to meet its oil requirements. Instead, there needed to be extraordinary coordination to increase production as avgas needs continued to grow.

To that end, the government engineered the so-called "Four Party Purchase Agreement." *Id.* Under this agreement, PAW negotiated contracts, the Defense Supplies Corporation ("DSC") signed them, and the DSC then resold the fuel to the Army and Navy at a uniform price established by PAW. *Id.*

DSC's aviation gas procurement policy created three-year firm contracts under which privately owned facilities like Petitioners' refineries would produce and supply to the government unprecedented amounts of avgas. *Id.* at 361, 365. DSC helped finance the immense costs associated with expanding a refinery's productive capacity, which was essential to meet a company's contractual obligation. *Id.* at 365-66. Because all parties involved were sophisticated actors who understood the domestic oil industry landscape, resources, and refining capacities, it went without saying that the government's demand for an increased amount of avgas necessitated a corresponding increase in crude oil production. It was further understood that without a steady supply of crude oil, avgas production would not be able to scale accordingly to meet wartime demands.

Simply put, "[f]rom the very beginning until the last gun was fired in the Pacific, there was never a time when crude supply was not a problem somewhere in the country." *Id.* at 214. PAW managed the

administrative side of directing crude oil supply to certain refineries, whereas federal contractors (like Petitioners) utilized their specialized expertise to produce crude oil for avgas refinement. PAW and its committees "maintained constant studies as to where crude could be had" and "analyzed various crudes to determine which could be used by which plants." *Id.* at 215. And "[w]henever they came across some idle refining capacity and some surplus crude, [the committees] would work with the Government to bring the two together." *Id.*

In short, PAW knew where its government contractors were sourcing their crude oil and relied on their expertise to produce massive amounts of avgas. And it proactively intervened and contracted with private parties to redirect or reallocate crude as necessary to maximize refinery output. The military's need for petroleum was constantly changing during the war, meaning that PAW and industry needed to work as one unit while playing to each party's strengths to keep the military supplied with avgas. The decision to produce crude oil was unquestionably and necessarily connected to Petitioners' contracts to provide massive quantities of avgas to the federal government for war purposes.

II. Refining and Production Are Linked in a Vertically Integrated Oil Company

A. Refining avgas used crude oil found in abundance in Coastal Louisiana.

Judge Oldham rightly observed that Petitioners "could not simply snap their fingers and, voilà, make avgas." Pet.App.45. "They had to make it out of *something*, and that something was crude oil." *Id.*

On the surface, Judge Oldham's words express a simple truth about gasoline's origins in crude oil. But they also point to essential context about the relationship between petroleum refining and production: specific refineries need crude oil with specific qualities to create specific products. The oil fields of Coastal Louisiana held crude with the right mix of molecules for producing aviation gasoline with the chemical processes in place at existing refineries.

It bears emphasis that crude oil is not fungible black sludge. "Not all crude oil is the same." U.S. Energy Information Administration ("EIA"), *Inputs and Outputs*, https://www.eia.gov/energyexplained/oil-and-petroleum-products/refining-crude-oil-inputs-and-outputs.php (last accessed, Sept. 3, 2025). Crude oil is actually a mixture of many different hydrocarbons, some heavier, like those in heating oil or diesel fuel, and some lighter, like those in gasoline and the superfine gasoline known as avgas.

"The physical characteristics of crude oil determine how refineries process it." *Id.* It takes different refining techniques to produce the same amount of product from different crudes with different balances of these lighter and heavier hydrocarbons. Lighter crudes (less dense ones) typically have more light hydrocarbons, and more valuable products like gasoline can be made from them with "simple distillation." *Id.* By contrast, heavy crude requires more sophisticated processing, sometimes blending or synthesizing with other organic compounds derived from natural gas to produce gasoline with sufficient octane. *See id.* Refining avgas in the necessary quantities requires not just sufficient quantities of the right kinds of petroleum, but sufficient quantities of the right kind of petroleum *for the available refineries*.

Put simply, some crude oil already has large amounts of the specific molecules needed to make the high-octane avgas that a Mustang or Spitfire needed to perform at its best. Producing avgas from these crudes can be accomplished with the simple equipment to which some refineries were limited. *See* EIA, *The Refining Process*, https://www.eia.gov/energyexplained/oil-and-petroleum-products/refining-crude-oil-the-refining-process.php (last accessed, Sept. 3, 2025) (explaining how gasoline can be produced by heating and distilling to separate the lighter from the heavier components of crude oil).

Other crude oil is poor in those molecules needed for high-octane avgas. While it is possible to create high-grade avgas from these crudes, additional, more sophisticated technology and chemical processes are needed to do it. *See id.* ("After distillation, heavy, lower-value distillation fractions can be processed further into lighter, higher-value products such as gasoline."); *id.* ("The most widely used conversion method is called cracking because it uses heat, pressure, catalysts, and sometimes hydrogen to crack heavy hydrocarbon molecules into lighter ones.").

Because certain oil fields produced crude favorable for refining avgas, the PAW took a special interest in them. It designated many Coastal Louisiana fields "as critical fields essential to the war program." PAW District 3, "Preliminary Survey Listing Critical Fields Essential to the War Effort," November 12, 1942. For example, it designated the Garden Island Bay, Lafitte, Barataria, and Delta Duck Club fields as ones that yielded a "preferential type of crude[] used for making aviation gasoline by normal distillation methods." *Id*.

To carry the oil from these "critical fields" on the Louisiana Coast to the necessary refineries, new

pipelines were built from the coast to Baton Rouge and Port Arthur. For example, a new pipeline, Project 14, was built from South Louisiana to Port Arthur. "The purpose of this east to west pipeline was to bring in to the Beaumont refining area special Louisiana Gulf coastal crude required in the manufacture of . . . 100-octane gasoline [avgas]." PAW History at 110. When explaining why it wanted Standard Oil of Louisiana to build another new pipeline, PAW explained that the "oil is essential to insure [sic] a supply of crude to the refinery which has facilities for processing 100-octane gasoline." PAW, "Application 58305, Standard Oil of Louisiana," January 27, 1943. Thus, by war's end, a single Louisiana refinery had produced more than a billion gallons of avgas—"the government estimated that it fueled one in every fifteen planes used in the war." Joshua Caffery, *World War II Industrialization in Louisiana*, 64 Parishes (May 22, 2023), *available at* https://64parishes.org/entry/world-war-ii-industrialization-in-louisiana.

This connection between crude and refining is equally true today and in the industry generally. Crude is the necessary feedstock for refining avgas, so increased demands for avgas necessarily require supplying more crude. And for the major oil companies, that supply generally comes from their own production activities, as they often operate as vertically integrated companies.

B. Vertically integrated companies handle the entire petroleum supply chain from production to refining.

Petitioners are vertically integrated oil companies that own both refineries and production fields, handling the entire supply chain within one company.

Vertical integration refers to a business that controls every segment of its supply chain, and it is common in the oil industry, where "majors," like ExxonMobil, Chevron, BP, and Shell own and operate multiple segments of the oil supply chain: for example, locating petroleum deposits, producing petroleum, transporting it to refineries, refining it into useful products like gasoline, and marketing and distributing it to customers. Integrating the entire supply chain within one company is a pronounced characteristic of the largest oil companies. *See generally* National Energy Project, Vertical Integration in the Oil Industry (Edward J. Mitchell ed., 1976), https://www.aei.org/wp-content/uploads/2017/02/Vertical-Integration-in-the-Oil-Industrytxt.pdf ("Energy Project").

Vertical integration is advantageous because it makes the supply of the most essential component part—crude—more secure. The most certain and secure way to ensure the uninterrupted crude that every refinery requires is by owning or controlling the crude oil production. Energy Project, at 118. Sourcing supply from others is riskier, as "[c]ontracts can be broken," especially in times of constrained crude oil supply. *Id.* (discussing Standard Oil's push to vertically integrate following contract failures in the 1930s).

A secure supply of crude is especially important in the oil industry because of the science and economics of running a refinery. Refineries have large capital costs and require an "uninterrupted 'through-put' throughout the life of the equipment." *See id.* at 115. Crude oil is the most expensive component in the refining process, and before investing the capital to build a refinery, companies must ensure access to a dependable crude oil supply at a reasonable price. *Id.* Transportation costs also help foster integration.

Historically, "the typical refinery can draw crude only from those areas to which it has access by pipeline or deep water." *Id.* at 118.

Vertical integration, especially during WWII, was driven by high-transaction costs on the open market and particularly by the need for efficiency in using steel due to government controls. Controlling the supply chain to enhance security of the supply and efficiency is precisely why firms turn inward for transactions—vertically integrate—rather than contracting with third parties. *See generally* R.H. Coase, *The Nature of the Firm*, 4 Economica 386 (1937).

This close relationship between crude production and refining was fully known to PAW. The government's unprecedented need for avgas meant a need to expand the "throughput" of the refinery. But, "[i]n order to increase refinery throughput . . . it is necessary to produce more crude oil; and it is then necessary to make available the transportation to move this crude oil to the refineries, and move the products away." PAW History at 110. Indeed, PAW created a division, the Petroleum Supply Division, whose "responsibility was to synchronize" every aspect of this supply chain so that it "would mesh smoothly and with greatest possible effectiveness into the machinery of war." *Id.* Thus, PAW was not only aware of this common integration, but it viewed itself by analogy as a kind of "integrated oil company." *Id.* at 28, *id.* at 25 (describing PAW as "vertically integrated" organization).

Even more generally, a government mandate to a major oil company to produce more avgas is tantamount to a mandate to produce more oil from fields with the right molecular mix for the available refineries.

III. The Fifth Circuit Improperly Narrowed the Scope of § 1442(a)(1)

WWII required all hands on deck to maximize the nation's petroleum defense. The above historical context provides essential background for Petitioners' crude oil production that cannot be ignored when applying the "related to" requirements of § 1442(a)(1)—a standard meant to be broadly interpreted. H.R. Rep. No. 112-17(I), at 1-2 (2011). The federal "government needed to fight in [WWII]," and it needed avgas for that fight. Pet.App.16. It is undisputed that "crude oil is a necessary component of avgas," and that Petitioners were contractually obligated to produce avgas for the federal government. Pet.App.28. Absent WWII, neither those contracts for unmatched amounts of avgas nor the establishment of PAW as a centralized planning agency over the oil supply chain would have been necessary. And under wartime conditions, the government had no choice but to exercise pervasive control over the crude oil supply, rendering the production of petroleum to be directly related to the production of avgas. As correctly stated by the dissent, "[Petitioners] satisfied their contractual avgas obligations by increasing their own exploration and production of crude," thereby making "[t]he exploration/production of crude . . . undeniably 'related to' the avgas refining contracts." Pet.App.45.

PAW's pervasive control over crude oil production during the war only confirms that crude oil production was related to the contracts for avgas. Naturally, each stage of an oil company's operations was inextricably connected to another and influenced by the federal government's demand for an overwhelming amount of avgas. The Fifth Circuit's holding that PAW's involvement "severed any connection between . . . production

and refinement activities," Pet.App.36, ignores the essential historical context of what spurred the federal government to contract with the oil industry. The whole point of the well-orchestrated supply chain by the federal government during wartime was to "maximize the output of war products," Pet.App.35, and, indeed, "not a single operation was delayed or impeded because of the lack of petroleum products" thanks to the unique government-industry relationship, PAW History at 7.

Congress enacted 28 U.S.C. § 1442(a)(1) to ensure that private parties operating at the direction of federal officials will have access to a federal forum. But that federal forum has become inaccessible to Petitioners because the Fifth Circuit here misconstrued the extent to which the challenged conduct is "connected or associated with" a federal officer's directive.

In this case, Petitioners "fulfilled the terms of a contractual agreement by providing the Government with a product that it used to help conduct a war." *See Watson v. Philip Morris Cos.*, 551 U.S. 142, 153-54 (2007). To do so, Petitioners had to increase production of crude oil that ultimately was subject to PAW's oversight. Industry "ran their refining activities as though they all were component parts of one huge refinery," and it was "[t]hanks to this kind of coordinated effort [that] the manufacture of petroleum products reached levels which many had deemed beyond achievement—levels without which the war might have been greatly prolonged." PAW History at 192. The crude oil production is plainly related to the avgas production, and Petitioners are entitled to a federal forum to address concerns about these wartime activities.

CONCLUSION

For all these reasons, the amici respectfully urge the Court to reverse the Fifth Circuit and restore the proper standard for the "related to" requirements of § 1442(a)(1) as designed by Congress with the 2011 amendments. Federal officer removal should ensure that parties who contract with and act under government direction to accomplish the government's ends—especially during times of national crisis—are not later subject to suits in state court for their actions. Without such assurance, a private party might hesitate to respond to the government's needs.

Respectfully submitted,

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