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

BRIEF FOR U.S. SENATORS MIKE LEE, TED BUDD, TED CRUZ, JOHN CORNYN, CINDY HYDE-SMITH, AND JOHN HOEVEN AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

Amici curiae are United States Senators Mike Lee (UT), Ted Budd (NC), Ted Cruz (TX), John Cornyn (TX), Cindy Hyde-Smith (MS), and John Hoeven (ND).* As Senators, they have a strong interest in the federal courts correctly interpreting and preserving the federal officer removal provision that Congress expanded in the Removal Clarification Act of 2011. That Act amended 28 U.S.C. § 1442(a)(1) to offer greater assurance that legal disputes involving federal officers or their agents can be removed from potentially hostile state courts and heard in federal district courts. By flouting the Act's plain language, the Fifth Circuit's approach undermines the separation of powers and usurps Congress's constitutional role in determining federal court jurisdiction. It also threatens important federal interests by depriving federal officers and agents of a federal forum in which they can be free of local biases or political pressures. The history of federal officer removal has been one of steady expansion over centuries, and Congress repeatedly has had to correct unduly narrow judicial interpretations. It is time for courts to stop fighting the statute. The Court should reverse and give the statute the full effect that Congress intended in its 2011 amendment, thereby ensuring protection for federal officers and agents carrying out critical federal duties.

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* No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

Amici Senators have clear interests here. The separation of powers is predicated in part on the premise that when Congress carefully, deliberately, and explicitly amends the law through a new statute, the judiciary must recognize Congress's action by fully effectuating the amended language. Lead signatory Senator Mike Lee has an additional interest here as Chairman of the Committee on Energy and Natural Resources, responsible for overseeing legislation and policy related to the Nation's energy production, natural resource management, and public lands. Every other Senator joining this brief likewise plays a leading role in policy arenas where contractors are essential to achieving vitally important policy goals.

ARGUMENT

I. Congress has repeatedly broadened the removal statute to protect federal officers and agents.

From early in the Republic, Congress sought to protect federal officers and agents from potentially hostile state and local venues by providing a mechanism for them to remove cases implicating their federal duties to federal court. As this Court has long recognized, removal helps "prevent hostile States from 'paralyzing' the Federal Government and its initiatives." *Watson* v. *Philip Morris Cos.*, 551 U.S. 142, 149 (2007) (cleaned up) (quoting *Tennessee* v. *Davis*, 100 U.S. 257, 263 (1880)). The current removal provision, found in 28 U.S.C. § 1442, is "a generalization of more specialized grants of removal jurisdiction that from 1815 on had been enacted in times of sharp federal-state conflict." R. Fallon et al.,

Hart and Wechsler's The Federal Courts and the Federal System 816 (6th ed. 2009).

Congress expanded this provision even further in the Removal Clarification Act of 2011, broadening removal to claims "for *or relating to* any act" under federal directives. The textually evident purpose of this amendment was to eliminate the causation standard that some courts had adopted and instead require only some connection between the legal action and federally directed acts. The reason for this expansion was also evident: to provide greater protection to federal officers and private entities working on the government's behalf, thereby promoting important federal interests.

A. Federal officer removal has consistently expanded over centuries.

Over time, the mechanisms for federal officer removal have steadily expanded, always operating on the principle that a party acting on behalf of the federal government should not have to litigate claims in potentially hostile venues. As Daniel Webster explained, the purpose of these removal statutes is to "give a chance to the [federal] officer to defend himself where the authority of the law [is] recognized." 9 Cong. Deb. 461 (1833).

"The federal officer removal statute has had a long history." *Willingham* v. *Morgan*, 395 U.S. 402, 405 (1969). First, during the War of 1812, an embargo against the United Kingdom was unpopular with New England's ship-building industry. "New England shipowners harassed federal customs officers [with] vexatious lawsuits." W. Wiecek, *The Reconstruction of*

Federal Judicial Power, 1863–1875, 13 Am. J. Legal Hist. 333, 337 (1969). Congress responded by "insert[ing] into an act for the collection of customs duties a provision—of limited duration—authorizing removal of all suits or prosecutions against federal officers or other persons as a result of enforcement of the act." Fallon et al., *supra*, at 816 n.6 (citing Act of Feb. 4, 1815, § 8, 3 Stat. 195, 198, and two extensions). "Obviously, the removal provision was an attempt to protect federal officers from interference by hostile state courts." *Willingham*, 395 U.S. at 405.

A couple decades later, Congress enacted another removal statute after South Carolina "passed a Nullification Act declaring federal tariff laws unconstitutional and authorizing prosecution of the federal agents who collected the tariffs." *Watson*, 551 U.S. at 148. The statute allowed federal officers "or other person[s]" to remove to federal court cases brought against them for enforcing the customs laws. *Ibid.* (emphasis omitted) (quoting Act of Mar. 2, 1833, ch. 57, § 3, 4 Stat. 633, 633).

Fast forward another couple decades, and "[t]he Civil War brought a wave of removal acts." Fallon et al., *supra*, at 817 n.6. "In 1863, Congress authorized, for the period only of the rebellion, the removal of cases brought against federal officers or others for acts committed during the rebellion and justified under the authority of the President or Congress." *Ibid.*; see Act of Mar. 3, 1863, § 5, 12 Stat. 755, 756–57. Congress then permitted removal of any suit against any revenue officer "on account of any act done under color of his office" by the revenue officer and "any person acting under or by authority of any

such officer." Act of July 13, 1866, ch. 184, § 67, 14 Stat. 171, 171–72. The statute limited these latter persons to those engaged in acts "for the collection of taxes." *Id.* § 67, 14 Stat. at 172. This removal provision "became permanent and w[as] codified in 1911." E. Johnson, *Removal of Suits Against Federal Officers: Does the Malfeasant Mailman Merit A Federal Forum?*, 88 Colum. L. Rev. 1098, 1100 (1988). And it was "the antecedent for" the current final "clause of § 1442(a)(1), which continued through successive codifications to be limited to cases growing out of the revenue laws." Fallon et al., *supra*, at 817 n.6.

But these limitations on removal were made obsolete in 1948. At that point, Congress again revised the statute, "extend[ing] [it] to cover all federal officers when it passed the current provision as part of the Judicial Code of 1948." *Willingham*, 395 U.S. at 406; see Act of June 25, 1948, ch. 646, § 1442(a), 62 Stat. 938, 938. The addition of "general language" made the "more specialized provision for removal," along with the one for officers engaged in criminal enforcement, no longer "serve any purpose." Fallon et al., *supra*, at 818. In other words, § 1442's removal provision is no longer "limited to particular federal officers or federal functions." *Id.* at 397.

B. Congress offered even greater protection to federal officers and agents in the statute's latest iteration.

This Court has repeatedly recognized that "the totality of congressional action" is the "measure" of statutory meaning. *Tennessee Valley Authority* v. *Hill*, 437 U.S. 153, 184 (1978); see also *Red Lion Broad. Co.*

v. *FCC*, 395 U.S. 367, 380–81, 383 (1969) (looking to legislative history to determine the effect of an amendment); cf. *Stokeling* v. *United States*, 586 U.S. 73, 79–80 (2019) (drawing inferences about statutory meaning from Congress's retention and expansion of terms in later amendments).

Here, after centuries of broadening federal officer removal, Congress further expanded it in 2011. Before 2011, the statute covered officers (or persons acting under them) who were "sued in an official or individual capacity for any act under color of [their] office." 28 U.S.C. § 1442(a)(1) (1996). In the Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545, Congress "broaden[ed] the universe of" federal officers' removal rights under § 1442(a)(1). H.R. Rep. No. 112-17(I), at 6 (2011). Acting in response to widespread inter- and intra-circuit conflicts over the scope of federal officer removal, Congress sought to provide clear statutory guidance. *Id.* at 2.

The Act's overarching purpose was "to ensure that any individual drawn into a State legal proceeding based on that individual's" federal work "has the right to remove the proceeding to a U.S. district court." *Id.* at 1. To that end, Congress rejected narrow judicial interpretations and expanded the statute's scope by inserting the phrase "or relating to." See *id.* at 3–4, 6; Pub. L. No. 112-51, § 2(b)(1)–(2). This broader language covered not only suits brought "for" acts performed under federal authority but any legal actions even "relating to" such acts.

As the House Judiciary Committee report explained, § 1442 was designed "to take from State courts the indefensible power to hold a federal officer

or agent criminally or civilly liable for any act allegedly performed in the execution of their federal duties." H.R. Rep. No. 112-17(I), at 3. Congress recognized that "the right to remove under these conditions [is] essential to the integrity and preeminence of the federal government within its realm of authority." *Id.* at 3. Federal government officers and agents "should not be forced to answer for conduct asserted within their federal duties in a state forum that invites 'local interests or prejudice' to color outcomes." *Ibid.* Without such protections, federal officers and agents "could be subject to political harassment, and Federal operations generally would be needlessly hampered." *Ibid.*

Congress acted after decisions that limited federal officer removal, including a Fifth Circuit ruling that a pre-suit deposition of a federal representative was not a "civil cause of action" under the Act. *Id.* at 3–4 (citing *Price* v. *Johnson*, 2009 WL 10704853, at *1 (N.D. Tex. Apr. 10, 2009), *aff'd*, 370 F. App'x 449 (CA5 2010)). Congress noted this was merely one example of many such decisions, and that the widespread inconsistency with which "federal courts . . . applied" § 1442 necessitated the 2011 amendment. *Id.* at 4; see also, *e.g.*, *Hilbert* v. *Aeroquip, Inc.*, 486 F. Supp. 2d 135, 146 (D. Mass. 2007) (finding insufficient an affidavit stating the Navy had "ultimate control" over a contractor's asbestos warnings because the statute purportedly required "direct orders or comprehensive and detailed regulations"); *Faulk* v. *Owens-Corning Fiberglass Corp.*, 48 F. Supp. 2d 653, 664 (E.D. Tex. 1999) (finding that "detailed, government specifications" for asbestos products were insufficient

to satisfy the statute's requirements without specific federal direction).

Thus, Congress designed the Removal Clarification Act with a singular purpose: to "clarify when Federal employees can transfer their case from a state court to a Federal district court." H.R. Rep. No. 112-17(I), at 5. Congress made clear that "'civil actions' and 'criminal prosecution' include 'any proceeding.'" *Ibid.* And Congress emphasized "that State courts lack the authority to hold Federal officers criminally or civilly liable for acts performed in the execution of their duties." *Id.* at 2. Congress wanted to avoid interpretations that "would potentially subject Federal officers to harassment" in state courts. *Ibid.*

With the specific addition of "or relating to," Congress "intended to broaden the universe of acts that enable Federal officers to remove to Federal Court." *Id.* at 6. As explained by the House Judiciary report, the amendment "rewrites § 1442 by permitting removal by Federal officers 'in an official or individual capacity, for *or relating to* any conduct under color of their office.'" *Ibid.*

Congress also struck the previous reference "to Federal officers who are 'sued' under the statute." *Ibid.* This deletion too was designed to expand the statute's reach by "deemphasiz[ing] the . . . need for a suit to be brought in advance of a motion to remove." *Ibid.*

These changes show Congress's intent to provide expanded protections for federal officers, including by loosening the required nexus between the legal action involving the officer or agent and the underlying

federal acts. As the en banc Fifth Circuit previously summarized, Congress "broadened federal officer removal to actions, not just *causally* connected, but alternatively *connected* or *associated*, with acts under color of federal office." *Latiolais* v. *Huntington Ingalls, Inc.*, 951 F.3d 286, 292 (CA5 2020).

II. The Fifth Circuit's decision strips the statute of its force and endangers federal interests.

Despite this expansion of federal officer removal in the 2011 amendment, the Fifth Circuit here still applied a heightened causation requirement. The panel majority held that the Petitioners fell "short of meeting [the 'relating to'] requirement because" the federal refining contracts did not have any explicit "directive pertaining to [crude] oil production." Pet. 29a, 38a. Some other courts have similarly glossed over the 2011 amendment. See, *e.g.*, *State* v. *Exxon Mobil Corp.*, 83 F.4th 122, 145 n.7 (CA2 2023) ("reject[ing] . . . that the causal-nexus requirement recognized in pre-2011 cases" "was abrogated by the Removal Clarification Act"); *Georgia* v. *Meadows*, 88 F.4th 1331, 1343 (CA11 2023) ("[A federal] officer must establish a causal connection between the charged conduct and asserted official authority." (cleaned up)).

These decisions shortchange Congress's intentional amendment of the statute, which employed broad language specifically to expand removal rights and eliminate strict causation requirements. And these erroneous decisions threaten significant consequences for federal interests by trapping federal officers and contractors in potentially

biased state forums—hindering critical federal initiatives.

A. The decision below disregards Congress's intentional expansion of the statute.

The Fifth Circuit's decision below and similar decisions that gloss over the 2011 amended language frustrate congressional intent, duly expressed through statutory language passed in accordance with bicameralism and presentment to the President. See U.S. Const. art. I, § 7, cl. 2. The purpose of the statute's expansion was to enable federal removal in cases like this. So, Congress should not need to act again to express its broad understanding of federal officer removal: that broad understanding is already the law. Courts should not fight statutory language.

Under ordinary interpretive principles, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Hibbs* v. *Winn*, 542 U.S. 88, 101 (2004). "When the words of a statute are unambiguous," "judicial inquiry is complete." *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253 (1992). Interpretation of the words of a statute "always depends on context," "context always includes evident purpose," and "evident purpose always includes effectiveness." A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012). Interpretation should thus "further[], not hinder[]" the text's "manifest purpose." *Ibid.*; see *Colorado* v. *Symes*, 286 U.S. 510, 517 (1932) (noting that statutes enacted "to maintain the supremacy of the laws of the United States by safeguarding officers and others acting under federal authority [from

abusive litigation in hostile forums] . . . . are to be liberally construed to give full effect to the purposes for which they were enacted").

Even before the 2011 amendment, this Court recognized that Congress's policy favoring a broad federal officer removal "should not be frustrated by a narrow, grudging interpretation of 28 U.S.C. § 1442(a)(1)." *Willingham*, 395 U.S. at 407. Based on the textually evident purposes of § 1442, this Court has reiterated that the statute "must be 'liberally construed.'" *Watson*, 551 U.S. at 147.

That is even more true after the 2011 amendment. As discussed, Congress amended the statute specifically to "broaden the universe of" removal rights under § 1442(a)(1). H.R. Rep. No. 112-17(I), at 6. Hence the Act's title: the "Removal Clarification Act." See *Dubin* v. *United States*, 599 U.S. 110, 121 (2023) (noting that a statute's title can "shed light on its text"). And the phrase that Congress added—"relating to"—carries an exceptionally broad meaning. "A law 'relates to' an [activity], in the normal sense of the phrase, if it has a connection with or a reference to" that activity. *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 96–97 (1995); see also *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) ("The ordinary meaning of the words 'relating to' is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" (cleaned up) (quoting Black's Law Dictionary 1158 (5th ed. 1979)); cf. *Ford Motor Co.* v. *Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 362 (2021) (the term "relate to" "contemplates

that some relationships will support jurisdiction without a causal showing").

Even before 2011, this Court had rejected a rigid causation standard between the legal claim and the federal acts, holding that "[i]t is enough that [the] acts . . . constitute the basis . . . of the state [lawsuit]." *Maryland* v. *Soper*, 270 U.S. 9, 33 (1926). Congress's addition of "or relating to" built on this flexible framework by further loosening the nexus requirement. The current standard should "sweep[] as broadly as its language suggests." *Ali* v. *Fed. Bureau of Prisons*, 552 U.S. 214, 226 (2008). The 2011 amendment contains more expansive language for broadened removal. This standard should be satisfied anytime the federal acts are connected or associated with the legal claim. See *Baker* v. *Atl. Richfield Co.*, 962 F.3d 937, 944 (CA7 2020); see also Pet. 44a (Oldham, J., dissenting). The interpretive principle of fully effectuating Congress's amendment of preexisting statutory text is especially important in the context of the type of "dialogue between Congress and the [courts]" that the evolution of the removal statute suggests. *Boumediene* v. *Bush*, 553 U.S. 723, 738 (2008). "If Congress amends, its intent must be respected" by courts. *Ibid.* "This allows both of [these] branches to adhere to [their] respected, and respective, constitutional roles." *Lamie* v. *U.S. Tr.*, 540 U.S. 526, 542 (2004).

But below, the Fifth Circuit did the opposite, practically ignoring the added language. Just as it had done before the amendment, the court required direct causation, holding that without explicit mention of oil production in the federal oil refinement contracts,

there was no connection between those contracts and claims implicating oil production—and thus no removal. Pet. 33a–34a. But "relating to" also means an "association with." *Morales*, 504 U.S. at 383. So even though the majority acknowledged (with some understatement) that crude oil production was "tangentially related [to the] federal directive" to refine oil, Pet. 34a, it practically applied a causal nexus test by limiting removable actions "to the bare words of a federal contract," Pet. 49a–50a (Oldham, J., dissenting). Yet even the Petitioners' federal contracts anticipated crude oil production by providing tax exemptions for oil produced under their refining agreements. See Pet. 170a (contracts providing that if the Petitioners were "required by [a] municipal" or "state" law to pay "any new or additional taxes" or other fees "by reason of the production" of crude petroleum, they were "entitled to [an] exemption").

Ultimately, the panel majority's fixation on contractual language glosses over the broader operational reality. As the panel recognized, the Petitioners' predecessors "were vertically integrated oil companies that produced . . . and used [the] crude at their refineries to comply with their World War II-era contracts with the government." Pet. 9a. The production of crude oil was more than just "related to" the federal contracts; it was a prerequisite for fulfilling the contracts. Even though Petitioners' "federal contracts clearly pertain to their refinement of avgas and other petroleum products," "these refinery activities do . . . have some relation to oil production." Pet. 28a. That relationship should easily suffice under the operative statutory text, which extends beyond such vertically-integrated companies

to encompass any actions "relating to" government contracts or directions.[1]

The restrictive approach below ignores not only the meaning of the amendment's language, but also the reality of operations essential to fulfilling federal contracts. That interpretation risks eviscerating the purpose of federal officer removal.

B. The unduly narrow reading below would harm important federal interests.

The consequences of flouting Congress's clear directive to broaden federal officer removal would be significant. Narrow construction of federal officer removal threatens important federal interests and programs that Congress specifically sought to protect, as well as the government's relationship with private contractors.

Removal ensures that federal officers and agents may enter a venue where all defenses are at their

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[1] See, *e.g.*, Exec. Order No. 9276, *Establishing the Petroleum Administration for War*, 7 Fed. Reg. 10091, 10092 (Dec. 2, 1942) (granting the Chairman of the War Production Board the power to direct "the petroleum industry as the Administrator may deem necessary, in order to . . . provide adequate supplies" and "[e]ffect proper distribution" "of petroleum for military, or other essential uses"); see also *Exxon Mobil Corp.* v. *United States*, 2020 WL 5573048, at *10 (S.D. Tex. Sept. 16, 2020) (During WWII, the government "control[led] the allocation, exchange, license, pooling, loan, sale, or lease of crude oil, base stocks, blending agents, processes and patents, and production, transportation and refining facilities . . . whenever and to whatever extent may be necessary to facilitate the maximum production of all grades of aviation gasoline or to reduce the time required to produce such gasoline.").

disposal. Without federal removal, States "may deprive federal officials of a federal forum in which to assert federal immunity defenses." *Watson*, 551 U.S. at 150. "[O]ne of the most important reasons for removal is to have the validity of the defense of official immunity tried *in a federal court*." *Willingham*, 395 U.S. at 407 (emphasis added); see also *Jefferson Cnty.* v. *Acker*, 527 U.S. 423, 447 (1999) (Scalia, J., concurring in part and dissenting in part) (stating that the "main point" of federal officer removal "is to give officers a federal forum in which to litigate the merits of immunity defenses"). Of course, immunity is not the only point, and Congress intended to provide the venue itself regardless of the claims. See H.R. Rep. No. 112-17(I), at 6.

Depriving federal officials and agents of a federal forum forces them into state courts, where local biases could potentially obstruct federal operations. This Court has long recognized that the overarching purpose of the removal statute is "to prevent paralysis of operations of the federal government." *Gay* v. *Ruff*, 292 U.S. 25, 32 (1934); see also *Watson*, 551 U.S. at 149; *Davis*, 100 U.S. at 263. The removal statute "protect[s] the Federal Government from the interference with its operations that would ensue" if a State brought officers and agents of the federal government to trial in state court for alleged offenses against state law while acting within the scope of their authority. *Watson*, 551 U.S. at 150 (cleaned up). Again, state court "proceedings may reflect 'local prejudice' against unpopular federal laws or federal officials." *Ibid.* (quoting *Soper*, 270 U.S. at 32). As Congress emphasized in amending § 1442, it sought

to shield the federal government from "political harassment" by the States. H.R. Rep. No. 112-17(I), at 3. Without protection, "local interests or prejudice' [will] color outcomes." *Ibid.* Thus, without an appropriate ability for federal officers and agents to remove, the same scenario that faced the customs officers in New England and the federal agents in South Carolina could result: a paralysis of federal initiatives.

Many precedents show the connection between federal officer removal and important federal interests. For instance, in *Baker* v. *Atlantic Richfield Co.*, 962 F.3d 937, 940 (CA7 2020), residents sued companies for polluting the soil with lead and arsenic. During World War II, the federal government contracted with several companies. *Id.* at 939. It directed one to produce zinc oxide, white lead carbonate, and lead for military and essential civilian goods. *Id.* at 940. It directed the other to build and operate a facility producing Freon-12 (a refrigerant used for preserving food, medicine, and other perishable supplies) solely for government use. *Id.* at 940–41. The plaintiffs alleged that the companies' operations violated state pollution laws. *Id.* at 939. The Seventh Circuit held that, under the 2011 amendment to § 1442, the companies did not need to show that every act of pollution was directly ordered by the government. *Id.* at 944–45. Instead, it was sufficient that the companies were acting under federal authority. *Ibid.*

Likewise, in *Latiolais* v. *Avondale*, 951 F.3d 286, 289 (CA5 2020), a Navy machinist sued Avondale for asbestos exposure during the refurbishment of the

USS *Tappahannock*. The Navy had contracted with Avondale in the 1960s and 1970s to build and refurbish naval vessels, directing the company to install asbestos for thermal insulation and supervising the process to ensure compliance. *Ibid.* The plaintiff alleged under state law that Avondale negligently failed to warn him of asbestos hazards and provide adequate safety equipment. *Id.* at 290. But under the 2011 amendment to § 1442(a)(1), the en banc Fifth Circuit held that removability does not require a direct causal nexus; it is enough for the civil action to be connected or associated with acts performed under color of federal office. *Id.* at 296. Because Avondale installed asbestos under Navy directions, the case was removable. *Ibid.*

As these precedents show, often federal officer removal is needed to protect federal contractors—private parties working under the government's direction to advance significant federal initiatives. Section 1442 protects "any person acting under" a federal officer's direction. 28 U.S.C. § 1442(a)(1). The federal government relies on these contractors for many reasons, including cost efficiencies, taking advantage of private sector expertise, and avoiding federal bureaucracy bloat.

Reading federal officer removal narrowly threatens this relationship between the federal government and vital contractors. In many cases, contractors' work may implicate areas of intense political disagreement, threatening them with the same type of local biases and pressures that motivated federal officer removal in the first place.

For instance, the Trump Administration has sought greater enforcement of our immigration laws, after years of nonenforcement created severe public safety and economic problems. See, *e.g.*, Exec. Order No. 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443 (Jan. 20, 2025); Exec. Order No. 14165, *Securing Our Borders*, 90 Fed. Reg. 8467 (Jan. 20, 2025); Proclamation No. 10888, *Guaranteeing the States Protection Against Invasion*, 90 Fed. Reg. 8333 (Jan. 20, 2025).

The U.S. Immigration and Customs Enforcement (ICE) relies on contractors to carry out these important goals.[2] ICE uses private contractors for transportation, security, detention facilities, IT

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[2] The federal government's contracting authority in this area stems from several statutory sources. The Homeland Security Acquisition Regulation outlines procedures for all Department of Homeland Security acquisition activities. See 48 C.F.R. § 3001.103 et seq.; *e.g.*, *id.* §§ 3037.104-70 (service contracting), 3035.017 (research and development contracting). More broadly, the Federal Property and Administrative Services Act of 1949 gives the President power to dictate federal contracting terms to ensure efficiency and economy. 40 U.S.C. § 101 et seq.; see also *id.* § 121 ("The President may prescribe policies and directives that the President considers necessary to carry out this subtitle."). All this authority operates through the Federal Acquisition Regulation, 48 C.F.R. § 1.101 et seq., under which agency heads can delegate contracting authority to contracting officers, *id.* §§ 1.601, 1.602-1(a) ("Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings."). Taken together, these authorities vest ICE with expansive discretion to contract with a wide range of private entities.

services, supplies, and deliveries.[3] These contractors play vital roles in immigration enforcement. But it is no secret that contractors' fulfillment of this important work is not without controversy. Cell phone applications have been designed solely to expose ICE agents.[4] Without a federal forum to assert federal defenses, there is significant danger that ICE agents and contractors could face legal actions colored by "local interests or prejudice." H.R. Rep. No. 112-17(I), at 3.

Another example occurred in Connecticut. New Haven is banning its employees from flying Avelo Airlines because it is an ICE subcontractor.[5] At one protest, Senator Richard Blumenthal said: "To the president of Avelo: You really stepped in it. . . . You made a bad mistake."[6] Connecticut's Attorney General, William Tong, dashed off a threatening letter, declaring that because Avelo "chose[]" to help the federal government enforce its laws, "[t]he State of Connecticut has an obligation now to review this business decision and to consider the viability of our

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[3] See, *e.g.*, L. MacLellan, *These are the Fortune 500 Companies that have Active Contracts with ICE*, Fortune (June 26, 2025), https://perma.cc/5P2F-CMA6.

[4] C. Duffy, *'I wanted to do something to fight back': This iPhone App Alerts Users to Nearby ICE Sightings*, CNN (June 30, 2025), https://perma.cc/8HRZ-BKJK.

[5] J. Rose, *Budget Airline Avelo Faces Backlash for Signing Up to Fly Deportation Flights for ICE*, NPR (Apr. 30, 2025), https://perma.cc/P8VM-FB26.

[6] *Ibid.*

choice to support Avelo."[7] In his letter, Tong demanded that Avelo provide a copy of its contract with the Department of Homeland Security (or related parties) and answer detailed questions about its deportation flights, including confirmation Avelo will not operate deportation flights from Connecticut airports.[8]

Connecticut could try to prosecute Avelo in state court under any number of theories, including perhaps state nondiscrimination laws. See, *e.g.*, Conn. Gen. Stat. §§ 46a-71(b), 46a-58(a). Many States let their Attorneys General issue intrusive subpoenas and other demands. See, *e.g.*, N.J. Stat. Ann. § 56:8-3; Mass. Gen. Laws Ann. ch. 93A, § 6(1); N.Y. Gen. Bus. Law §§ 343, 352. An unduly narrow reading of § 1442 could threaten contractors like Avelo that make many decisions related to the fulfillment of their federal obligations—including what operations it may undertake in a particular State—without express contractual provisions about those decisions. There is ample reason to think that ICE contractors like Avelo could not get a fair shake in state courts like Connecticut's.

ICE's detention facilities are also facing mounting pressure. "The use of private detention contractors is a vital piece of the national detention system enabling ICE to successfully execute its mission with less than

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[7] W. Tong, *Avelo Airlines Contract to Operate Flights for U.S. Department of Homeland Security*, Off. Att'y Gen. Conn. (Apr. 8, 2025), https://perma.cc/5DFQ-RLGP.
[8] *Ibid.*

4% of facilities being ICE owned and operated."[9] But ICE detention contractors are unpopular in some quarters. For instance, one contractor that operates a detention facility on ICE's behalf in Colorado has become a target for local malcontents following a FOIA lawsuit brought by the ACLU.[10] This scrutiny comes on top of existing legal challenges at the same facility, where the contractor was already embroiled in litigation over alleged violations of Colorado's minimum wage law while acting "pursuant to a contract with [ICE]." *Menocal* v. *The GEO Group, Inc.*, 635 F. Supp. 3d 1151, 1157 (D. Colo. 2022); see 113 F. Supp. 3d 1125, 1129 (D. Colo. 2015) (dismissing the minimum wage claim).

Colorado's hostility toward federal immigration policies extends beyond ICE facilities. Recently, Colorado Attorney General Phil Weiser sued a Mesa County sheriff's deputy for allegedly violating a Colorado law that purports to prohibit assisting federal immigration enforcement.[11] Again, it is not a stretch that contractors in venues like this will face an unacceptable risk of local bias, and their actions that are related to—even if not expressly required

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[9] *Readout of U.S. Immigration and Customs Enforcement Meeting with Private Detention Contractor* (Apr. 5, 2024), https://perma.cc/4RBL-A4EJ.

[10] S. Wilson, *Three New ICE Detention Centers Reportedly Planned in Colorado*, Colo. Newsline (Aug. 15, 2025), https://perma.cc/AJ7W-K8SR.

[11] R. Fish, *Mesa County Sheriff: AG Lawsuit Over Alleged Immigration Enforcement Violation is About Politics, Not Fairness*, Denver7 ABC (Jul. 31, 2025), https://perma.cc/XVF8-M2U2.

by—a federal directive should be protected by the availability of a federal forum.

This availability of a neutral forum is especially important because private contractors have freedom to choose their work. The prospect of prolonged litigation in hostile forums may cause many contractors to choose not to bid on government contracts. Or contractors may refuse to participate in certain jurisdictions. Or some potential contractors may never get off the ground, as hostile litigation could serve as a significant barrier to entry. All this undermines the ability of the federal government to achieve its objectives, threatening the delivery of federal services—or potentially leading to a patchwork of federal services that depends on local political sentiment rather than national need.

These policy considerations were addressed precisely where they ought to be: in Congress, by the People's elected representatives. Congress amended the statutory language to avoid these outcomes. This Court should give the clear statutory text its full sweep and thereby vindicate Congress's intentional effort to broadly shield federal officers and contractors—doing important federal work—from abusive litigation in hostile forums.

CONCLUSION

For these reasons, the Court should reverse.

Respectfully submitted,

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