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

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INTEREST OF THE *AMICI CURIAE*[1]

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

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

Many of the *amici*'s members perform vital functions for the United States while acting under the direction and control of federal officers. The *amici*'s

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

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

SUMMARY OF ARGUMENT

I. More than two centuries ago, Congress created federal-officer removal jurisdiction to give those carrying out the work of the federal government access to federal courts. Federal courts provided fair forums for "[f]ederal officers or agents," who Congress concluded "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." H.R. Rep. No. 112-17, at 3 (2011).

At the height of Prohibition, this Court confirmed that federal-officer removal is available to private parties, too. *Maryland v. Soper*, 270 U.S. 9, 30 (1926). After all, federal contractors, like federal employees, could perform work that was nationally important but locally unpopular. Since then, federal contractors of all stripes—manufacturers of military hardware, administrators of federal healthcare programs, and contractors performing environmental cleanup among them—have invoked the federal-officer removal statute to gain access to a federal court. In that time, the touchstone of federal-officer removal by private parties has always remained the same: whether the suit "involve[s] an effort to assist, or to help carry out, the duties or tasks of the federal superior." *Watson v.*

Philip Morris Cos., 551 U.S. 142, 152 (2007) (citing *Davis v. South Carolina*, 107 U.S. 597, 600 (1883)).

II. In 2011, Congress amended § 1442 to make it easier for federal officers and private parties alike to remove cases to federal court. The amendment expanded the statute to cover not just actions "for any act under color of [federal] office," but actions "for *or relating to*" such acts. Most federal courts recognized the expansion for what it was: the old "for" standard required a causal connection between the charged conduct and the acts under federal office, but the "for or relating to" standard meant that a "connection" or "association" between the two would suffice.

The Fifth Circuit, however, raised the bar higher than where it was before. According to the court of appeals, the words "relating to" can be satisfied by private parties only if the suit is connected to a "directive" in "the contents of the relevant federal contracts." Pet. App. 25, 29. There is no dispute that there is a connection between the conduct alleged by respondents and petitioners' work producing refined avgas for the federal government. But in the view of the court of appeals, the two were not *sufficiently* connected because the subject matter of respondents' suit—the extraction and production of raw crude—was nowhere to be found in the four corners of petitioners' federal contracts. That position is not consistent with the statute as Congress amended it in 2011. Section 1442's "for or relating to" prong is satisfied where a private party renders aid or assistance to the federal government, and the suit challenges conduct that is connected to, or associated with, that work—regardless of whether the federal government instructed the defendant to perform that specific conduct and inscribed that instruction in a written agreement.

III.The Fifth Circuit's "contractual directive" requirement would create enormous uncertainty regarding when a private party may remove a case to federal court under § 1442. That uncertainty, in turn, would inevitably cause private contractors to think twice before taking on work for the federal government. Indeed, the court's restrictive interpretation of "for or relating to" is entirely unmoored from the realities of modern government contracting—where the level of the federal government's involvement can range from dictating every last detail of the contract to according near-complete discretion to the contractor.

Respondents complain that honoring the plain text of the words "relating to" would render the words meaningless, as "virtually every remote and tenuous activity could be deemed related to a government contract." State Br. in Opp. 21. But a broader, textually faithful standard would not open the floodgates to federal court; Section 1442 has other preconditions to federal-officer removal, such as the "acting under" and colorable-federal-defense requirements. By contrast, if this Court were to adopt the Fifth Circuit's "contractual directive" requirement, it may leave federal-officer removal even more elusive for private contractors than before, which would contravene Congress's decision to "*broaden* the universe of acts that enable Federal officers to remove to Federal court." H.R. Rep. No. 112-17, at 6 (emphasis added).

ARGUMENT

I. Federal contractors have long relied on the liberal construction of federal-officer removal that this Court has promised and Congress has ratified.

Time and again, this Court has held that § 1442's right of removal for federal officers must not be treated as "narrow" or "limited," but "liberally construed." *Colorado v. Symes*, 286 U.S. 510, 517 (1932). That promise of broad protection is part of the commitment that the federal government makes to its contractors—and contractors rely on that promise as part of the bargain they strike when they agree to do work for the federal government.

Throughout its history, the purpose of federal-officer removal jurisdiction has always been to ensure that those performing federal work may litigate federal "defenses … in the federal courts." *Willingham v. Morgan*, 395 U.S. 402, 406-07 (1969). From the statute's enactment to its recent amendment, Congress has deemed the ability to secure a federal forum for federal officers' federal defenses to be "essential to the integrity and preeminence of the Federal Government within its realm of authority." H.R. Rep. No. 112-17, at 3. Federal-officer removal is "exceptional" in that it is based on "an anticipated or actual federal defense … despite the nonfederal cast of the complaint." *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999).

The statute was first used to protect federal officers facing state action for acts they undertook in performance of their duties. "[W]here state courts might prove hostile to federal law … the removal statute would 'give a chance to the [federal] officer to defend

himself where the authority of the law was recognized,'" *i.e.*, in federal court. *Watson*, 551 U.S. at 148 (quoting 9 Cong. Deb. 461 (1833) (statement of Sen. Daniel Webster)). But it did not take long for this Court to recognize that private parties, too, could avail themselves of federal-officer removal, so long as the action being removed arose out of assistance that the private party rendered to a federal officer performing his official duty. *See id.* at 149-50.

1. "The federal officer removal statute has had a long history." *Willingham*, 395 U.S. at 405. The statute's earliest predecessor was a customs law enacted during the War of 1812, when several New England states opposed efforts to embargo trade with England. *Id.* The statute included a removal provision designed "to protect federal officers from interference by hostile state courts," permitting customs officers "to remove to the federal courts any suit or prosecution commenced because of any act done 'under colour' of the statute." *Id.* Similar statutes protecting customs and revenue officers were passed in 1833 in the face of state nullification efforts, and again during the Civil War. *Id.* at 405-06. Congress expanded the availability of federal-officer removal in 1948, by removing subject-matter limitations. *See id.* at 406. Most recently, and crucially for this case, Congress amended the statute in 2011 to further broaden its scope. *See* Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545.

"The purpose of all these enactments is not hard to discern": to ensure robust access to federal court for the "officers and agents" through whom the federal government must act. *Willingham*, 395 U.S. at 406. In cases where those officers and agents face potential liability for acts undertaken "within the scope of their

authority," "if their protection must be left to the action of the State court," then "the operations of the general government may at any time be arrested at the will of one of its members." *Id.* (quoting *Tennessee v. Davis*, 100 U.S. 257, 263 (1879)).

2. The federal-officer removal statutes have historically provided a federal forum not just to federal officers themselves, but also to private parties assisting them. *See Watson*, 551 U.S. at 147-49 (discussing history of current statute and its predecessors). During Prohibition, this Court confirmed that private parties "ha[d] the same right to the benefit of" federal-officer removal as the federal officers whom they served. *Maryland v. Soper*, 270 U.S. 9, 30 (1926). In *Soper*, Maryland had charged four federal prohibition officers and a private individual acting as their chauffeur with murder; a person had died during a distillery raid conducted by the prohibition officers. *Id.* at 27. (An official of the federal Prohibition Unit, which was responsible for enforcing the Volstead Act, had hired the chauffeur's company. *Id.*) Relying on *Davis v. South Carolina*, 107 U.S. 597 (1883), the Court concluded that the private defendant was just as entitled to removal as the federal prohibition officers, given that the private defendant had been "acting as a chauffeur and helper to the four officers under their orders and by direction of the prohibition director for the state." *Soper*, 270 U.S. at 30; *see also Davis*, 107 U.S. at 600 ("[T]he protection which the law thus furnishes to the marshal and his deputy, also shields all who lawfully assist him in the performance of his official duty.").

In a companion case (with the same name), the Court also stressed that federal-officer removal was not limited to only those acts "expressly authorized by the

federal statutes." *Maryland v. Soper*, 270 U.S. 36, 41-42 (1926). Rather, it was enough that the acts were "an inevitable outgrowth of the officer's discharge of his federal duty and … closely interrelated with it." *Id.* at 42. In both cases, the Court recognized that nothing in the statute "require[d] that the [lawsuit] must be for the very acts which the [defendant] admits to have been done … under federal authority." *Soper*, 270 U.S. at 33.

This Court did not revisit the issue of private parties invoking federal-officer removal until *Watson*. In *Watson*, the Court clarified when a private party is "acting under" a federal officer for purposes of § 1442. There, Philip Morris sought to remove a lawsuit regarding allegedly deceptive cigarette advertisements. *Watson*, 551 U.S. at 146. To establish the required connection to federal office, Philip Morris pointed to extensive FTC oversight over the tobacco industry—including a testing process that the FTC had delegated to "an industry-financed testing laboratory," which had been "extensively supervised" and "closely monitored" by the FTC. *Id.* at 154 (alterations omitted).

To the Court, that oversight was not enough to justify federal-officer removal, as Philip Morris's relationship with the FTC was not "distinct from the usual regulator/regulated relationship." *Id.* at 157. In support of that conclusion, the *Watson* Court harked back to *Davis* and *Soper*, observing that "precedent and statutory purpose make clear that the private person's 'acting under' must involve an effort to assist, or to help carry out, the duties or tasks of the federal superior." *Id.* at 152.

While *Watson* did not consider how private contractors might show the causal connection that was required by the version of § 1442 in force at the time, *Jefferson Cnty.*, 527 U.S. at 424, it reaffirmed the century-old principle that those "'who lawfully assist' the federal officer 'in the performance of his federal duty'" should be able to benefit from the federal-officer removal statute. 551 U.S. at 151 (quoting *Davis*, 107 U.S. at 600).

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

Federal contractors of various stripes frequently remove under § 1442 when they are named in lawsuits relating to their work for the government. Military contractors, in particular, have invoked the federal-officer removal statute in numerous cases. Such contractors include manufacturers of military hardware such as helicopters, submarines, and warships;[2] manufacturers of chemicals and chemical

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[2] *See Moore v. Elec. Boat Corp.*, 25 F.4th 30, 32 (1st Cir. 2022) (submarines); *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 289 (5th Cir. 2020) (en banc) (naval vessels); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 252 (4th Cir. 2017) (boilers for naval vessels); *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 809 (3d Cir. 2016) (aircraft); *Ruppel v. CBS Corp.*, 701 F.3d 1176, 1178 (7th

components of other supplies;[3] administrators of military health care programs;[4] and other providers of services to the military,[5] including banks that operate on military bases.[6]

Another notable category of cases concerns private businesses working with federal health care programs outside the military context. In a number of cases, courts have held that private companies that contract to administer Medicare benefits were "acting under"

Cir. 2012) (turbines for naval vessels); *Gordon v. Air & Liquid Sys. Corp.*, 990 F. Supp. 2d 311, 314 (E.D.N.Y. 2014) (turbines and steam generators for warships); *Malsch v. Vertex Aerospace, LLC*, 361 F. Supp. 2d 583, 584-85 (S.D. Miss. 2005) (helicopters); *Akin v. Big Three Indus., Inc.*, 851 F. Supp. 819, 823-24 (E.D. Tex. 1994) (jet engines); *Fung v. Abex Corp.*, 816 F. Supp. 569, 573 (N.D. Cal. 1992) (submarines).

[3] *See, e.g.*, *Maryland v. 3M Co.*, 130 F.4th 380, 384 (4th Cir. 2025) (firefighting foam for the military); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 939-41, 942, 946-47 (7th Cir. 2020) (various "critical wartime commodities" during World War II, including zinc oxide and lead carbonate); *Genereux v. Am. Beryllia Corp.*, 577 F.3d 350, 353-54, 357 & n.9 (1st Cir. 2009) (beryllium oxide ceramics used in nuclear weapons, radar tubes, jet brake pads, and jet engine blades); *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 138-39 (2d Cir. 2008) (Agent Orange).

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

[5] *See Hagen v. Benjamin Foster Co.*, 739 F. Supp. 2d 770, 772-73 (E.D. Pa. 2010) (civilian contractor that employed machinist who worked on Navy vessel); *McMahon v. Presidential Airways, Inc.*, 410 F. Supp. 2d 1189, 1192, 1195 (M.D. Fla. 2006) (contractor that flew planes for Department of Defense in Afghanistan).

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

federal officers. *See, e.g.*, *Peterson v. Blue Cross/Blue Shield of Tex.*, 508 F.2d 55, 57 (5th Cir. 1975); *Einhorn v. CarePlus Health Plans, Inc.*, 43 F. Supp. 3d 1268, 1270 (S.D. Fla. 2014); *Freeze v. Coastal Bend Foot Specialist*, No. C-06-481, 2006 WL 3487405, at *3 (S.D. Tex. Dec. 1, 2006); *Pani v. Empire Blue Cross Blue Shield*, No. 93 Civ. 8215 (SHS), 1996 WL 734889, at *1 (S.D.N.Y. Dec. 23, 1996), *aff'd*, 152 F.3d 67 (2d Cir. 1998); *Grp. Health Inc. v. Blue Cross Ass'n*, 587 F. Supp. 887, 891 (S.D.N.Y. 1984). So too for companies administering health benefits for federal employees. *See Goncalves ex rel. Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1243-51 (9th Cir. 2017); *Jacks v. Meridian Res. Co., LLC*, 701 F.3d 1224, 1232-35 (8th Cir. 2012), *abrogated in part on other grounds by BP p.l.c. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532 (2021); *Anesthesiology Assocs. of Tallahassee, Fla., P.A. v. Blue Cross Blue Shield of Fla., Inc.*, No. 03-15664, 2005 WL 6717869, at *2 (11th Cir. Mar. 18, 2005).

Other contractors have also availed themselves of the protections of the federal-officer removal statute. For example, a business hired to eliminate toxic mold from an air-traffic control tower was held to be "acting under" the Federal Aviation Administration and, on that basis, successfully removed a negligence lawsuit. *Bennett v. MIS Corp.*, 607 F.3d 1076, 1088, 1091 (6th Cir. 2010). Businesses relying on § 1442 have also included federal land banks operating under the Farm Credit Administration, which exist only to "further a government interest";[7] and telecommunications

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

companies providing information to federal law-enforcement or national-security authorities.[8]

Contractors are not always for-profit businesses: nonprofits also benefit from the protection of § 1442. For example, entities providing legal services to disadvantaged individuals have availed themselves of the removal statute. *See In re Commonwealth's Motion to Appoint Counsel Against or Directed to Defender Ass'n of Phila.*, 790 F.3d 457, 462-63, 468, 472 (3d Cir. 2015) (Federal Community Defender Organization, which provided legal services pursuant to the Criminal Justice Act, was "acting under" the Administrative Office of the U.S. Courts); *Gurda Farms, Inc. v. Monroe Cnty. Legal Assistance Corp.*, 358 F. Supp. 841, 842-47 (S.D.N.Y. 1973) (nonprofit providing legal advice to migrant workers was "acting under" the Office of Economic Opportunity). Even a "private citizen[]" serving as a Chapter 13 trustee under the Bankruptcy Code can avail himself of the right to remove. *E.g.*, *Bell v. Thornburg*, 743 F.3d 84, 89 (5th Cir. 2014) (permitting "private citizen[]" serving as standing Chapter 13 trustee under the Bankruptcy Code to remove under § 1442).

4. Removal under § 1442 is important to these individuals, nonprofits, and businesses working under the federal government. That is especially so when the work is risky or politically controversial.

One prominent example, the Agent Orange litigation, *see Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 138-39 (2d Cir. 2008), took place against the backdrop of

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

the government's controversial decision to use herbicides in the Vietnam War. The Vietnam conflict itself was the subject of considerable debate, to say the least. *See, e.g.*, *Vietnam Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104, 119 (2d Cir. 2008).

Similar examples abound. One involved a challenge to a controversial practice of sharing customer phone records with the National Security Agency—a case in which the United States was prepared to intervene to ensure its interests were adequately protected. *See Nat'l Sec. Agency Telecomms. Records Litig.*, 483 F. Supp. 2d at 945. In yet another case, Pennsylvania state courts sought a blanket disqualification of federally-funded lawyers from state habeas proceedings, animated by what one circuit judge concluded was "simple animosity or a difference in opinion regarding how capital cases should be litigated." *In re Commonwealth's Motion*, 790 F.3d at 486 (McKee, J., concurring).

In politically charged cases, there is a significant risk that local prosecutors, judges, or jurors will disagree with the decisions of the federal government—and allow that disagreement to affect how federal agents are treated in local courts. Such political disagreements (over the War of 1812 and the federal trade embargo of England) are what prompted Congress to enact the earliest predecessor of § 1442 in 1815. *See Willingham*, 395 U.S. at 405.

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

concerning Agent Orange, made the following observation:

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

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

For private businesses "acting under" federal officials, availability of a federal forum is particularly important. Private officials do not make the policy choices that they help the government to carry out; they should not be the ones to bear the brunt of political disagreements over those policy choices. And so it is hardly surprising that, as noted above, a variety of different businesses have availed themselves of removal under § 1442.

II. The Fifth Circuit's "contractual directive" requirement is not, and has never been, the correct standard for federal-officer removal by private parties carrying out the federal government's work.

Congress's 2011 amendment to the statute has particular importance here: it made removable any claim "relating to" work performed under a federal officer. Before that amendment, lower courts had considered reading a causation requirement into the statute. After that amendment, it is clear no such requirement can stand. Accordingly, this Court should reject the Fifth Circuit's "contractual directive" standard. That standard re-adopts causation requirements that are patently incorrect after the 2011 amendment and, indeed, may be stricter than what the law required *before* the amendment.

1. Until 2011, the federal-officer removal statute permitted "any [federal] officer (or any person acting under that officer)" to remove a civil action to federal court "*for* any act under color of such office." 28 U.S.C. § 1442(a)(1) (2006) (emphasis added). This Court construed this phrase to require that a suit "*grow[] out of* conduct under color of office," *i.e.*, that there be a "'causal connection' between the charged conduct and asserted official authority." *Willingham*, 395 U.S. at 407, 409 (emphasis added) (citation omitted).

The causal-connection requirement was never particularly demanding. In *Willingham*, for example, this Court determined that the warden and chief medical officer of a federal prison could remove a civil action alleging that the two had assaulted the plaintiff, an inmate at the prison. The Court concluded that the

causal-connection requirement had been satisfied, "simply enough," by the "fact that [the defendants] were on duty, at their place of federal employment, at all the relevant times." *Willingham*, 395 U.S. at 409. The Court did not require the defendants to demonstrate that their alleged actions fell within the scope of their federal employment; if there had been a question about "whether they were engaged in some kind of 'frolic on their own' in relation to [the plaintiff]," the defendants were still to be given "the opportunity to present their version of the facts to a federal, not a state, court." *Id.*

Three decades later, this Court held that two federal judges could remove an Alabama county's action to collect a local occupational tax from them. *Jefferson Cnty.*, 527 U.S. at 429-30. Although the tax, on its face, was not aimed at federal judges or federal employees, the Court nevertheless determined that the suits were "for a[n] act under color of office." *Id.* at 432 (quoting 28 U.S.C. § 1442(a)(3)). The Court rejected the Solicitor General's view that the causal-connection requirement had not been satisfied because the tax was imposed upon the judges personally, and "not upon the United States or upon any instrumentality of the United States." *Id.* Such a rigid conception of the requirement, the Court observed, "would defeat the purpose of the removal statute." *Id.* An "airtight case on the merits" would not be necessary to "show the required causal connection." *Id.*

2. Although § 1442 had been liberally construed, *see Watson*, 551 U.S. at 147, and the causal-nexus requirement was not a taxing one, Congress nevertheless decided in 2011 to amend the statute to allow removal not just of any civil action or criminal prosecution "for

any act under color of such office," but of any such action or prosecution "*relating to* any act under color of such office." § 2(b)(1)(A), 125 Stat. 545. That addition self-evidently "broaden[s] the universe of acts that enable Federal officers to remove to Federal court," H.R. Rep. No. 112-17, at 6.

As the Fifth Circuit itself eventually recognized, the addition of "or relating to" was not "a radical change." *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 294 (5th Cir. 2020) (en banc). Rather, by adding the phrase "or relating to," the Act expanded the types of civil actions and criminal prosecutions eligible for removal under § 1442 to include those actions that "stand in some relation" to, or have an "association with," acts taken under color of federal office. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (citation omitted).

3. Several circuits readily recognized that Congress's amendment marked the demise of the causation requirement. The Third Circuit, in one of the first decisions interpreting the phrase "for or relating to," noted that the old standard required private contractors to show that they were being sued "at least in part '*because of* what they were asked to do by the Government.'" *In re Commonwealth's Motion*, 790 F.3d at 471 (quoting *Isaacson*, 517 F.3d at 137). But with the addition of "relating to," the court observed, "a 'connection' or 'association' between the act in question and the federal office" would suffice. *Id.* The Fourth Circuit found the Third Circuit's decision persuasive and adopted its reasoning, dispensing with causation entirely in favor of "connection" or "association." *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017) (reversing the district court's determination that a "strict

causal connection" was necessary under the federal-officer removal statute, and discerning a "connection or association" sufficient for removal). The Seventh and Eleventh Circuits kept the "causal connection" label but disposed of it in practice. *See Baker v. Atl. Richfield Co.*, 962 F.3d 937, 944 (7th Cir. 2020) (explaining that, up until 2020, the Seventh and Eleventh Circuits had "stopped short of abandoning the 'causal connection' test, though [they] both had 'essentially implemented a connection rationale for removal'").

The Fifth Circuit, for a while, stood by the causal-connection test, in form and substance. It continued to rely on pre-2011 caselaw to hold that § 1442 required a showing that "a causal nexus exists between the defendants' actions under color of federal office and the plaintiff's claims." *Bartel v. Alcoa S.S. Co.*, 805 F.3d 169, 172 (5th Cir. 2015) (quoting *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398-400 (5th Cir. 1998)). Although the court of appeals recognized that the words "relating to" meant "some attenuation is permissible," *Zeringue v. Crane Co.*, 846 F.3d 785, 794 (5th Cir. 2017), it was clear that the Fifth Circuit was not giving the phrase "relating to" the same expansive reading as its sister circuits—even those that kept the causal-connection requirement in name only. *Latiolais*, 951 F.3d at 295 n.8 (noting that other circuits that retained the causal-nexus requirement had applied it "more expansively … than [the Fifth Circuit] in recent cases").

Nine years after the Removal Clarification Act of 2011, the Fifth Circuit, sitting *en banc*, held that the Act meant that the causal-connection test was no more, and the "for or relating to" prong requires only that "the charged conduct is connected or associated with an

act pursuant to a federal officer's directions." *See Latiolais*, 951 F.3d at 296.

4. *Latiolais*' course correction did not last long. In this case, the Fifth Circuit panel held that the challenged conduct must have a "*sufficient* connection with directives in … federal … contracts," Pet. App. 29 (emphasis added), and that the connection must be found in "the contents of the relevant federal contracts." Pet. App. 25. That marks a return not just to an outdated standard, but to a standard that is stricter than the one the court had previously applied.

Although the court of appeals insisted it was not holding that § 1442 requires a showing that "a federal officer directed the specific … activities being challenged," Pet. App. 29, that is exactly what it did. The court found removal unwarranted because petitioners' federal contracts "lack[ed] … any contractual provision pertaining to oil production" or any direction "to use only oil they produced." Pet. App. 30. That requirement is nowhere to be found in the plain text of "relating to." Indeed, the court of appeals admitted as much: it actually acknowledged that petitioners' "refinery activities … [had] some *relation* to oil production," as "crude oil is a necessary component of avgas, and one way of obtaining crude oil is to produce it." Pet. App. 28-29 (emphasis added). The court rejected petitioners' right to remove only by raising the bar above where Congress had set it—wrongly treating as dispositive the fact that the government itself did not mention production in its contracts with petitioners.

The "contractual directive" requirement is not only contrary to the current "relating to" standard, it may be too taxing even under the now-abandoned "causal

connection" standard. Consider, for example, the fact that federal-officer removal has historically been available even for "acts not expressly authorized by the federal statutes" that are "an inevitable outgrowth of the officer's discharge of his federal duty." *Soper*, 270 U.S. at 42. Crude-oil production was an "inevitable outgrowth" of refining activity. Pet. App. 46 (Oldham, J., dissenting) ("And given their contractual obligations to produce avgas, defendants had to get the crude oil from *somewhere*…."). And even under the half-causation, half-connection standard that the Fifth Circuit applied after the enactment of the Removal Clarification Act but before *Latiolais*, the Fifth Circuit rejected the notion that "precise federal direction" was necessary to satisfy its causal-nexus test. *Zeringue*, 846 F.3d at 794.

Regardless of whether the "contractual directive" requirement was defensible under the old standard, it is certainly not defensible *now*. "[D]emanding a showing of a specific government direction" goes "beyond what § 1442(a)(1) requires, which is only that the charged conduct *relate to* an act under color of federal office." *Sawyer*, 860 F.3d at 258; *Moore v. Elec. Boat Corp.*, 25 F.4th 30, 36 (1st Cir. 2022).

5. The court of appeals' insistence that "relating to" requires a contractual directive makes little sense, given that federal-officer removal for private parties is not limited *only* to those parties who have direct contracts with the federal government. To be sure, such a relationship is often a reliable way to establish federal-officer removal jurisdiction. *See Watson*, 551 U.S. at 153. But it is not the only way; "the absence of a direct contractual relationship with the federal government is *not* a bar to removing an action under § 1442(a)(1)."

Cnty. Bd. of Arlington Cnty. v. Express Scripts Pharmacy, Inc., 996 F.3d 243, 254 (4th Cir. 2021). Indeed, there are many circumstances in which a private party may assist in the performance of federal duties under federal oversight, even if there is no contract between the government itself and that party.

Consider, for example, subcontracted work. The government may contract a private party to assist in performing the functions of the federal government, and give that contractor the discretion to retain other parties to do the government's work. A manufacturer of military hardware, for example, might enter into contracts with a supplier to obtain specialized parts needed to make the hardware. *E.g.*, *Genereux v. Am. Beryllia Corp.*, 577 F.3d 350, 357 n.9 (1st Cir. 2009).[9] Or a private insurance carrier administering health benefits for federal employees may, at their discretion, contract with pharmacy benefit managers ("middlemen") to assist in that administration. *E.g.*, *West Virginia ex rel. Hunt v. CaremarkPCS Health, L.L.C.*, 140 F.4th 188, 198 (4th Cir. 2025). In both instances, the subcontractor is "involve[d in] an effort to assist, or to help carry out, the duties or tasks of the federal superior." *Watson*, 551 U.S. at 152. There is no basis for depriving these subcontractors of the benefit of federal-officer removal for their federal work, simply because the federal government has not issued to them specific contractual directives to follow.

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[9] *See also* Notice of Removal at 3, *Genereux v. Am. Beryllia Corp.*, No. 04-cv-12137 (D. Mass. Oct. 8, 2004), ECF No. 1 (explaining that the removing defendant "supplied beryllium oxide ceramic rods" to a defense contractor that "were used as electrical standoffs in military communications and/or electronic countermeasures equipment").

III. The Fifth Circuit's restrictive, atextual reading of "relating to" would inevitably discourage private contractors from working for the federal government.

Assisting the federal government is not always easy. Some companies choose not to work with the government—and one reason is the potential for contractors to incur liability for the implementation of controversial government policies. Federal-officer removal represents the government's most powerful tool to assuage this worry. Weakening federal-officer removal would weaken the federal government's ability to attract and retain contractors, especially on projects that are important but controversial.

1. Being forced to defend against a "scattering of … claims throughout the state courts" over work performed for the federal government would "have a chilling effect" on the "acceptance of government contracts." *Isaacson*, 517 F.3d at 134. Just as federal officials needed access to a federal forum to "assert federal immunity defenses" at the incipience of the federal-officer removal statute, *Watson*, 551 U.S. at 150-51, contractors, too, require a federal forum free of "local prejudice," *id.* at 150, so that they have a fair opportunity to invoke federal immunity and other federal defenses. *See, e.g.*, *Government of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 187-88 (1st Cir. 2024) (Puerto Rico cannot deprive a federal contractor of the right to have its "immunity litigated in federal court" by disclaiming claims based on acts under color of federal office); *see also* Jeffrey A. Belkin & Donald G. Brown, *The Soldier of Fortune in Federal Court: An Analysis of the Federal Officer Removal Statute*, 22 No. 6 Andrews Gov't Cont. Litig. Rep. 1, at *2 (July 28,

2008) (noting that, under the old causal-connection standard, "removal under the [federal-officer removal] statute and immunity for a government contractor are closely related issues").

Reading the phrase "for or relating to" as requiring that the "charged conduct be related to a federal officer's directions in a contract," Parish Br. in Opp. 20, would deprive a great many contractors of a federal forum. Indeed, the Fifth Circuit's standard invites a peculiar outcome where a "barebones" federal contract that commits considerable discretion to a federal contractor may be good enough for federally conferred immunity, *e.g.*, *Taylor Energy Co., L.L.C. v. Luttrell*, 3 F.4th 172, 174-76 (5th Cir. 2021), but not for federal-officer removal under a "liberally construed" statute, *Watson*, 551 U.S. at 147.

A federal forum ensures reliable access—free from the heightened risk of local prejudice—to substantive defenses beyond immunity. For example, access to a federal forum may ensure that a contractor does not find itself defending a lawsuit in an inconvenient jurisdiction just because a state court refuses to allow the case to be heard elsewhere. *E.g.*, *Magnin v. Teledyne Cont'l Motors*, 91 F.3d 1424 (11th Cir. 1996) (affirming (1) denial of motion to remand case removed under § 1442 and (2) dismissal for forum non conveniens, as Alabama was not a convenient forum for an aviation accident that happened in France, even though the defendant manufacturer was based in Alabama). Or, when a contractor faces a putative class action for work done under a federal officer, the contractor can find comfort in the fact that a federal court will apply the rigors of Federal Rule of Civil Procedure 23, and will not yield to more relaxed legal standards that may fa-

vor putative class plaintiffs. *E.g.*, *Crutchfield v. Sewerage & Water Bd. of New Orleans*, 829 F.3d 370 (5th Cir. 2016). In denying access to federal court absent a relevant "contractual directive," the Fifth Circuit's approach to removal risks depriving federal contractors of these protections.

2. Premising federal-officer removal on "a federal officer's directions in a contract" is also unmoored from the realities of federal government contracting. While the government often lays out in fine print how it wants a contractor to provide its goods or services, that is not always the case; in many other instances, the government leaves those details to the discretion of the contractor. For example, when the government directs a contractor to manufacture a product, it can provide "design specifications," which "describe in precise detail the materials to be employed and the manner in which the work is to be performed"; the contractor has "no discretion to deviate from the specifications." *Blake Constr. Co. v. United States*, 987 F.2d 743, 745 (Fed. Cir. 1993). Alternatively, the government can provide "performance specifications," which "specify the results to be obtained, and leave it to the contractor to determine how to achieve those results." *Stuyvesant Dredging Co. v. United States*, 834 F.2d 1576, 1582 (Fed. Cir. 1987). A contractor carrying out performance specifications is "expected to exercise his ingenuity in achieving [the] objective or standard of performance, selecting the means and assuming a corresponding responsibility for that selection." *Blake Constr.*, 987 F.2d at 745 (citation omitted). Performance specifications "anticipate a contractor's exercise of discretion," *Fireman's Fund Ins. Co. v. United States*, 92 Fed. Cl. 598, 652 (2010), as it is possible that "nothing in the contract's description

[will] dictate[] the '*manner*' in which [the contractor] must perform." *P.R. Burke Corp. v. United States*, 277 F.3d 1346, 1357 (Fed. Cir. 2002).

Regardless of whether the government has given a contractor no discretion or complete "latitude," Pet. App. 29-30, the contractor's function is the same: "to assist, or to help carry out, the duties or tasks of the federal superior." *Watson*, 551 U.S. at 152. That includes the scenario here, where a private contractor "help[s] the Government to produce an item that it needs." *Id.* at 153. A contractor's actions do not lose their "connection" or "association" with a federal contract simply because the contractor exercised discretion in how to fulfill the contract.

3. Despite respondents' assertions to the contrary, honoring the plain text of the words "relating to"—by requiring no more than a connection or association between the charged conduct and a federal contract—does not mean that "any federal contract will do," Parish Br. in Opp. 20, or that the "relating to" requirement will become "meaningless." State Br. in Opp. 20-21. As the Fifth Circuit itself once recognized, the fact that "some attenuation is permissible" does not mean the "relating to" requirement sinks to "the point of irrelevance." *Zeringue*, 846 F.3d at 794.

Applying the phrase "relating to" expansively, as Congress intended, does not mean every case involving a private contractor for the federal government will be removable to federal court. For example, the contractor must still demonstrate that it was "acting under" a federal officer, *Watson*, 551 U.S. at 152, and that it has a colorable federal defense, *Jefferson Cnty.*, 527 U.S. at 431. Moreover, the touchstone of "relating to" remains

whether the charged conduct relates to "an effort to assist, or to help carry out, the duties or tasks of the federal superior." *Watson*, 551 U.S. at 152. If the conduct in question was not part of a contractor's efforts to aid the federal government, then it is not "for or relating to" acts under federal office.

In this case, no one seriously contends that there is no "connection" or "association" between petitioners' federal contracts to produce avgas and their production of raw crude. Pet. App. 45 (Oldham, J., dissenting) (explaining that "defendants could not simply snap their fingers and, voilà, make avgas"). Even the Fifth Circuit could not deny that "Defendants' federal contracts," which "clearly pertain[ed] to their refinement of avgas and other petroleum products," also had "some relation to oil production," because "one way of obtaining crude oil is to produce it." Pet. App. 28-29.

Rather, respondents' gripe is that petitioners' federal work was not related *enough* to the charged conduct. In their view, anything short of a specific contractual directive from the federal government is "insufficient" to satisfy the "for or relating to" requirement, as the Fifth Circuit so held. Pet. App. 29.

But the "relating to" requirement simply is not demanding in the way that respondents want it to be. Section 1442(a) does not require federal courts to decide how "grandly" or "narrowly" the charged conduct is connected to the performance of federal responsibilities—only to confirm that a plausible connection is there. *Cf. Jefferson Cnty.*, 527 U.S. at 432-33. Even under the old "causal connection" standard, this Court has rejected invitations to apply federal-officer removal in a manner that scrutinizes the closeness of the

charged conduct to the federal government's work. In *Willingham*, for example, it was enough that the defendants encountered the plaintiff through their federal employment. Whether they actually acted within the scope of their federal duties when interacting with the plaintiff (or were on "some kind of 'frolic of their own'") was an issue to be decided later—by "a federal, not a state, court." 395 U.S. at 409.

Treating the "relating to" standard as a search for specific contractual instructions would create considerable uncertainty as to how and when private contractors can access federal court. Consider, for example, defense contractors—such as those who assemble and manufacture military hardware or components for various defense technologies and systems. Defense contractors often invoke federal-officer removal—particularly in litigation, such as asbestos or other toxic-tort cases, that may be several degrees removed from the specifications (to the extent such specifications are present) that govern the performance of their contracts. *See* pp. 9-10, *supra*. While a defense manufacturing contract might have "strict specifications" for how a product is to be manufactured, it will almost certainly not have specifications for everything that a potential plaintiff may sue about. For example, such specifications are unlikely to cover the working conditions of those assembling the product. *E.g.*, *Sawyer*, 860 F.3d at 252-53 (government provided "strict specifications" for how Navy boilers were to be manufactured, and what kind of labels were to be affixed on those boilers, but not about warnings given to "individuals constructing the boilers of the presence of asbestos and their need to take proper precautions"). In that example, respondents' reading of "relating to" would force defense

contractors to draw a detailed connection between working conditions and specific equipment specifications, and for courts to decide whether the two are "related" enough. That plainly goes "beyond what § 1442(a)(1) requires." *Sawyer*, 860 F.3d at 258.

As *Latiolais* correctly explains, the nexus requirement is, and has always been, "minimal." 951 F.3d at 295. But the Fifth Circuit's interpretation of "for or relating to" in this case is anything but minimal. If this Court were to endorse that interpretation, the resulting uncertainty would only deter private contractors from taking on federal work. Far from giving "full effect to the purpose[] for which" § 1442 and the Removal Clarification Act were enacted, *Symes*, 286 U.S. at 517, the court of appeals' interpretation of the statute would leave federal-officer removal more elusive and unpredictable than before for private parties, undermining Congress's decision in 2011 to make removal more available.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted.

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