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 OF FORMER GOVERNOR JOHN BEL EDWARDS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

CHRISTOPHER MEYER
EARTHJUSTICE
48 Wall Street
Fifteenth Floor
New York, NY 10005

CAROLINE A. FLYNN
Counsel of Record
EARTHJUSTICE
1001 G Street NW
Suite 1000
Washington, DC 20001
(202) 667-4500
cflynn@earthjustice.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

Statutes

TABLE OF AUTHORITIES—Continued

Page(s)

Other Authorities

INTEREST OF AMICUS CURIAE

Amicus John Bel Edwards served as the Governor of Louisiana from 2016 to 2024.[1] During his time in office, Governor Edwards prioritized efforts to combat the rapid deterioration of the Louisiana coastline. He declared a state of emergency in response to coastal erosion. His administration invested over $15 billion in coastal-restoration projects. And when coastal parishes, including Plaquemines Parish and Cameron Parish, sued oil and gas companies under state law for the damage caused by the companies' drilling, dredging, and waste-removal operations, Governor Edwards directed the Louisiana Department of Natural Resources to intervene in the lawsuits to protect the State's interests and ensure that any recoveries would be dedicated to coastal restoration.[2] He accordingly has firsthand insight into the factual and legal background of this case, including petitioners' protracted efforts to avoid its adjudication in a Louisiana court.

Governor Edwards also submits this brief to underscore the State's interest in seeking redress in its own courts. Nearly half the State's population

---

[1] No counsel for a party authored this brief in whole or in part, and no such counsel, party, or other person or entity—other than amicus curiae and his counsel—made a monetary contribution intended to fund the preparation or submission of this brief. Amicus files this brief solely in his individual capacity.

[2] Jeff Adelson, Nola.com, *Gov. Edwards Instructs Administration to Intervene in Parish Coastal Suits Against Oil and Gas Companies* (Apr. 11, 2016), https://perma.cc/8VDT-DNTQ.

lives on the coast.[3] It is home to five of the top fifteen ports in the country.[4] In addition to wildlife and recreation, the coastal region supports numerous business sectors, including the energy and seafood industries.[5] The catastrophic land loss the State is experiencing—at a rate of one football field of coastal land every hour and a half—thus poses an existential threat to Louisiana citizens, its culture, its industrial base, and its economy.[6]

Respondents have pursued these actions under Louisiana's State and Local Coastal Resources Management Act of 1978 (SLCRMA) to ensure that the firms that contributed to that damage (and profited from it) pay their fair share of remediation costs. There is no question that such recoveries will go to remediation: As a result of a 2022 Louisiana law that Governor Edwards signed, SLCRMA damages must be directed to coastline remediation and mitigation projects. *See* La. R.S. § 49:214.36(J). And notwithstanding petitioners' insinuations to the contrary, there is no reason to doubt the fairness or impartiality of the Louisiana citizens serving on parish juries. Louisiana is the nation's second largest producer of oil and gas.[7] Coastal residents are hardly

---

[3] Louisiana Exec. Dep't, Proc. No. 43 JBE 2017, *State of Emergency – Coastal Louisiana*, at 1 (Apr. 18, 2017) (Coastal Emergency Proclamation), https://perma.cc/3XR9-KQYP.

[4] *Id.*

[5] *Id.*

[6] *See* Sabrina Wilson, *Gov. Edwards Applauds the Approval of Restoration Plans for La's Fragile Coastline*, Fox8Live.com (May 26, 2023), https://perma.cc/86KP-FM2Z.

[7] Coastal Emergency Proclamation 1.

hostile to the industry. And in enacting SLCRMA, the Louisiana legislature likewise recognized the need "[t]o support and encourage multiple use of coastal resources" while "provid[ing] for adequate economic growth and development." La. R.S. § 49:214.22(3). These cases simply concern disputes about petitioners' unpermitted use of state land—not petitioners' incidental status as federal contractors in the mid-20th century—and those disputes should be decided in state court.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners have spent the past twelve years attempting to remove these state coastal-management suits from the Louisiana courts. In their latest attempt, petitioners have homed in on their predecessors' past role as wartime suppliers of military aviation fuel (avgas) to argue that they are entitled to the protection of the federal-officer removal statute, 28 U.S.C. § 1442. This Court should reject petitioners' astonishingly broad understanding of Section 1442's scope.

I. As an initial matter, petitioners and their amici mischaracterize respondents' claims. Respondents are not "seek[ing] to impose liability against federal contractors for their work helping the United States win World War II." Barr Br. 2. Petitioners' oil-production activities in the 1940s are not the basis for their post-1980 SLCRMA liability. Instead, those pre-1980 activities—to the extent they are relevant at all—bear on petitioners' attempted state-law *defense*. Given the much-diminished potential for state-court prejudice in these circumstances, this is far from a

heartland case for federal-officer removal.

II. Petitioners also misinterpret Congress's 2011 amendments to Section 1442. In decisions dating back nearly a century—and across different iterations of the statute—this Court has required a causal nexus between the officer's exercise of federal authority and the conduct challenged in the state-law claim. *See, e.g.*, *Maryland v. Soper (No. 1)*, 270 U.S. 9, 33 (1926). The linchpin of petitioners' argument before this Court is that Congress eliminated this well-established causal-nexus requirement in the Removal Clarification Act of 2011. But the change that petitioners seize upon was no more than a "conforming amendment" designed to effectuate the Removal Clarification Act's true aim: to enable federal officers to remove pre-suit discovery proceedings, which was previously the subject of a circuit split.

That the Act was meant to fix the distinct problem of pre-suit discovery is evident on the face of the Act's text and confirmed throughout the legislative record. Further, reading the 2011 amendment as petitioners do would lead to the anomalous conclusion that Congress *maintained* the causal-nexus requirement for federal officers engaged in law-enforcement and revenue-collection duties, but eliminated it for everyone else. This Court does not readily conclude that Congress has made fundamental changes to statutory regimes through technical or conforming amendments, *see, e.g.*, *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 430-31 (2018), and certainly not in such a counterintuitive manner. The Court should reject petitioners' attempt to ascribe improbable significance to the Removal Clarification

Act and instead adhere to the causal-nexus requirement entrenched in this Court's precedent.

III. Even if the 2011 amendment could be read as expansively as petitioners urge, removal would still be improper because petitioners were not "acting under" the federal government, 28 U.S.C. § 1442(a)(1), when producing oil from the Louisiana coast in the 1940s. This Court has instructed that Section 1442(a)(1) authorizes removal only if the private defendant was "'acting under'" a federal officer "*in carrying out the 'act[s]' that are the subject of [the plaintiffs'] complaint*." *Watson v. Philip Morris Co.*, 551 U.S. 142, 147 (2007) (first set of brackets in original; citation omitted; emphasis added). But the complaints in these cases concern petitioners' oil-production activities, and petitioners had no federal contracts to produce oil. The Court may affirm the judgment on this alternative basis.

ARGUMENT

I. These Lawsuits Seek Remedies For Modern-Day Permitting Violations, Not Petitioners' Wartime Activities

In light of petitioners' and their amici's presentation, it is first necessary to clarify the limited respect in which petitioners' World War II-era operations feature in this state resource-management case.

SLCRMA regulates "any use or activity within the coastal zone which has a direct and significant impact on coastal waters," La. R.S. § 49:214.23(13), and which is "of state or local concern," *id.* § 49:214.30(A)(1). Beginning on the law's effective date in 1980, such

uses require a permit. *Id.*; *see* Pet. App. 3. If an entity carries out such uses without a permit, or in violation of permit conditions, it can be liable for actual restoration, restoration costs, and damages. La. R.S. § 49:214.36(D) and (E); *see, e.g.*, *Parish of Plaquemines v. Riverwood Prod. Co.*, No. 18-5217, 2019 WL 2271118, at *1 (E.D. La. May 28, 2019).

The State and local governments with state-approved programs may enforce the law's requirements. La. R.S. § 49:214.36(D). Here, respondents allege that petitioners violated SLCRMA by conducting certain oil and gas operations—namely, drilling, dredging, and waste-disposal activities—along the Louisiana coast after 1980 without a permit. *See, e.g.*, 18-cv-05256 D. Ct. Doc. 1-8, at 5, 9-15 (May 23, 2018); *see also* La. Br. 8-9.

None of respondents' claims seek to hold petitioners liable for anything they (or their predecessors) did prior to 1980. But SLCRMA also contains a grandfather-clause defense. That clause provides that "[i]ndividual specific uses" of coastal resources "legally commenced or established prior to" 1980 "shall not require a coastal use permit." La. R.S. § 49:214.34(C)(2). Five years after the parishes brought these suits (and after petitioners' other attempts at federal removal stalled out), petitioners pivoted to this grandfather clause. They argued that some of the improper coastal uses at issue in respondents' claims were actually "commenced or established" before 1980—including as far back as the 1940s—and that petitioners were therefore exempt from post-1980 SLCRMA permitting obligations. *See, e.g.*, *Parish of Cameron v. Auster Oil & Gas, Inc.*, 420

F. Supp. 3d 532, 536 (W.D. La. 2019); *Riverwood*, 2019 WL 2271118, at *2-*3.[8]

In other words, petitioners were the ones to push their World War II-era operations to the foreground of these cases—not respondents. To be clear, SLCRMA does *not* impose "retroactive liability." Barr Br. 3.[9] Nor is it correct to say (as petitioners and their amici repeatedly assert) that "[t]he Parishes and the State seek to hold Petitioners liable for their World War II activities." Tort Reform Br. 2; *see also, e.g.*, Pet. i; Barr Br. 2; W. Va. Br. 4; Oil & Gas Ass'ns Br. 3. Having the removal question turn on this peripheral aspect of the case amounts to the tail wagging the dog.

And seizing these suits from the Louisiana courts does not align with the animating purposes behind the federal-officer removal statute. There is hardly a "significant risk" of "'local prejudice'" when the basis for petitioners' liability is their post-1980 uses of the Louisiana coast, not their long-ago activities as federal contractors. *Watson v. Philip Morris Co.*, 551 U.S. 142, 150, 152 (2007) (citation omitted). Nor is state-court consideration of the grandfather-clause issue "likely to disable federal officials from taking necessary action designed to enforce federal law," *id.*

---

[8] Petitioners began advancing the federal-removal theory at issue in this case—the one based on their World War II contracts for avgas—even later, in 2023. Pet. App. 9; La. Br. 10-12.

[9] The State's brief in opposition to certiorari stated that "[SLCRMA's] permitting regime is retroactive." La. Br. in Opp. 4. That sentence inadvertently omitted a word; it was intended to state that the permitting regime is "*not* retroactive." *See* La. Br. 7 n.2.

at 152—because petitioners' work for the federal government is at most tangentially relevant to a state-law *defense*. To find federal-officer removal proper under these circumstances would thus "expand the scope of the statute considerably," *id.* at 153, at a serious cost to federalism and comity. *See Colorado v. Symes*, 286 U.S. 510, 518 (1932) (the federal-officer removal statute must be construed "with highest regard" for States' "equal" right "to make and enforce their own laws").

II. Congress Did Not Abrogate This Court's Causal-Nexus Requirement In 2011

This Court has long interpreted the federal-officer removal statute to require a causal nexus between the officer's federal duties and the claims in the state-law action. The crux of petitioners' argument is that Congress deliberately discarded that well-established requirement through a 2011 conforming amendment to the current iteration of the statute, 28 U.S.C. § 1442(a)(1). But text, context, and statutory background refute that improbable understanding. At most, Congress's addition of the indeterminate phrase "relating to" should be interpreted to reinforce the causal-nexus test, not to supplant it.

A. The Removal Clarification Act Broadened The Federal-Officer Removal Statute In A Different And Unrelated Respect

1. The federal-officer removal statute, 28 U.S.C. § 1442, provides that the following category of state-court cases may be removed to federal court:

> (a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to . . .
>
> > (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof . . . for or relating to any act under color of such office or on account of any right, title, or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.
>
> 28 U.S.C. § 1442(a)(1).

The current provision has a long pedigree. Congress first provided for removal of cases against federal customs officers in 1815. *See Watson*, 551 U.S. at 148. That statute permitted officers to remove an action "for any thing done, or omitted to be done, as an officer of the customs, or for any thing done by virtue of this act or under colour thereof." Customs Act of 1815, ch. 31, § 8, 3 Stat. 198. To "prevent paralysis of operations of the federal government," *Gay v. Ruff*, 292 U.S. 25, 32 (1934), Congress later provided for removal of cases against officers enforcing the federal revenue laws. Act of Mar. 2, 1833, ch. 57, 4 Stat. 632, 633. That 1833 statute permitted removal of cases "for or on account of any act done under the revenue laws of the United States, or under colour thereof." *Id.*

In the ensuing decades, Congress used similar language to extend the right of removal to other federal officers and those assisting them. *See, e.g.*, Act of July 13, 1866, ch. 184, § 67, 14 Stat. 98, 171 (permitting a revenue officer to remove cases brought

"on account of any act done under color of his office"); Act of Aug. 23, 1916, ch. 399, 39 Stat. 532, 532 (permitting an officer of the federal courts to remove cases brought "for or on account of any act done under color of his office or in the performance of his duties as such officer"); Act of June 25, 1948, ch. 646, 62 Stat. 938, 938 (permitting all federal officers to remove cases brought "for any act under color of [federal] office").

But even as Congress steadily extended the removal right to new categories of officers, one core requirement remained the same: The officer had to show a "causal connection," or "causal nexus," between his exercise of federal authority and the challenged conduct. *See Maryland v. Soper (No. 1)*, 270 U.S. 9, 33 (1926) (federal revenue officers and their chauffeur; "causal connection"); *Willingham v. Morgan*, 395 U.S. 402, 409 (1969) (federal prison employees; "causal connection") (citation omitted); *Mesa v. California*, 489 U.S. 121, 131-33 (1989) (postal service employees; "causal connection") (citation omitted); *Jefferson Cnty. v. Acker*, 527 U.S. 423, 432-33 (1999) (federal judges; "causal connection" and "essential nexus").

2. In 2011, Congress passed the Removal Clarification Act. Pub. L. No. 112-51, 125 Stat. 545. Among other changes, the Act amended Section 1442(a)(1) to its current form, with the new language italicized:

> (a) A civil action or criminal prosecution *that is* commenced in a State court *and that is* against *or directed to* . . .

> (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof . . . for *or relating to* any act under color of such office or on account of any right, title, or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

28 U.S.C. § 1442(a)(1) (emphasis added); *see* 125 Stat. at 545.

In petitioners' view, this amendment had a seismic implication. By adding the phrase "or relating to"—when that clause of Section 1442(a)(1) had previously said "for"—Congress deliberately abrogated this Court's causal-connection test with respect to federal officers, agencies, and those acting under their authority. Pet. Br. 26, 28-32.

Petitioners are mistaken. The Removal Clarification Act's sole substantive change was to authorize removal of state pre-suit discovery proceedings targeting federal officials, which was previously the subject of a circuit split. The addition of "relating to" was a conforming amendment designed to reconcile Section 1442(a)(1)'s language with that change. The amendment text, statutory background, and the legislative record—which *affirms* this Court's causal-nexus requirement—are transparent on this point. And where there has been an "entrenched practice" for allocating jurisdiction between state and federal courts, this Court has been skeptical of the claim that Congress "upended" that practice "by way of a conforming amendment." *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416,

430-31 (2018); *see also Director of Rev. of Mo. v. CoBank ACB*, 531 U.S. 316, 324 (2001). The Court should be equally skeptical of petitioners' interpretation in this case.

a. As relevant here, the Removal Clarification Act included two operative provisions and a "[c]onforming amendment[]." 125 Stat. at 545. The first operative provision amended Section 1442(a) to state that a federal officer may remove a state-court civil action or criminal prosecution that is "against *or directed to*" her. *See supra* at 10. The second added a subsection newly defining "civil action" and "criminal prosecution" to include "any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued." 125 Stat. at 545 (currently codified at 28 U.S.C. § 1442(d)(1)). The conforming amendment then altered Section 1442(a)(1) to refer to actions or prosecutions "for *or relating to* an act under color of [federal] office," along with another technical change. *Id.*; *see supra* at 11.[10]

When viewed alongside the Act's substantive changes, the rationale for the conforming amendment is both obvious and unremarkable. When it comes to a discovery proceeding that precedes an actual suit or prosecution—for instance, a subpoena or investigatory deposition—it is difficult to say that the

[10] Specifically, Section 1442(a)(1) had previously referred to a federal officer "sued in an official or individual capacity"; the Act deleted the word "sued." 125 Stat. at 545; *see also* H.R. Rep. No. 112-17, pt. 1, at 7-8 (2011) (showing all additions and deletions).

subpoena or deposition is "for" the officer's acts under color of federal law. That is because the subpoena or deposition seeks information; it does not assert a claim or charge. But by adding the phrase "relating to"—thus centering the inquiry on whether the discovery sought pertains to the officer's federal conduct—the conforming amendment removes this awkwardness. Thus, read in context, the amendment is "plainly not intended to change the standard" for federal-officer removal more broadly. *I.N.S. v. Stevic*, 467 U.S. 407, 428 (1984) (discussing a conforming amendment).

Petitioners' interpretation of the conforming amendment is even more implausible upon observing what Congress did *not* change. The federal-officer removal statute had its origins in the revenue-enforcement context, and the statute "is most obviously implicated" in the context of "enforcement activity." Brief for United States at 25, *Watson v. Philip Morris Co.*, 551 U.S. 142 (2007) (No. 05-1284) (*Watson* U.S. Br.); *see also supra* at 9. But the Removal Clarification Act did not touch the clause of Section 1442(a)(1) specifically dealing with law-enforcement and revenue officers. *See* 28 U.S.C. § 1442(a)(1) (allowing for removal of actions brought "*on account of* any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue") (emphasis added); *see also supra* at 11. Rather, Congress preserved the "on account of" language in that clause—which is the very language that first established the causal-nexus test. *See Soper*, 270 U.S. at 33 (federal prohibition officers, which this Court described as revenue officers); *see*

also Pet. Br. 26 (acknowledging that this Court previously interpreted "on account of" to require the causal-connection test).

It would be nonsensical for Congress to have eliminated the causal-nexus requirement for federal officers generally and for not those two core categories. Indeed, petitioners offer no reason why Congress would have wanted to expand access to removal except in those instances where the policy rationale for removal is most acute.[11] Rather than attributing that wholly counterintuitive intent to Congress, it makes far more sense to interpret the addition of "or relating to" in the prior clause as a nonsubstantive change designed solely to iron out a textual incongruity. *Cf. Pulsifer v. United States*, 601 U.S. 124, 149 (2024) (rejecting a construction of a statute that, while grammatical, "makes a hash of the scheme Congress devised").

b. The legislative background of the Removal Clarification Act forcefully confirms that Congress did not intend to abrogate this Court's settled causal-connection standard. When Congress describes an amendment as "conforming," this Court has considered extrinsic evidence to confirm that

---

[11] The same goes for the courts of appeals that have interpreted the Removal Clarification Act to eliminate the causal-nexus requirement—none of whom have grappled with the incongruity of Congress retaining the requirement only for certain types of federal officers. Only one court even acknowledged the preserved language. *See In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 470 n.7 (3d Cir. 2015).

Congress viewed the amendment as non-substantive. *See BNSF Railway Co. v. Loos*, 586 U.S. 310, 320 (2019) (crediting IRS reading of legislative history to conclude that "technical amendments" did not alter the definition of "compensation" in the Railroad Retirement Tax Act); *Stevic*, 467 U.S. at 428 (citing a House committee report to conclude that Congress "explicitly recognized" a conforming amendment as merely clarifying). More generally, this Court routinely interprets statutory text in light of the problem or catalyst that moved Congress to enact it. *See, e.g.*, *Yates v. United States*, 574 U.S. 528, 532, 535-36 (2015); *Adoptive Couple v. Baby Girl*, 570 U.S. 637, 649 (2013); *see also* Samuel L. Bray, *The Mischief Rule*, 109 Geo. L. J. 967, 992-99 (2021) (discussing this "mischief rule" of interpretation).

Here, Congress could not have been clearer about the limited scope of the Removal Clarification Act and the targeted problem the legislation was designed to fix. The Act's sponsor, Representative Henry Johnson, explained that he introduced it to address state pre-suit discovery laws that permitted federal officials to be deposed or subpoenaed "despite the fact that a civil action ha[d] not yet commenced." Removal Clarification Act of 2010: Hearing on H.R. 5281 Before the Subcomm. on Courts & Comp. Policy of the H. Comm. on the Judiciary, 111th Cong., at 1 (2010) (House Hearing).[12] As Representative Johnson

[12] The issue was top of mind because of a Texas state court's recent attempted pre-suit deposition of Representative Eddie Bernice Johnson. *See Price v. Johnson*, No. 3:09-cv-476-M, 2009 WL 10704853 (N.D. Tex. Apr. 10, 2009), *appeal dismissed*, 600 F.3d 460 (5th Cir. 2010) (referenced at House Hearing 5, 12, 23-24, 38, 58-59, 61-62, 72, 75-77, 81-83, 85 and House Report 3-4).

explained, the Act would resolve a conflict in the lower courts and clarify that officers could remove such a proceeding. *Id.* at 1-2. Crucially, however, he "stress[ed]" that the Act would "*not chang[e]* the underlying removal law." *Id.* at 2 (emphasis added).

During the House committee hearing on the Act, every testifying witness—including government witnesses—agreed that its objective was narrow. *See* H.R. Rep. No. 112-17, pt. 1, at 2 (2011) (House Report) (explaining that "[a]ll [witnesses] agreed with the purpose of" the bill). Deputy Assistant Attorney General Beth Brinkmann testified that the law would "clarify *one aspect* of [Section 1442] concerning removal of a matter when a litigant seeks a subpoena in State court against a Federal official." House Hearing 7 (emphasis added). House General Counsel Irvin Nathan testified that the Act "appropriately leaves in place the current law and practices governing Federal officer removal in nearly all respects," and would "*not alter* the standard for general removal for Federal officers under [Section] 1442." *Id.* at 13 (emphasis added); *see also id.* at 17 (explaining that "each of the currently existing requirements of the federal officer removal statute still must be met"). Professor Lonny Hoffman's testimony explained that the Act addressed the "vital policy issue" of "allowing removal of a State pre-suit

---

Nor was Representative Johnson's the only case to involve pre-suit discovery against members of Congress or their aides. *See Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408 (D.C. Cir. 1995) (referenced at House Hearing 21, 30, 41-43, 63-64); *In re White*, No. 10-185, 2010 WL 923400 (E.D. La. Mar. 10, 2010) (referenced at House Hearing 24-25, 30-31).

discovery request." *Id.* at 30. And Professor Arthur Hellman agreed that the Act's "purpose" was to "clarify" whether removal applied in, for example, an "action for pre-suit discovery directed at a Member of Congress." *Id.* at 58; *see also id.* at 61-64, 81 (noting the "extensive controversy" over this issue and discussing the circuit split).

No witness suggested that the Act would eliminate this Court's causal-nexus requirement. Nor did they dispute the sponsor of the Act's claim that the Act would not alter the general standard for removal. *See supra* at 15-16.

Indeed, multiple witnesses specifically explained the technical reason for adding the words "or relating to" in Section 1442(a)(1). As Professor Hellman put it, "[b]ecause the amended § 1442 would now include proceedings that do not seek to impose civil liability or a criminal penalty on the federal officer, [the Act] allows removal not only in proceedings 'for' acts under color of the federal office but also in proceedings 'relating to' such acts." House Hearing 68. And the House General Counsel noted that the "relating to" change was a "language clarification[]" "reaffirm[ing] that ancillary proceedings, such as subpoena enforcement matters and pre-suit discovery proceedings, fall within the scope of Section 1442." *Id.* at 20; *see also id.* at 44 (Prof. Hoffman explaining that "[o]ther minor changes to existing § 1442(a) would make it consistent with the new subsection" defining the terms civil action and criminal prosecution to include pre-suit proceedings).

The House committee report further confirms the Act's limited scope. The report explains that the Act

"responds to recent Federal court cases that reflect an inter- and intra-circuit split as to whether State 'pre-suit discovery' laws qualify as civil actions or criminal prosecutions that are removable under § 1442." House Report 2. The report explicitly describes the pre-suit discovery situation as "the problem" the bill addresses. *Id.* at 3-4; *see also id.* (describing a recent "high-profile case" involving the attempted deposition of a sitting congresswoman in Texas state court); *id.* at 6 (explaining, under the heading "Performance Goals and Objectives," that the law "allows any Federal officer subpoenaed pursuant to a State pre-suit discovery statute to remove the civil action or criminal prosecution to U.S. district court").

In addition, the House committee report *affirmed* the causal-nexus requirement, stating that a removing officer "must demonstrate a causal connection between the charged conduct and asserted federal authority." House Report 3; *see also id.* (explaining that under current law, the state-court action must be "based on acts undertaken pursuant to color of office"). Nothing in the report qualified this approving description of the causal-nexus requirement or suggested that the requirement would disappear upon the amendment's enactment.

To be sure, the committee report also stated that the addition of "relating to" was "intended to broaden the universe of acts that enable Federal officers to remove to Federal court." House Report 6. Petitioners and some lower courts have relied on this sentence to conclude that the Act eliminated the causal-nexus requirement. Pet. Br. 19; *see, e.g.*, *In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457, 471-

72 (3d Cir. 2015).

But that is not what the sentence means. Read in context alongside the remainder of the committee report—which, like the Act's text and the rest of the legislative record, focuses on the Act's purpose of including pre-suit discovery—this sentence is best read to refer to the "acts" *in state court* that trigger removal. Specifically, the sentence is noting that the act of issuing a subpoena or ordering a deposition will trigger removal, thus broadening the universe of triggers beyond the actual filing of a lawsuit or the initiation of a prosecution. House Report 6.

Petitioners instead interpret this sentence in the committee report to refer to the universe of past "acts" *by the federal officer* that qualify for removal. But under that reading, the sentence would not accurately characterize the textual change it purports to describe. Even on petitioners' interpretation of the amended Section 1442(a)(1), the addition of "relating to" expands the universe of *civil actions* or *prosecutions* that can be removed, not the category of underlying "acts" by the official; the amended text still refers to "acts under color of such office." *See supra* at 10-11.

At bottom, petitioners are arguing that Congress discarded nearly one hundred years of settled practice via a technical conforming amendment passed with minimal fanfare. But as noted, this Court does not lightly conclude that Congress has made a "radical—but entirely implicit—change" through " 'technical and conforming amendments.' " *Director of Rev. of Mo.*, 531 U.S. at 324 (citation omitted). And this Court has refused to "depart from [its] long-standing

interpretation" of the federal-officer removal statute in particular when faced with an ambiguous amendment to the provision. *Mesa*, 489 U.S. at 135; *see also Gay*, 292 U.S. at 31-32. It should follow the same course here.[13]

B. At Most, This Court Should Interpret The 2011 Amendment To Reinforce The Causal-Nexus Requirement

At most, Congress's addition of "relating to" should be interpreted to reinforce this Court's causal-nexus test, not to supplant it. *See Baker v. Atlantic Richfield Co.*, 962 F.3d 937, 944 (7th Cir. 2020) (understanding the new language to "comport[] with the Supreme Court's [pre-2011] decisions"); *DeFiore v. SOC LLC*, 85 F.4th 546, 557 n.6 (9th Cir. 2023) (interpreting the new language to incorporate the test from "the Supreme Court's decisions"); *Georgia v. Meadows*, 88 F.4th 1331, 1343-44 (11th Cir. 2023) (continuing to apply the causal-nexus test), *cert. denied*, 145 S. Ct. 545 (2024).

This Court has repeatedly recognized that, divorced from context, the phrase "relating to" is "essentially indeterminate"—because "relations[] stop nowhere." *Maracich v. Spears*, 570 U.S. 48, 59 (2013)

---

[13] This Court has said that Section 1442 should be "'liberally construed'" to effect removal. *Watson*, 551 U.S. at 147 (quoting *Symes*, 286 U.S. at 517). But even a "liberal construction nonetheless can find limits in a text's language, context, history, and purposes." *Id.* And here, the text, context, and history of the Removal Clarification Act—including the fact that Congress left unaltered the "on account of" language—demonstrate that Congress did not overturn the causal-nexus requirement. *See supra* at 11-14.

(brackets, internal quotation marks, and citation omitted); *see also California Div. of Labor Standards Enf't v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring) ("[A]pplying the 'relate to' provision according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else."); *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.,* 514 U.S. 645, 655 (1995) (similar).

This Court has accordingly looked elsewhere—such as to statutory structure, context, and historical background—to identify workable contours for the phrase. *See, e.g.*, *Maracich*, 570 U.S. at 60-61; *Mellouli v. Lynch*, 575 U.S. 798, 811-12 (2015); *cf. United States v. Miller*, 604 U.S. 518, 533 (2025) (the meanings of "phrases that govern conceptual relationships" "inherently depend on their surrounding context").

This Court's causal-nexus test supplies those contours. As discussed above, there is no indication that Congress was dissatisfied with that requirement. *See supra at* 14-18. And that standard—which does not require a particular kind of causal connection—fits comfortably with the phrase "relating to." *See Acker*, 527 U.S. at 433 (holding that "[t]he circumstances that gave rise to" the claim against the federal judges, "not just" the judges' specific challenged acts, are enough to show the "essential nexus"); *see also Baker*, 962 F.3d at 944 (this Court's decisions "have never utilized a rigid causation standard for removal"); *DeFiore*, 85 F.4th at 557.

But while the causal-nexus test is sufficiently

flexible to apply to a wide variety of circumstances, there must still be *some* causal link. In this case, at a minimum, the standard requires that the contract or contractual relationship be the but-for cause of the conduct giving rise to the claim. *See Soper*, 270 U.S. at 33 ("It is enough if the [state] prosecution . . . is based on or arises out of the acts [the officer] did under authority of federal law in the discharge of his duty *and only by reason thereof*.") (emphasis added); *Willingham*, 395 U.S. at 409 (finding it sufficient that the federal defendants' "presence at the place" in question "in performance of [their] official duty" gave rise to the state prosecution) (brackets in original).

Here, petitioners merely point to the association between the product they supplied through their federal contracts (refined avgas) and its input (crude oil, produced in part from Louisiana). *See* Pet. Br. 40. Petitioners make no assertion that they would not have carried out the oil-production practices at issue—or have been engaged in production on the Louisiana coast at all—but for their World War II avgas contracts. *See* Pet. Br. 32 (taking the position that the avgas contracts need not have "specifically caused" the "challenged conduct").

Indeed, there is no dispute that the avgas contracts gave petitioners "complete latitude" to "forego producing any crude and instead to buy it on the open market," as petitioners and others often did. Pet. App. 29-30 (citation omitted); *see also id.* at 35-36 (explaining that the Petroleum Administration for War allocated crude oil to refineries based on various considerations that did *not* include the producer's practices nor whether the refining company had produced the crude). Petitioners accordingly do not

claim that they could satisfy the Court's causal-nexus test, and their attempt to remove under Section 1442(a)(1) should fail.

III. Alternatively, Petitioners Were Not "Acting Under" A Federal Officer In Producing Crude Oil

Even if "for or relating to" could theoretically be read as expansively as petitioners urge here, removal would still be improper because petitioners were not "acting under" a federal officer in producing oil from the Louisiana coast in the 1940s. *See* La. Br. 21-36; Parishes Br. 16-27. This Court may consider this alternative basis for affirmance, which respondents press before this Court and presented below. *See, e.g.*, *United States v. Tinklenberg*, 563 U.S. 647, 661 (2011). Indeed, a proper understanding of the "acting under" language is necessary to a reasoned interpretation of the rest of Section 1442(a)(1). *See* La. Br. 39.

a. Private defendants may remove state-court suits under Section 1442(a)(1) only if they were "acting under [an] officer[] of the United States" with respect to the subject matter of the claim. 28 U.S.C. § 1442(a)(1). This Court has explained that this acting-under prong includes two sub-requirements. *See Watson*, 551 U.S. at 147, 151-52.

First, the private defendant must be engaged in an "effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior." *Watson*, 551 U.S. at 152 (citation omitted). That superior-inferior relationship must be one involving "'subjection, guidance, or control.'" *Id.* at 151 (citation omitted).

Second, the text of the acting-under prong imposes its own nexus requirement. As this Court instructed in *Watson*, Section 1442(a)(1) "permits removal only if [the private defendant], *in carrying out the 'act[s]' that are the subject of [the plaintiff's] complaint*, was 'acting under' any 'agency' or 'officer' of 'the United States.'" 551 U.S. at 147 (second set of brackets in original; emphasis added; citation omitted). That is, the present participle "acting" requires the defendant to have harmed the plaintiff *while* occupying the federal role. *See* La. Br. 21-23.

Lower courts have accordingly recognized, including in cases post-dating the Removal Clarification Act, that to satisfy "the 'acting under' inquiry," the private defendant must show that "'the allegations are directed at the relationship between the defendant and the federal officer.'" *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 813 (3d Cir. 2016) (brackets and citation omitted); *see also Graves v. 3M Co.*, 17 F.4th 764, 768-69 (8th Cir. 2021); *Fidelitad, Inc. v. Insitu, Inc.*, 904 F.3d 1095, 1099-1100 (9th Cir. 2018). For instance, just because "a private company has acted under the close supervision of the federal government for some discrete period in its history," it cannot then "claim 'acting-under' status for the rest of time." *State by Tong v. Exxon Mobil Corp.*, 83 F.4th 122, 144 (2d Cir. 2023).

Here, petitioners cannot establish that they were acting under officers of the United States "in carrying out the 'act[s]' that are the subject of" respondents' "complaint[s]." *Watson*, 551 U.S. at 147 (emphasis added) (first set of brackets in original; citation omitted); *see* Pet. App. 86, 91, 118-21. To begin with,

respondents seek SLCRMA recovery for post-1980 uses only. *See supra* at 6-7; La. Br. 27-28. But even focusing on the conduct implicated in petitioners' grandfather-clause defense, "the challenged conduct here pertains to [petitioners'] exploration and production activities." Pet. App. 21. And petitioners were not acting as federal contractors in producing oil from the Louisiana coast, because they had no contract with the government for that product. *See* La. Br. 28. Petitioners at most acted under federal officers in *refining* avgas—but "[r]efinery activities are not addressed in any complaint" in these cases. Parishes Br. 16.

Naturally, petitioners have resisted *Watson*'s articulation of the acting-under prong, contending that a private defendant's status as a federal contractor suffices for that prong regardless of the action's subject matter. *See* Pet. Cert. Reply 5. But even petitioners' own amici do not share that view. *See* Chamber Br. 25 (recognizing that "the contractor must still demonstrate that it was 'acting under' a federal officer," citing *Watson*).

Petitioners' expansive understanding of "acting under" is also out of sync with how this Court has understood an analogous phrase in 42 U.S.C. § 1983. *See* La. Br. 26 n.5. Like Section 1442, Section 1983 applies only when the defendant is acting pursuant to governmental authority in committing the alleged wrong—*i.e.*, when a "person who, *under color of any [state law]*," deprives another of federal civil rights. 42 U.S.C. § 1983 (emphasis added); *see Lindke v. Freed*, 601 U.S. 187, 194 (2024) (explaining that Section 1983's "under color of" state law language imposes a

state-action requirement). In *Lindke*, which considered Section 1983's state-action requirement in the context of a public official's speech on social media, this Court explained that the "under color of" language requires a nexus between the official's "authority rooted in [law or custom] to speak for the State" and the speech "that caused the alleged rights deprivation." *Id.* at 201. In other words, to have committed the deprivation "under" state law, the public official must have been exercising state authority *in committing the act at issue*. *See id.* ("For social-media activity to constitute state action, an official must not only have state authority—he must also purport to use it.").

Nor does *Watson*'s interpretation of the acting-under prong drain the causal-nexus requirement (or as petitioners would have it, the "connection or association" requirement) of any significance. True, when it comes to private defendants, the two inquiries may dovetail. *See Graves*, 17 F.4th at 769 (acknowledging that the two prongs may be "closely related . . . when the party seeking removal is not itself a federal officer"). But the causal-nexus requirement has a more forceful role to play when it comes to actual federal officers. *See id.* There is no question that a federal defendant is an "officer . . . of the United States or of any agency thereof," therefore satisfying Section 1442(a)(1)'s first half. The causal-nexus requirement then requires a sufficient connection between the defendant's federal authority and the charged conduct; it precludes such a "bona fide federal officer" from removing "a trespass suit that occurred while he was taking out the garbage." *Betzner v. Boeing Co.*, 910 F.3d 1010, 1015 (7th Cir.

2018) (citation omitted).

Moreover, excising any nexus analysis from the acting-under prong would give rise to a peculiar inquiry. In *Watson*, this Court indicated that a contractual relationship might meet the acting-under prong if it is "an unusually close one involving detailed regulation, monitoring, or supervision." 551 U.S. at 153. Adhering to that guidance, the courts of appeals have required federal contractors to show that their contracts are sufficiently specific and detailed, or that the relationship is otherwise characterized by a high degree of direction and supervision, to meet that standard. *See, e.g.*, *West Virginia ex rel. Hunt v. CaremarkPCS Health, L.L.C.*, 140 F.4th 188, 197 (4th Cir. 2025); *Government of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 193 (1st Cir. 2024); *Board of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1252-53 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 1795 (2023); *Bennett v. MIS Corp.*, 607 F.3d 1076, 1087-88 (6th Cir. 2010).

But such an inquiry into contractual details and the nuances of the supervisory relationship makes little sense if the cause of action need not arise out of that relationship at all. Here, for instance, whether the government gave detailed specifications for how the avgas was to be refined or closely monitored petitioners' avgas-refining operations has no bearing at all on the crude-oil-production-centered dispute. Petitioners' removability theory instead focuses on their ability to articulate a mere *logical* connection between the product being sold under the contract and an input for that product. *See* Pet. Br. 39 (arguing that to "fulfill those contracts," petitioners needed to

obtain "quantities of crude oil"). This clear mismatch between the two sides of the analytical inquiry further demonstrates that petitioners' understanding of Section 1442(a)(1) cannot be correct.

b. Perhaps recognizing that petitioners' incidental status as avgas suppliers is likely insufficient to satisfy the "acting under" prong, the United States offers an alternative theory: that petitioners were "acting under" the Petroleum Administration for War (PAW) in conducting their oil-production operations. U.S. Br. 30-34. Specifically, the United States asserts that PAW exercised "supervision" of petitioners' production and issued "'recommendations'" that determined petitioners' practices. *Id.* at 31-32 (brackets and citation omitted).

But this Court has already held that the degree of federal regulation cannot "transform" a private firm's "*compliance* into the kind of assistance that might bring the [firm] within the scope of" the acting-under requirement. *Watson*, 551 U.S. at 157. "And that is so even if the regulation is highly detailed and even if the private firm's activities are highly supervised and monitored." *Id.* at 153. Indeed, the United States advocated for that very result in *Watson*, telling this Court that "[p]ermitting removal by private parties subjected to detailed and specific federal regulation would potentially shift into federal court a wide range of traditional state law claims." *Watson* U.S. Br. 19 (capitalization altered).

The Fifth Circuit therefore correctly rejected this theory when petitioners presented it in an earlier round of this litigation. *See Plaquemines Parish v. Chevron USA, Inc.*, No. 22-30055, 2022 WL 9914869,

at *3 (5th Cir. Oct. 17, 2022) (per curiam). Petitioners sought certiorari, which this Court denied. 143 S. Ct. 991 (2023). Petitioners did not seek this Court's review of that question again in the present petition, and it is not properly before the Court. *See* S. Ct. R. 14.1(a). Indeed, petitioners appear to now disclaim the position that the United States embraces. *See* Pet. Br. 36 ("To be sure, compliance with federal regulations *alone* does not suffice to show that a private party is 'acting under' federal direction."); *see also id.* (explaining that PAW addressed petitioners' production activities "by regulation"); *id.* at 49. So even if the Court were inclined to create case-by-case exceptions to *Watson*, including in the "wartime context," U.S. Br. 31, this case does not present a viable opportunity to do so.

CONCLUSION

The Court should affirm.

Respectfully submitted,

CHRISTOPHER MEYER
EARTHJUSTICE
48 Wall Street
Fifteenth Floor
New York, NY 10005

CAROLINE A. FLYNN
Counsel of Record
EARTHJUSTICE
1001 G Street NW
Suite 1000
Washington, DC 20001
(202) 667-4500
cflynn@earthjustice.org

Counsel for Amicus Curiae

November 20, 2025