No. 24-813

In The Supreme Court of the United States

CHEVRON U.S.A. INCORPORATED, ET AL.,
Petitioners,

v.

PLAQUEMINES PARISH, LOUISIANA, ET AL.,
Respondents.

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

BRIEF OF ENVIRONMENTAL DEFENSE FUND AND FATHER LAWRENCE MOORE AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amici Environmental Defense Fund (EDF) and Father Lawrence Moore have decades of practical and scholarly expertise with the procedural doctrines governing the proper interplay between state and federal courts in adjudicating disputes faced by local landowners, businesses, and communities in Louisiana. Local courts play an essential role in developing solutions to remediate the Louisiana coast and foster thriving coastal communities.

EDF is a 501(c)(3) non-profit, nonpartisan organization dedicated to protecting human health and the environment for people, communities, and the natural systems on which they depend by addressing the most serious environmental problems, anchored in science, economics and law. For decades, EDF has worked to protect communities, human health, infrastructure, and the environment in Louisiana, with staff and over a thousand members in the state.

Since the 1970s, EDF has worked with Louisiana residents, businesses, and landowners who depend on the health of coastal Louisiana. In 1988, EDF helped create Louisiana's first statewide nonprofit organization dedicated to coastal restoration. EDF expanded its engagement in Louisiana following the 2010 Deepwater Horizon oil spill when it helped to form a coalition to restore coastal Louisiana's globally

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than amici curiae, their members, or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

significant wetlands by ensuring federal criminal and civil penalties from the resulting settlement helped to benefit restoration projects, and to protect the people, communities, jobs and wildlife most impacted by the spill. The coalition works on science-based decision-making and project prioritization for regional, ecosystem-based wetland restoration and risk-reduction measures. EDF also works on projects to identify resources for coastal restoration, as well as the development of innovative insurance models that can serve Louisiana communities both before and after disasters.

Father Lawrence Moore is an ordained Jesuit Priest and Professor of Law at Loyola University New Orleans College of Law, and the law school's former Interim Dean.[2] As the only Jesuit law school in the South, Loyola is dedicated to serving the communities of southeast Louisiana. Loyola has a deep commitment to local land use and environmental matters, including through its Center on Environment, Land, and Law Leadership and its Environmental Policy Lab. Father Moore has taught federal courts and procedure for forty-two years, and he has a scholarly interest in promoting the sound development of the law governing federal officer removal.

As part of their work with coastal Louisiana communities, amici have experience studying and navigating litigation in state and federal courts in Louisiana. Amici write to explain how state courts

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[2] Father Moore speaks here in his professional capacity as a law professor, not for the Society of Jesus.

have served as able arbiters in implementing Louisiana laws designed to restore the Louisiana coast and resolving disputes to redress current harms to local landowners and communities. In amici's view, informed by years of scholarship and experience, expanding federal officer removal as proposed by Petitioners would extend removal far beyond its statutory textual moorings, inject federal courts into disputes that Congress never intended to wrest from fully competent state courts, and create a procedural quagmire. All for no upside, because these cases present no risk of state courts impeding federal officers' work based on local prejudice—the danger federal officer removal is designed to address.

INTRODUCTION AND SUMMARY OF ARGUMENT

These cases are about the proper management of competing uses of the Louisiana coast and decades of failures to remediate the impacts of the post-war Louisiana oil boom. They do not concern obstructing federal war efforts or punishing oil producers for refining avgas under contract with the federal government during World War II. They are far outside both the heartland objectives and plain terms of the federal officer removal statute.

Spurred by Congress's support for states managing their own coastal areas, 16 U.S.C. § 1455, Louisiana enacted the State and Local Coastal Resources Management Act of 1978 ("SLCRMA"), La. Rev. Stat. Ann. § 49:214.21 *et seq.*, to manage the coast. In the decades since, Louisiana courts have ably resolved disputes relating to resource exploration and extraction under the SLCRMA and similar state laws. Such cases address a complex array of state law issues, implicate a host of conflicting local interests, and frequently turn on the particular facts of each case. Sometimes oil and gas defendants have prevailed; sometimes landowners or other business interests have carried the day. But none of these cases—SLCRMA cases included—suggest that Louisiana courts harbor the sort of local prejudice against federal programs that provides the raison d'etre for federal officer removal.

This case, too, has no basis for federal officer removal. Any connection between these lawsuits (about oil production and failure to remediate over decades) and federal directives (World War II refining contracts) is far too remote. The statute limits removal to lawsuits against federal officers and persons "acting under that officer … for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). The Fifth Circuit correctly concluded, for federal contractors seeking to avail themselves of the protection afforded federal personnel, the statute requires that the lawsuit have "sufficient connection with directives" in a federal contract. Pet. App. 29.

Congress's addition of "relating to" in the statute did not transform every suit against a federal contractor into a removable action, merely because the contractor could articulate some connection, however attenuated, between its voluntary conduct and a federal contract directive. Precedent teaches that "relating to" language cannot be read in isolation or stretched to extend to every theoretical relationship. Its scope must be understood in light of the statutory objectives: to provide a federal forum to adjudicate federal immunity defenses and protect federal programs from interference generated by local hostility against unpopular federal laws. Removing suits arising from a contractor's independent choices outside the bounds of their contractual obligations advances neither objective. Statutory history reinforces the limited scope of the "relating to" language: the 2011 amendments aimed to clarify that pre-suit discovery matters involving members of Congress and federal officers were removable, not to throw open federal courthouse doors to every lawsuit against a federal contractor presenting a colorable federal defense.

Allowing removal here would spark a tidal wave of removal by federal contractors based on activities so remote in time and substance from any federal directive that even the defendant would likely not recognize the supposed link until well into discovery. It would give rise to gamesmanship, delay, and illogical outcomes without advancing any federal interest. The slender connection between this lawsuit and a federal wartime refining contract contrasts with the fundamentally Louisiana-based nature of the controversy—implicating Louisiana law and a range of Louisiana interests. Removal under these conditions is unwarranted and contrary to statute.

ARGUMENT

I. State courts fairly resolve cases addressing costal uses.

A. Cases addressing coastal restoration in Louisiana involve a complex interrelated web of local issues, impacts, and trade-offs.

1. For more than a century, Louisiana has served as the resource hub of the nation's energy sector, a sector which has become a central pillar of the State's economy. Jason P. Theriot, *American Energy, Imperiled Coast: Oil and Gas Development in Louisiana's Wetlands* 5–6 (2014) (hereinafter Theriot, *American Energy*); *see generally* Jason P. Theriot, *Oilfield Battleground: Louisiana's Legacy Lawsuits in Historical Perspective*, 57 La. Hist.: J. La. Hist. Assn. 403 (2016) (hereinafter Theriot, *Oilfield Battleground*).

Energy development began in coastal Louisiana well before World War II. *See, e.g.*, *State v. La. Land & Expl. Co.*, 298 So. 3d 296, 301 (La. Ct. App. 2020), *aff'd*, 339 So. 3d 1163 (La. 2022) (alleging damages to soil, and water caused by breach of 1935 mineral lease); *Houssiere v. ASCO USA*, 108 So. 3d 797, 800, 803 (La. Ct. App. 2013) (pursuing remediation and damages for breach of 1928 lease).

Pre-war and wartime oil and gas exploration and production, however, was eclipsed by the *post-war* expansion of activity in Louisiana's wetlands that accompanied the offshore boom from the 1950s to the late 1970s. Theriot, *American Energy*, *supra*, at 4, 25 (describing post-war increase in oil and gas production and "major expansion of the pipeline corridor through the wetlands"); Br. of Gen. Honoré Sec. I. In the decades following World War II, the industry drilled thousands of wells and carved thousands of miles of pipeline canals through the State's delicate wetlands. Theriot, *American Energy*, *supra*, at 38, 211.

Intensive oil and gas exploration, well drilling, and other production activities exacted a profound toll on Louisiana's coastal environment—introducing contamination into its soils and waters, eroding wetlands, and accelerating the loss of the land that once served as the State's first line of defense against hurricanes and coastal storms, while also functioning as a natural barrier protecting both the State and the energy sector's infrastructure. Br. of Gen. Honoré Sec. I.A. These practices affecting coastal Louisiana began before World War II and continued long after. *See, e.g.,* Theriot, *Oilfield Battleground*, *supra*, at 441; Theriot, *American Energy*, *supra*, at 38.

2. Recognizing the local nature of these issues, Congress encouraged states to address them. *See* 16 U.S.C. §§ 1454, 1455. Louisiana responded with tailored and specific legislative and regulatory measures to address these local issues, including the SLCRMA, which created a regulatory program governing activities in coastal Louisiana and was invoked here by Respondents to redress post-1980 failures to remediate damage to Louisiana's coast. Louisiana Br. 6-7.

In the decades that followed, there has been extensive litigation under SLCRMA and similar Louisiana environmental statutes addressing the impacts on Louisiana's coast from the failure of operators to remediate the foreseeable—or, in most instances, actually foreseen—impacts of their production and exploration practices. Such actions are predominantly brought by Louisiana landowners, local governmental bodies, and local businesses, under Louisiana laws, seeking remediation and damages in Louisiana. This case presents but one variant of the medley of state-law-based environmental remediation actions brought throughout the state.

Landowner-lessors seeking remediation of soil and water contamination caused by excessive and unreasonable conduct in violation of mineral leases—many of which have been resolved in favor of oil and gas producers—give rise to another common variant of cases. *See, e.g.*, *Terrebonne Par. Sch. Bd. v. Castex Energy, Inc.*, 893 So. 2d 789 (La. 2005) (finding that in the absence of an express lease provision, the Louisiana Mineral Code did not impose an implied duty on the lessee to restore the eroded surface estate to its original condition); *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 79 So. 3d 246 (La. 2011) (applying Louisiana's "subsequent purchaser doctrine" to limit landowner recovery for environmental damage); *La. Land & Expl. Co.*, 339 So. at 1163 (declaring oilfield remediation statute consistent with Louisiana Constitution in claims for environmental damage).

These mineral lease cases often turn on nuanced issues of rights and obligations under Louisiana's Mineral Code and Louisiana's codified procedure for oilfield contamination cases, "Act 312." 2006 La. Acts 312 (codified as amended at La. Rev. Stat. Ann. § 30:29). In addition, local land use disputes related to the remediation of environmental damage frequently involve claims that are particular to Louisiana's distinct civil-law legal system and instruments, as well as regulations and administrative proceedings before local regulators that are unique to Louisiana and often run parallel to litigation. Defendants run the gamut from large out-of-state oil corporations to smaller, local operators that inherited problems, and neighboring landowners. *See, e.g.*, *Hogg v. Chevron USA, Inc.*, 45 So. 3d 991 (La. 2010).

Despite their varying claims for environmental remediation in Louisiana, such cases all epitomize a complex interplay between state law and local trade-offs—just as Respondents' cases do. Respondents are not seeking to hold Petitioners liable for any refining activity connected to World War II-era federal contracts. Instead, Respondents' claims are based on post-War failures to remediate harms from oil and gas *production* under a Louisiana permitting scheme that, by its terms, applies only to "uses" within the Louisiana coastal zone that are of "state" and "local concern." La. Rev. Stat. Ann. § 49:214.25(A)(1)(f). As explained below, Louisiana courts are well-equipped to handle fairly the complex and nuanced issues of Louisiana law presented by these cases and the array of state and local issues at play.

B. Louisiana provides a fair forum for resolving disputes related to oil and gas production.

Suits for remediation of harm caused by oil and gas production activity in Louisiana have, to date, been primarily adjudicated in Louisiana state courts that are well-equipped to address the local concerns and statutes at issue. Any suggestion that Louisiana courts and juries are biased, incapable, or otherwise ill-suited to handle cases for remediation of oil and gas industry impacts, is unfounded and directly contradicted by the outcomes of past cases.

Louisiana courts have resolved remediation cases fairly and expeditiously. Oil and gas defendants have frequently prevailed in environmental jury trials in Louisiana coastal parishes, including in cases brought by Plaquemines Parish landowners against Chevron. In the same court where Chevron suffered its loss this year, a Plaquemines Parish jury returned a verdict in favor of Chevron in a contamination case brought by a landowner-lessor just four years earlier. *Hero Lands Co. v. Chevron*, No. 64-320, 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, Verdict Form (May 14, 2021). The jury determined, *inter alia*, that Chevron had not operated unreasonably or excessively under its leases. *Id.*; *see also Meaux v. Hilcorp Energy Co.*, No. 99-72994, 15th Judicial District Court, Parish of Vermillion, State of Louisiana, Jury Verdict Form (Aug. 29, 2008) (zero verdict in Vermillion Parish for similar reasons); *Clark v. Wagner Oil Co.*, No. 10-18866, 38th Judicial District Court, Parish of Cameron, State of Louisiana, Final Judgment on Jury Verdict (Jan. 3, 2014) (same).

By the same token, Louisiana courts have rendered modest judgments for remediation of contaminated property. *See, e.g.*, *Simoneaux v. Amoco Prod. Co.*, 860 So. 2d 560 (La. Ct. App. 2003), (affirming jury's award of $375,000 for cost of restoring site contaminated by use of earthen pits for containment of oilfield wastes instead of the requested $12,907,440). The criticisms from

Petitioners' amici of the district judge's decisions in Respondents' cases, as well as Louisiana's judicial system more broadly, *see* Br. of Pelican Inst. for Public Pol'y 11-12, sound in rhetoric, rather than objective fact or assignment or error. *See* J. Michael Veron, *In Pursuit of Bigfoot: Confronting Oil and Gas Mythology in Louisiana*, 75 La. L. Rev. 1251, 1271-72 (2015).

Louisiana lawmakers, too, have focused on facilitating a predictable process for addressing oilfield contamination and ensuring that recoveries for environmental damage serve remediation, while also fostering growth in the energy sector that is so important for Louisiana's economy. Just this year, the Legislature amended the oilfield contamination statute, Act 312, to limit recoverable damages by affected landowners, provide more flexibility to defendants in funding remediation plans, and shield responsible parties from claims for attorney and expert fees. 2025 La. Acts 458 § 2 (codified at La. Rev. Stat. Ann. § 30:29).

Louisiana's roots in the oil and gas industry run deep, and many of its citizens, including Louisiana judges, jurors, and legislators, owe their families' livelihoods across generations to the industry. Br. of Former Gov. Edwards 2-3. Against that backdrop, it is reductive to claim that Louisiana courts are overly hostile to oil and gas interests. More often, the industry enjoys an ingrained presumption of legitimacy and goodwill from a citizenry with a long connection to companies like Chevron. The resulting setting has historically provided oil and gas defendants fair hearings, if not a proverbial thumb on the scale in their favor. Problems do arise, however, when cases become mired in procedural wrangling based on ever shifting theories of removal, leaving local property owners and coastal communities waiting years for relief.

II. Petitioners' unbounded rule is unmoored from § 1442's text, context and purpose.

As amici's experience confirms, state courts are "presumptively competent" to handle federal defenses. *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990). Federal defenses like those raised here are not a basis for taking cases away from state courts. *See, e.g., id.* at 459; *see also Jefferson Cnty. v. Acker*, 527 U.S. 423, 430-31 (1999). Under our constitutional "system of dual sovereignty," *Tafflin*, 493 U.S. at 458, federal courts must "give due regard" "to the power of the States to provide for the determination of controversies in their courts," *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, 578 U.S. 374, 389 (2016) (citation modified).

Section 1442 operates as a limited exception to the presumptive competence of state courts and must be read consistent with its "language, context, history, and purposes" of protecting the activities of the federal government from interference by state courts. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147-48 (2007). But Petitioners' reading of § 1442 would instead invite the Court to transform § 1442 into a "welcome mat" for "a horde of … state claims with embedded federal issues." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 318 (2005) (discussing 28 U.S.C. § 1441 removal). The Court should decline this invitation.

A. For § 1442 removal, "acting under" a federal officer entails a close relationship between the suit and acts directed by federal officers.

Under § 1442, removal is limited to suits against federal officers and persons "acting under that officer … for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). These requirements each call for a close connection between the removed suit and government direction.

As is undisputed, Pet. Br. 5, the "acting under" element requires government direction or control. Someone is "[a]cting under" a federal officer only when under his "'subjection, guidance, or control.'" *Watson*, 551 U.S. at 152. If the removal right extends to private individuals at all, *see infra* 19-20 & n.4, "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." *Watson*, 551 U.S. at 151-52; Louisiana Br. 21-23. Federal officer removal is unavailable to a private person acting only to advance his own interests or even out of a general desire to assist the federal government. *See Watson*, 551 U.S. at 151-52.

Government direction and control is also central to the "relating to" element. The tight link is expressed in the textual command that suits qualify for removal only if they are "for or relating to" acts "under color of such office." 28 U.S.C. § 1442(a)(1). "Such office" refers to the specific federal office a person was "acting under." The "office" is that of the federal officer. A private person does not have an "office."

"[A]cts taken under color of office," are those that "are vested with, or appear to be vested with, the authority entrusted to that office." Black's Law Dictionary (12th ed. 2024) ("color of office"). For an act to be "under color of such office," therefore, it must involve a use of official authority to carry out the duties of the federal officer directing the action. *See Mesa v. California*, 489 U.S. 121, 135 (1989).

In contractor cases, the contract provides the critical link to that official authority. A suit is removable only if the suit "relat[es] to" the acts taken under color of the office that a person is "acting under," 28 U.S.C. § 1442(a)(1), meaning (for a contractor) that a suit must relate to acts specifically directed by the contract. As the Fifth Circuit correctly held, such relation to the federal officer's authority requires "sufficient connection with directives" in the federal contract. Pet. App. 29. A federal contractor voluntarily undertaking actions outside the scope of the federal contract comes nowhere close to satisfying § 1442's requirements for federal officer removal.

B. Petitioners' boundless interpretation disregards this Court's caution that "relating to" means a significant and close connection.

Petitioners urge this Court to read "relating to" as encompassing an unending chain of increasingly remote connections. In Petitioners' view, Br. 28, the statute sweeps in any suit relating to any conduct that itself relates in a cosmic sense to an "act under color of [federal] office," no matter how tenuous the tie. But relation to some conduct the contractor decided was "merely useful or efficient … to fulfilling [a] federal objective" at any point along the path from "raw materials … to [the] manufacture of the finished product," Pet. Br. 23, 40, is not enough to invoke federal jurisdiction under § 1442.

This Court has "recognized that the term 'relate to' cannot be taken 'to extend to the furthest stretch of its indeterminacy,' or else 'for all practical purposes'" its reach "'would never run its course.'" *Egelhoff v. Egelhoff*, 532 U.S. 141, 146 (2001) (quoting *N.Y. State Blue Cross Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995)) (discussing ERISA preemption provision). The Court relies not on its "*literal* reading" but on its "ordinary" meaning. *Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 93 (2020) (Thomas, J., concurring). Otherwise, the phrase would "pick up every ripple in the pond, producing a result that no sensible person could have intended." *Egelhoff*, 532 U.S. at 153 (Scalia, J., concurring) (internal quotation marks omitted).

And the ordinary meaning implies a close connection. "If someone, for instance, asserted that he is 'related to Joe,' it would be reasonable to presume a close familial relationship." *Rutledge*, 592 U.S. at 94 (Thomas, J., concurring). "No one would assume that the speaker was referencing a mutual tie to Adam and Eve." *Id.*

Some connections are thus "'too tenuous, remote, or peripheral'" to count. *Morales v. TWA*, 504 U.S. 374, 390 (1992). Grappling with the phrase in the ERISA preemption context, the Court has concluded that "relating to" does not sweep in any law that "affects" ERISA plans. It reaches only those state laws causing "acute" effects and those that "govern[] a *central* matter of plan administration." *Rutledge*, 592 U.S. at 87 (citation omitted; emphasis added).

Similarly, in construing the preemption provision in the Federal Aviation Administration Authorization Act, the Court recognized that a state law does not "relate to" rates unless it has a "'*significant* impact'" on them. *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 375 (2008) (quoting *Morales*, 504 U.S. at 388) (emphasis added by the Court).

Petitioners counter that "relating to" means "a 'connection or association,'" Br. 26 (font normalized), but this does not advance their argument. Like "relating to," "connected with" cannot be read with "'uncritical literalism.'" *Cal. Div. of Labor Standards Enf't v. Dillingham Constr., N.A.*, 519 U.S. 316, 325 (1997) (quoting *Travelers*, 514 U.S. at 656). Neither phrase encompasses "infinite connections," only significant and close ones. *See Travelers*, 514 U.S. at 656.

C. Statutory objectives and history confirm that only significant and close connections to government-directed activities count.

1. Whether a connection is close enough depends on the "objectives of the … statute." *Egelhoff*, 532 U.S. at 147 (internal quotation marks omitted) (discussing ERISA preemption); *accord* U.S. Br. 19. The underlying objectives of federal officer removal confirm that Congress intended only to reach lawsuits with a close connection to federal directives. Federal officer removal springs from the federal government's need to protect its "very basic interest in the enforcement of federal law through federal officials" from interference by state courts. *Willingham v. Morgan*, 395 U.S. 402, 406 (1969). Removal serves this interest in two primary ways, neither of which would be advanced by Petitioners' boundless interpretation.

First, "one of the most important reasons for removal is to have the validity of the defense of official immunity tried in a federal court." *Watson*, 551 U.S. at 150 (quoting *Willingham*, 395 U.S. at 407). Although any "colorable federal defense" satisfies the jurisdictional requirements, *see Mesa*, 489 U.S. at 136-37, the "main point" of federal officer removal is to provide a federal forum specifically for immunity defenses, *Watson*, 551 U.S. at 151 (citation omitted).

This objective is relevant to contractors, if at all, only for suits challenging conduct tightly connected to a federal contract. While the federal government and its employees have broad immunity from suit, *see, e.g.*, 28 U.S.C. § 2679(b)(1), "private persons performing Government work" do not "acquire the Government's embracive immunity." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 166 (2016). Even if contractors can claim immunity rather than a defense from liability, *see GEO Group v. Menocal*, No. 24-758 (S. Ct.), this protection extends, at most, to acts taken "pursuant to" federal contracts. *Campbell-Ewald*, 577 U.S. at 166 (citation omitted). When the challenged conduct is not directed by a contract—indeed, as here, when it is not even encompassed within the subject matter of a contract—there is no immunity defense, and thus no reason to provide a federal forum for it.[3]

[3] Petitioners asserted that they were entitled to federal immunity, but this argument is not even "colorable." *See Par. of Plaquemines v. Riverwood Prod. Co.*, No. 18-5217, 2022 U.S. Dist. LEXIS 4974, at *18 (E.D. La. Jan. 11, 2022). The Fifth Circuit did not consider immunity, with the dissent considering

The primary removal objective of adjudicating federal officer immunity thus has no bearing here.

Second, federal officer removal aims to prevent "local prejudice against unpopular federal laws or federal officials" from infecting the proceedings and thereby interfering with federal programs. *See Watson*, 551 U.S. at 150-51. But such concerns are wholly absent where, as here, a suit relates not to any federally directed conduct, but instead to actions *not* required by a federal contract. State court proceedings do not interfere with federal operations by reviewing actions that are unnecessary to those federal operations. This is true even when a contractor's actions are governed by federal regulations. *Watson*, 551 U.S. at 152. And it is particularly true here, given that this suit involves Petitioners' failure to comply with state law decades after their World War II contracts expired. Louisiana Br. 8. State courts can fairly resolve this dispute as they have other claims relating to resource extraction in Louisiana. *See supra* Part I.

2. Petitioners contend that removal must be available for lawsuits regarding any act a contractor deems "useful or efficient" for fulfilling a contract, because that was Congress's intention when it added "relating to" to the statute in 2011. This argument fails textually, *see supra* Part II.A. And the context and history of the 2011 amendments confirm that Congress never intended to work any such sea change in removal law.

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only preemption defenses. *See* Pet. App. 38 (majority); Pet. App. 62-63 (dissent). But state courts are well-equipped to consider federal preemption defenses.

a. The addition of "relating to" was part of a package of amendments designed to clarify that § 1442 permitted removal of pre-suit discovery matters after a member of Congress was unable to remove such a proceeding. H.R. Rep. No. 112-17, at 2 (2011). Congress changed the definition of "civil action" and "criminal prosecution" to include ancillary proceedings. *Id.* at 6, 8. Congress also made "conforming amendments" to other portions of the statute, including the addition of "relating to," to clarify that the actions giving rise to removal went beyond ongoing litigation. *See* Pub. L. No. 112-51, § 2(b)(1)(A), 125 Stat. 545, 545 (2011) (font normalized). For pre-suit discovery proceedings, there may not be a suit *for* the officer's act, but discovery would *relate to* the officer's act. *See* Br. of Former Governor Edwards Sec. II.A.2.a.

Before and after the 2011 amendments, § 1442 has thus consistently focused on "grant[ing] district court jurisdiction over cases in which a *federal officer* is a defendant." *See Mesa*, 489 U.S. at 136 (emphasis added). Nothing in the 2011 amendments shifted this focus to federal contractors. *See generally* H.R. Rep. No. 112-17 (2011) (discussing federal officers); Br. of Former Governor Edwards Sec. II.A.2.b.

b. Petitioners nevertheless suggest (Br. 27-28) that the amendments were intended to broaden the scope of suits that contractors could remove beyond those that have a causal nexus to the federal contract. This argument reflects a fundamental misunderstanding of the legal backdrop against which Congress legislated.

Watson held that heavily regulated private entities could not remove without determining "whether and when particular circumstances may enable private contractors to invoke the statute." *See Watson*, 551 U.S. at 154.[4] That was the state of the law when the 2011 amendments were enacted.

Some lower courts had permitted contractors to remove "at least when the relationship between the contractor and the Government is an unusually close one," *id.* at 142, and a handful of decisions specifically addressed the causal-nexus requirement for contractors, *see* Pet. Br. 26-27 (citing cases). But it is "most unlikely" that this uneven level of lower-court consensus was "so broad and unquestioned" that the Court should presume Congress legislated against it. *See BP P.L.C. v. Mayor of Baltimore*, 593 U.S. 230, 244 (2021) (internal quotation marks omitted).

Ultimately, whatever the relevance of "relating to" for contractors might be, nothing supports the claim that Congress intended the amendment to allow removal of suits about any and all acts that a contractor deemed "useful or efficient" at any point in the causal chain of fulfilling its contractual obligations. Adopting Petitioners' rule that "relating to" should be read to include voluntary acts merely useful or efficient to a federal contractor in achieving any remote contractual objective would eliminate any meaningful connection between the lawsuit and the

[4] Contrary to Petitioners' theory that only non-government actors are covered by the "acting under" clause, Pet. Br. 37, the clause might instead serve to clarify that the statute applies to all government employees, not just officers who exercise "significant authority pursuant to the laws of the United States." *See Int'l Primate Prot. League v. Adm'rs of Tulane Educ. Fund*, 500 U.S. 72, 81 (1991); *County of San Mateo v. Chevron Corp.*, 32 F.4th 733, 756 (9th Cir. 2022).

federally directed acts. Petitioners' rule would allow removal if, for example, a contractor paid by the federal government to remove plants, chose—for expediency and with no explicit directive—to use Agent Orange. That would be a nonsensical use of a procedural rule designed to protect federal officer immunity.

III. Petitioners' boundless approach to federal officer removal would open the floodgates, needlessly risking gamesmanship and extended procedural wrangling.

A. Petitioners' rule would allow removal in many cases best decided by state courts.

Petitioners' theory is not only unmoored from the text and history of federal officer removal, it would transform § 1442 from a provision directed at protecting the federal government from interference with its officers into one that allows removal of almost any case with a federal contract lurking anywhere in the background.

1. The implications would be tremendous. In 2024, the government awarded contracts to over 100,000 companies. *See* Archisha Mehan, *Federal Contract Awards Hit $773.68B in FY24, Small Businesses See $4B Increase*, GovSpend (Feb. 24, 2025), https://tinyurl.com/2urj7uxk. And that's just 2024. As this case illustrates, defendants with contracts in the distant past would also claim a relationship to litigation today—even if the suit involved a failure to remediate harms in the intervening decades—exponentially multiplying the numbers.

These numbers would further skyrocket if, as Petitioners posit, federal regulations could support contractor removal. Pet. Br. 23. But this Court has already held that a private firm is not "acting under" a federal officer when it complies with federal regulations "even if the regulation is highly detailed and even if the private firm's activities are highly supervised and monitored." *Watson*, 551 U.S. at 153. The answer should be no different when regulations are considered under the "relating to" element. Otherwise, any suit where a contractor could raise a federal preemption defense could be removed on the theory that the preemptive regulations supply the government direction over the challenged conduct that the contract lacks.

No less than in *Watson*, Petitioners' theory "would expand the scope of the statute considerably, potentially bringing within its scope state-court actions filed against private firms in many highly regulated industries," even though such suits are not "likely to disable federal officials from taking necessary action" or raise federal immunity defenses. *Watson*, 551 U.S. at 153.

2. Petitioners invoke World War II as an exceptional circumstance. But the World War II context fails to cabin Petitioners' theory of removal. One of the ways that World War II was exceptional was its widespread effect on American industry. For example, seventy percent of rubber used in manufacturing today is "a descendant of" synthetic rubber created during World War II when natural sources of rubber became unavailable or were insufficient to meet wartime needs. *See* American Chemical Society, *U.S. Synthetic Rubber Program*, https://tinyurl.com/yjzazktu (last visited Nov. 17, 2025). Imagine a state court design defect suit about rubber produced in 1980, where an expert report years into the litigation mentions that one part of the formula depends on a chemical discovery first made during World War II. A car accident case involving a blown-out tire that was manufactured with a World War II era formula would involve lurking ties to wartime federal interests. Would these suits become removable? Would the right to remove depend on the happenstance of whether the defendant happened to have had a contract with the government during World War II? What if the company had a federal contract to supply tires but could have used any formula for the rubber? What about a federal contract to supply vehicles with any sort of tires? Under Petitioners' approach, any choice by the contractor, anywhere along the product supply chain, opens the door to federal court if the contractor deems it useful for fulfilling the contract. That is a limitless "test."[5]

B. Petitioners' approach would foster delay, waste judicial resources, and create illogical outcomes.

1. Petitioners' attempt to impose limitations on their limitless test creates an oddly gerrymandered path to federal court, distinguishing between contractors based on criteria far removed from Congress's interests in allowing federal officer removal. "The illogical results of applying such an

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[5] Further expanding the reach of their already limitless rule, Petitioners never say it is limited to the World War II context. Military contracting is extensive, with the Navy, Air Force and Army regularly spending more on contracts than any other federal agency. Mehan, *supra*.

interpretation … argue strongly against the conclusion that Congress intended these results." *Jones v. Hendrix*, 599 U.S. 465, 480 (2023) (citation omitted; alteration in original).

Petitioners repeatedly invoke vertical integration as the master key unlocking the federal courthouse door. *See* Pet. Br. 3, 9, 10, 16, 40. In their view, large "vertically integrated" businesses with government contracts anywhere in their expansive corporate structure can remove any case to federal court, so long as some aspect of their business has ever been, in any sense, "useful or efficient in fulfilling the federal contract." Pet. Br. 34, 40.

As the Fifth Circuit explained, "illogical and disparate" results abound under Petitioners' test, with removal outcomes diverging based on nothing but corporate structure or happenstance. *See* Pet. App. 35-37. Crude oil producers that were not vertically integrated—*i.e.*, lacked refineries, and therefore refining contracts—cannot remove under Petitioners' test, despite identical federal regulation of crude oil production. *See id.* at 37; *Plaquemines Parish v. Chevron USA, Inc.*, No. 22-30055, 2022 U.S. App. LEXIS 28733, at *9-10 (5th Cir. Oct. 17, 2022) (*Plaquemines II*). And even some vertically integrated companies, like Humble Oil, cannot remove because "none of the crude oil it produced in the relevant Operational Area was sent to its refinery." Pet. App. 36.[6]

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[6] The United States' fix for this acknowledged asymmetry is to advocate for an even more expansive view of removal jurisdiction where the Petroleum Administration in War's (PAW's) "extensive supervision of the wartime oil industry" by

The usual rules about federal defenses crumble, too, in the face of vertical integration. Federal preemption or constitutional defenses are not a gateway to federal court. Federal question jurisdiction must be "based only on the allegations in the plaintiff's 'well-pleaded complaint'—not on any issue the defendant may raise." *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 26 (2025) (citation omitted).

But for a vertically integrated company, any colorable federal defense related to any aspect of its operations will suffice for removal even if unrelated to the federal contract or any acts directed by it. *See* Pet. App. 34-35 (describing Petitioners' argument); Pet. App. 62-63 (dissent reasoning that Petitioners' ordinary preemption defense qualifies). The breadth of Petitioners' removal theory would erode the certainty of the well-pleaded complaint rule—at least for larger businesses with multiple product lines and divisions, one of which happens to contract with the federal government—opening federal courts to many cases with no federal claims.

Worse still, Petitioners' test is manipulable, turning fully on private businesses' choices about corporate structure. Congress has long strived to avoid such manipulability in rules governing access to

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regulation is enough, regardless of any federal refining contract, effectively arguing for a "unique wartime" carveout to *Watson*. *See* U.S. Br. 30-34. Two wrong turns don't make a right. The Court has rejected the government's proposed "exit route" to "avoid 'absurd results'" when the government's "own misreading" generated those absurd results. *Kloeckner v. Solis*, 568 U.S. 41, 55 (2012). The Court can again avoid the problem by rejecting the "misreading" that creates it. *See supra* Section II.A.

federal courts. For example, Congress amended the statute governing corporate citizenship in diversity cases to shut down corporations' ability to "manipulate federal-court jurisdiction" and "open[] the federal courts' doors" in States where they conduct most of their operations. *Hertz Corp. v. Friend*, 559 U.S. 77, 85-89 (2010). Such manipulation was "at odds with diversity jurisdiction's basic rationale" of protecting "out-of-state parties" from "local prejudice." *Id.* at 85. The same rationale holds here. Manipulation of corporate structure cannot create an otherwise absent federal interest in removal.

2. Manipulability is not the only problem; the potential for procedural gamesmanship and wasteful delay goes hand-in-hand.

The removal statute reflects Congress's "obvious concern with efficiency." *BP*, 593 U.S. at 245. The statute mandates early resolution of removal questions, at the outset or "within 30 days" of receipt of the "first" paper from which a defendant can "ascertain[]" that the case has become removable. 28 U.S.C. § 1446(b).

But throwing open the courthouse doors to situations far from the purpose of the statute, especially under a manipulable test, will lead to extended and costly threshold wrangling. Here, removal questions have been litigated for over a decade, with three rounds of removal attempts since 2013, and federal officer removal only being raised five years after the complaints were filed, in response to an expert report. Pet. App. 4-6.

The United States mostly blames Respondents for the delay, objecting (Br. 26) to their "choice to fight for a state forum." But not only are plaintiffs master of their complaint, they can hardly be faulted for choosing a forum without regard to attenuated federal contracts with no apparent ties to the actions giving rise to the lawsuit. Facts relevant to any attempted federal officer removal under Petitioners' approach—the reason why corporate division A judged some act "efficient or useful" for fulfilling a federal contract entered into by division B—are likely to be solely in the defendant's possession. Petitioners' rule is therefore especially vulnerable to late-springing removals and the associated potential for gamesmanship.

And this case is far from unique. In *Dupont v. Exxon Mobil Corporation*, for example, landowners in and near a subdivision built on land where a pumping station had previously operated filed a state court lawsuit in 2014 seeking damages for personal injuries and contamination of their property. No. 3:25-cv-00936, Dkt. No. 1, at 2, 16 (M.D. La. Oct. 25, 2025) (notice of removal). The defendant disclaims any connection between the pumping station and its Baton Rouge refinery. *Id.* at 13. Nonetheless, citing this case and the Court's grant of certiorari, *id.* at 4 n.9, the defendant only months before trial recently removed the case based on federal wartime refining contracts—due to a mere remark in an export report that the pumping station was an "arm" of a contracting refinery, *id.* at 2.

Late removals designed to avoid impending trials based on strained factual connections to federal contracting will no doubt become the norm if this Court allows it here. Congress's acceptance of some efficiency loss for heartland cases raising real concerns about state court interference with federal operations, *see BP*, 593 U.S. at 245, should not be pushed beyond its bounds to countenance extended delays in cases far afield from federally directed operations.

3. Delayed removal is just the start of the procedural slowdowns engendered by Petitioners' rule. If Petitioners prevail, cases addressing near-identical issues and a complex interplay between state and federal law will end up proceeding in state and federal courts at the same time. The proof is in the pudding here: Even the same vertically integrated oil producer could have one case remanded and another removed, depending on whether it refined avgas from any of the crude oil that it produced in the relevant area. *See* Pet. App. 36; *supra* 24 (describing remand of Humble Oil case).

Parallel litigation in state and federal courts inherently raises complicated issues that burn up time and resources on procedural wrangling instead of the merits. When "there is parallel state and federal litigation," "[c]omity or abstention doctrines may, in various circumstances, permit or require the federal court to stay or dismiss the federal action in favor of the state-court litigation." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005). Once a case reaches judgment in state or federal court, complicated preclusion issues can arise. *See Lance v. Dennis*, 546 U.S. 459 (2006) (resolving a question regarding the interplay between preclusion and *Rooker-Feldman* abstention). Cases may get bogged down in procedural skirmishes inherent to complex, multi-forum litigation—rather than expeditiously resolving the merits. By contrast, state courts have ably shepherded the cases remanded (or never removed) to merits resolutions. *See supra* Part I.

C. No specter of state interference with federal operations warrants opening the doors to such procedural mischief.

Petitioners cast this case as one where they face state liability "for doing the federal government's bidding during wartime," Pet. Br. 48, akin to state harassment of federal officers enforcing a trade embargo during the War of 1812, *id.* at 4. They invoke traditional removal concerns of "'local prejudice' against unpopular federal laws" and risk of "imped[ing] … enforcement of … federal law." *Watson*, 551 U.S. at 150. But Petitioners do not face liability for doing the government's bidding and these suits create no risk of local prejudice impeding federal operations.

1. The government's contractual "bidding" was limited to refining quantities. The contracts gave Petitioners "complete latitude … to forego producing any crude and instead buy it on the open market," Pet. App. 30 (alteration in original). Because the contracts did not require Petitioners to produce crude oil, they included no directive to produce oil or provision regarding production practices. *See* Pet. App. 23 (describing Petitioners' "recognition that their refinery contracts are silent as to oil production"). The refining contracts required Petitioners to refine certain quantities of avgas, and in some cases to expand their facilities to do so. Pet. App. 21-23. But the government never required a production increase and left them free to buy crude on the open market.

See Br. of Gen. Honoré Sec. II. The Fifth Circuit correctly limited its "relating to" analysis to "directives in Defendants' federal refining contracts." Pet. App. 19.

To surmount the complete contractual silence about crude oil production, Petitioners throw PAW regulations into the "government bidding" mix. Pet. Br. 43-45. But many PAW regulations were "recommendations" to follow "voluntarily." U.S. Br. 32. And wartime needs did not swallow up the whole crude oil market, as Petitioners suggest; 70% of crude oil production during World War II went to civilians. C.A. Rcd. 31811. Even if the government tightly regulated crude oil production, that does not create or reinforce a qualifying relation between crude oil production and the government's contractual direction over refining. Crude oil regulation applied to producers independent of any refining contracts or operations. *See Plaquemines II*, 2022 U.S. App. LEXIS 28733, at *9-10. The happenstance of a refining contract is an exceptionally slender reed on which to pull into federal court all lawsuits about anything to do with any "raw material" element (Pet. Br. 40). The lack of a qualifying connection is particularly stark here; Petitioners could have avoided liability by complying with Louisiana law when it took effect in 1980. *See* Louisiana Br. 8.

2. Nor is this case about state interference with federally-directed wartime oil production operations—even assuming such operations had been federally directed. Petitioners face liability for actions after the State and Local Coastal Resources Management Act of 1978 took effect in 1980—decades after World War II—including their failure to clean and restore production sites as closely as possible to their original state. *See, e.g.*, 43 La. Admin. Code § I-719(M). Petitioners' attempt to avail themselves of a state law defense based on a "grandfather" clause is the only reason that any aspect of their World War II production activities are at issue. Louisiana's incorporation of this grandfather clause defies any suggestion of any state effort to impede (retroactively) the federal government's war effort. If there were any doubt, Louisiana courts' fair and unbiased handling of cases involving the oil and gas industry would resolve it.

What's more, this litigation can hardly be cast as Louisiana versus the United States. Though Petitioners gloss over it, Pet. Br. 12, SLCRMA was enacted under the auspices of a federal program providing grants to states that enact coastal management plans meeting certain federal requirements. 16 U.S.C. § 1455. Rather than shy away from local involvement in this context, federal law invites it under this scheme of cooperative federalism.

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Louisiana courts have shown themselves well able to even-handedly adjudicate cases enforcing state law against entities that have harmed Louisiana's coast. No dangers of local prejudice or federal interference justify broadening federal officer removal to reach a case like this one, where any attenuated connection between the oil production and federal direction of refining activities is post hoc and created solely at the private company's option. Such an expansion of federal officer removal pushes far beyond the statute's text, wreaks procedural havoc, and trammels on important state interests with no upside.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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