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

AMICUS CURIAE BRIEF OF GENERAL (RETIRED) RUSSEL HONORÉ IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Lieutenant General Russel Honoré (U.S. Army, Ret.) is a decorated 37-year army veteran, global authority on leadership and national security, and an expert on climate disasters and preparedness.[2]

General Honoré understands both the military's critical need for petroleum products and Louisiana's coastal crisis. Born in Pointe Coupee Parish, Louisiana, he commanded Joint Task Force Katrina and was dubbed the "Category 5 General" for coordinating military relief efforts in post-hurricane New Orleans. He has devoted his post-military career to coastal restoration, founding the GreenARMY coalition of experts and advocates among other initiatives aimed at protecting Louisiana's wetlands.

General Honoré's brief addresses arguments made by former colleagues he greatly respects but with whom he must respectfully disagree. *See* Br. for Gen. (Ret.) Richard B. Myers & Admiral (Ret.) Michael G. Mullen as *Amici Curiae* Supporting Petitioners ("Gen. Myers & Adm. Mullen *Amici* Br."). Their *amici* brief misunderstands what was "necessary" for the oil industry to deliver refined avgas to the military during World War II and thus when it is important to our national security for a contractor to remove state-law claims to federal court.

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[1] No counsel for any party authored this brief in whole or in part. The brief was funded by Republican Patriots Protecting Property Rights Inc.

[2] *See Biography*, General Honoré, https://generalhonore.com/biography/ (last visited Nov. 20, 2025).

SUMMARY OF ARGUMENT

I. The parishes sued petitioners for crude oil exploration and production in Louisiana's wetlands that violated the State's coastal-zone permitting requirements. *See* Petr. Br. 12 (describing the "SLCRMA," La. Rev. Stat. §§ 49:214.21-42); Parishes Br. 3-4 (same). The complaints target only conduct that petitioners continued after the statute's effective date in 1980. The parishes claim petitioners either failed to obtain permits the SLCRMA required to use the coastal zone for crude oil exploration and extraction or violated their permits' terms. *See* Parishes Br. 4. Because petitioners did not comply with the statute, they must now remediate the damage they've done to Louisiana's critical wetlands in the coastal-zone areas where they continued their unlawful practices after the SLCRMA went into force.

A. In recent decades, Louisianians have witnessed critical marshland vanish into the Gulf of Mexico at an average rate of one-football-field-per-hour largely because petitioners' crude oil production methods have devastated the State's coast. Dredging canals and access channels through Louisiana's marshes creates pathways for saltwater intrusion that kills freshwater vegetation, the loss of which causes land to subside into open water. These canals and channels also route sediment-carrying water straight into the Gulf rather than across the marsh, depriving wetlands of sediment needed to rebuild. Storm surges that would have been absorbed by miles of marsh thus reach further inland with greater force, creating a feedback loop where each hurricane accelerates further land loss. Despite decades to comply with the SLCRMA, petitioners have not

restored damaged land, filled canals, replanted marsh grasses, or rebuilt barrier islands.

B. Requiring petitioners to litigate in state court does not harm our national security. On the contrary, destroying the cypress swamps and wetlands that once shielded New Orleans has left Naval Air Station Joint Reserve Base New Orleans, the Port of New Orleans, and the oil and gas infrastructure supplying fuel to America's military vulnerable to hurricanes like Katrina. It is petitioners' operations and now their delay in remedying the damage they caused that have harmed our national security, not the failure to treat petitioners like federal officers who "need a federal forum." *Contra* Petr. Br. 34; *contra also* Gen. Myers & Adm. Mullen *Amici* Br. 13-14.

II. Petitioners produce crude oil as well as refine it, as they did during World War II. But wartime avgas demands did not require increasing crude oil production in Louisiana's coastal wetlands even at the time, let alone in the destructive manner petitioners used then and chose to continue in violation of the SLCRMA.

A. During World War II, Louisiana regulated the State's oil production. Although the Petroleum Administration for War ("PAW") controlled refinery output and product allocation, the PAW did not concern itself with where crude oil came from or how it was produced, leaving those decisions almost entirely to state regulation and industry discretion. In 1943, the United States argued to this very Court that state agencies were "well equipped to inaugurate and administer comprehensive programs of conservation" for oil production, and that their activities were

"important factors in the national program sponsored by the [PAW]." Br. for the Petroleum Administrator for War as *Amicus Curiae*, *Hunter Co., Inc. v. McHugh*, 320 U.S. 222 (1943) (No. 25), at *5.

The federal government did not need to direct crude oil production because private industry ensured crude supply met refinery demand. Dozens of crude oil producers operated in Louisiana, Texas, Oklahoma, and California during the war, creating a surplus of crude. In the Gulf Coast, refined products piled up at refineries to the point where "these refineries would soon have to cut back their operations, or actually shut down for lack of storage capacity." John W. Frey & H. Chandler Ide, *A History of the Petroleum Administration for War, 1941-1945*, at 217 (Gov't Printing Off. 1946) ("*PAW History*"). And much of the avgas was not refined from crude at all but was further refined from other products like heating oil and motor gasoline using new refinery equipment. *See* Surplus Prop. Admin., *Aviation-Gasoline Plants and Facilities: Report of the Surplus Property Administration to the Congress* 9-12 (1946).

B. The PAW was laser focused on obtaining avgas and other petroleum products for military use, as reflected in the federal contracts for avgas. The parties agree that the contracts specified avgas delivery to the military—not crude extraction for the government. The avgas contracts did not have "'any reference, let alone direction, pertaining to crude oil production.'" Petr. Br. 33 (quoting Pet. App. 33). The agreements "by their terms gave petitioners 'complete latitude to forego producing *any* crude.'" *Ibid.* (quoting Pet. App. 29-30) (alteration omitted) (emphasis added). And if a refinery could not perform under the

avgas contract because of delays in crude oil delivery or lack of availability, for example, the refiner was excused from performance. *E.g.*, JA183-84 (force majeure provision of Shell Oil avgas contract).

C. Petitioners' choice to maximize their crude oil profits had nothing to do with their avgas refining obligations. Crude oil produced during World War II was widely traded to meet refinery demands. Some refineries purchased all their crude from other producers; petitioners do not dispute *they* purchased crude from third parties to refine into avgas. From 1941 to 1945, Shell Oil alone purchased over 174 million barrels of crude on the open market from non-Shell affiliated producers to refine into avgas and other petroleum products. *See* JA211-12.

Meanwhile, the PAW only allocated petitioners' refineries enough crude oil to fulfill their avgas obligations; producing more crude did not mean producing more avgas because refinery capacities were limited. *See* JA214-19 (*PAW History*, *supra*, 191, 215). The "system of monthly allocations of *specific* volumes of crude to *specific* refiners" was "on the basis, always, of providing first for the minimum quantities estimated to be necessary to assure maximum output of war products." JA27, 218-19 (*PAW History*, *supra*, at 215). An integrated avgas refiner's upstream crude oil production therefore played no part in the refiner's monthly allocation to meet their avgas commitments. Petitioners' choice to maximize profits using unlawful crude oil production methods in Louisiana's coastal zone ultimately was a business decision the war effort did not need and the government did not request.

III. Given this reality, the Court should reject the idea that the Question Presented is existential to our national defense. *Contra* Gen. Myers & Adm. Mullen *Amici* Br. 13-14.

A. Everyone agrees that federal contractors could not remove cases like this from state court under any prior iteration of the federal officer removal statute—from the original 1815 enactment to the 2011 amended version currently in place. That period spanned nearly two centuries of major conflicts, foreign and domestic. During much of that time, including during World War II, this Court required a causal connection that petitioners failed to establish here. *See, e.g.*, *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431-33 (1999) (requiring "causal connection" and "essential nexus"); *Mesa v. California*, 489 U.S. 121, 131-33 (1989) (requiring "causal connection"); *Willingham v. Morgan*, 395 U.S. 402, 409 (1969) (same); *Maryland v. Soper (No. 1)*, 270 U.S. 9, 33 (1926) (same); *see also Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 147-51 (2007) (discussing each of these cases). Contractors still stepped forward, including petitioners, who claimed at the time "'that Democracy can rise to any heights of accomplishment when emergency faces it.'" *E.g.*, JA212 (quoting Shell Union Oil Corporation, *Annual Report For the Year Ended December 31, 1942*, 5). The 200-year status quo poses no threat of an unprovoked industrywide about-face, as petitioners' conduct demonstrates; their appetite for federal contracts has not waned despite a decade of failed removal attempts in these cases.

B. As amended, federal officer removal remains available to defendants who show that the complaint challenges conduct performed while "acting under" a

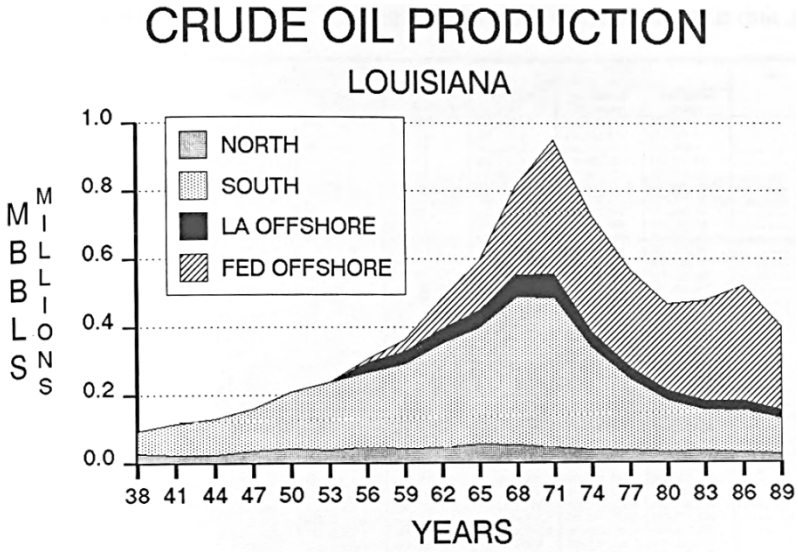
federal officer "for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1); *see* La. Br. 21, 32 (Section 1442(a)(1) "covers only an action filed against a defendant who is performing a present and continuing act under a federal officer," and who establishes they were "carrying out the 'acts' that are the subject of the complaints" (cleaned up)); Parishes Br. 21-22 & n.18 ("The causation standard applied by this Court when *Watson* was decided in 2007 is substantially the same as it is today."); *see also* Br. of Former Gov. John Bel Edwards as *Amicus Curiae* Supporting Respondents, at 8-23 (arguing that Congress did not abrogate this Court's causal-nexus requirement when it amended Section 1442(a) in 2011). The panel affirmed the District Court's finding that petitioners failed to establish a sufficient relationship between their 1940s avgas refining contracts and their crude oil production practices in Louisiana. That finding is fatal to petitioners' claim.

The non-integrated producers' crude oil was also directed to avgas refineries under the PAW's allocation program; their crude was just as necessary as petitioners' to meeting the military's avgas needs. The equipment manufacturers who sold drilling rigs and the workers who operated them were also in some sense necessary to producing the crude oil that was ultimately routed to avgas refineries. But petitioners do not dispute that none of them can remove under the federal officer removal statute. And some have tried. *See Plaquemines Parish v. Chevron USA, Inc.* (*Plaquemines II*), 2022 WL 9914869 (5th Cir. Oct. 17, 2022) (rejecting removal attempt by non-integrated firms), *cert. denied* 143 S. Ct. 991 (2023). This Court should similarly reject petitioners' gambit.

ARGUMENT

I. PETITIONERS HAVE DEVASTATED LOUISIANA'S COASTAL ZONE AND HARMED OUR NATIONAL SECURITY.

This case is not about activities that began in 1942 or ended in 1945. Crude oil production in Louisiana's coastal wetlands began decades before and continued well beyond World War II into the era when the SLCRMA went into effect. *See generally* Dianne M. Lindstedt et al., *History of Oil and Gas Development in Coastal Louisiana*, La. Geological Surv. Res. Info. Series No. 7, at 67 (1991). The peak of Louisiana coastal production was nearly 30 years after the war ended, entirely unconnected to any crude extracted for refining in the '40s:



See La. Dep't of Nat. Res., *Louisiana Energy Statistics: 1909–1989*, at ch. II.3 (1991).

Recognizing the urgent need to halt the cascading destruction certain exploration and extraction procedures have caused to the State's coastal wetlands, the Louisiana Legislature enacted the State and Local Coastal Resources Management Act in 1978. The law took effect in 1980 and requires parties engaging in activities that directly and significantly impact coastal waters to obtain coastal use permits and to restore affected areas. The law does not impose retroactive liability for past ecological damage; it requires companies to bring their ongoing operations into compliance with protective standards and to restore land their activities demolished if they choose to continue the use.

Accordingly, petitioners could not have been sued under the SLCRMA if they had ceased their unauthorized crude oil production practices before the Act's effective date in 1980. *See* Parishes Br. 9-10. But their failure to comply with the statute's permitting requirements thereafter requires remediation of pre-program damages.

A. Petitioners Use Unlawful Crude Oil Production Practices That Significantly Contribute To The Destruction Of Louisiana's Coastal Wetlands.

Louisiana's coast is not solid ground. It is an intricate ecosystem of marshes, swamps, and barrier islands built over millennia by sediment deposits from the Mississippi River. *See* Tyler Priest, *Technology and Strategy of Petroleum Exploration in Coastal and Offshore Gulf of Mexico*, in 1 *History of the Offshore Oil and Gas Industry in Southern Louisiana: Papers on the Evolving Offshore Industry* 11-14 (2008)

(describing Gulf of Mexico as "a giant downwarp of the earth's crust filled with tens of thousands of feet of ancient river sediment deposited over 100 million years"). Vegetation (marsh grasses, mangroves, cypress trees) holds the land together. Remove the vegetation, and the land subsides into open water. Interrupt the sediment flow, and the land cannot rebuild itself. The system is fragile, and oil and gas extraction strikes at both vulnerabilities.

Dredging canals through wetlands triggers a cascade of destruction. And while "dredging canals destroys wetlands directly," the "indirect effects of these canals are the most significant." Lindstedt et al., *supra*, at 68 (Louisiana Geological Survey 1991). "Dredged materials deposited along the canals prevent sheet flow across the marsh, thereby altering hydrology and decreasing the sediment and water supply, and subsequently contributing to subsidence." *Ibid.* Put another way, when companies cut navigation canals and pipeline corridors through marshes to access drilling sites, they create pathways for saltwater intrusion. Saltwater kills freshwater vegetation. Dead vegetation no longer holds soil in place. Banks erode. The canal widens. What was once a 50-foot-wide canal becomes a 200-foot-wide waterway within a decade. Multiply this by thousands of miles of canals, and the cumulative effect is staggering.

Access channels also disrupt hydrology and cause saltwater intrusion. "Like canals, navigational channels have a major impact on Louisiana's coastal wetlands." Lindstedt et al., *supra*, at 68. "They alter hydrology by changing an area's drainage patterns from numerous small, sinuous channels to one large,

straight, deep channel." *Ibid.* "These channels are a major cause of saltwater intrusion and subsequent loss of freshwater vegetation in the state." *Ibid.* These wetlands depend on seasonal flooding patterns and sediment deposition. In layman's terms, access channels act as highways routing water and the sediment it carries straight into the Gulf rather than across the marsh. Deprived of sediment, the land sinks. Deprived of fresh water, vegetation dies. The result is "ghost forests" where dead cypress trees surrounded by open water stand where thriving wetlands once existed.

The effects quickly compound. Once land converts to open water, it rarely recovers. Storm surges that would have been absorbed by miles of marsh now reach further inland and with greater force.[3] Each hurricane accelerates the land loss.[4] Petitioners' unlawful practices thus create a feedback loop of destruction—damaging wetlands, thereby weakening

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[3] *See, e.g.*, *Natural Hurricane Protection*, Nat'l Oceanic & Atmospheric Admin., https://tinyurl.com/3tkc564h (last visited Nov. 20, 2025); *Storm Protection*, Coal. to Restore Coastal La., https://tinyurl.com/jxhzmnyp (last visited Nov. 20, 2025).

[4] *See, e.g.*, *Hurricanes Have Left Their Mark on Louisiana's Wetlands*, NASA Earth Observatory (May 13, 2024), https://tinyurl.com/yjdwtcu9; Justin Nobel, *No State Is Losing Land Like Louisiana—But No Other State Has a Bolder Plan*, Nat'l Geographic (July 28, 2022), https://tinyurl.com/y5ejspr7.

storm protection,[5] which in turn leads to greater storm damage, ultimately resulting in even more land loss.[6]

Communities where General Honoré's ancestors worked the land are now open water. Petitioners significantly contributed to this destruction and then ignored state law requiring them to bring their practices into compliance. They have not restored the land their operations destroyed, filled canals, replanted marsh grasses, or rebuilt barrier islands. The ruin from their activities worsens each passing day. The parishes' state-law claims cover but a fraction of the harm petitioners caused and have done nothing to remedy.

B. Petitioners' Crude Oil Production Practices Harm Our National Security.

General Honoré commanded Joint Task Force Katrina in 2005. He witnessed firsthand what happens when Louisiana's wetlands are gone. Hurricane Katrina's storm surge killed nearly 1,400 people and caused $125 billion in damage, penetrating so far inland in part because the coastal wetlands that would have absorbed its force no longer exist. Every mile of marsh reduces storm surge by several inches. Miles of marsh mean the difference between water stopping at the levees and water overtopping them.

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[5] *See* Jae-Young Ko et al., *Impacts of Oil and Gas Activities on Coastal Wetland Loss in the Mississippi Delta*, Harte Rsch. Inst., at 608-09 (2004).

[6] *See* John Tibbetts, *Louisiana's Wetlands: A Lesson in Nature Appreciation*, 114 Env't Health Persps., Jan. 2006, at A40, A40-A42.

Katrina did not just kill civilians and destroy homes, though those losses were and are catastrophic. The storm also disrupted major transportation corridors, including Interstate 10, which serves as a hurricane evacuation route and is part of the Strategic Highway Network,[7] and the oil and gas infrastructure that produces a substantial portion of the nation's domestic energy supply.[8] Given this, the storm directly and significantly impacted:

- Naval Air Station Joint Reserve Base New Orleans, home to Navy and Marine Corps aviation units;[9]

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[7] *Hurricane Katrina: Lessons Learned*, The White House: President George W. Bush, https://tinyurl.com/2wnncs22 (Aug. 27, 2005) ("Louisiana Department of Transportation and Development officials informed Mississippi Department of Transportation officials" that contraflow plans for "interstate highways and other major roadways" would "reverse the flow of traffic on inbound lanes to facilitate the evacuation of the New Orleans metropolitan area.").

[8] U.S. Energy Info. Admin., *Short-Term Energy Outlook - September 2005*, at 1 (Sept. 2005), https://tinyurl.com/ympr22ae ("Hurricane Katrina caused significant direct damage to offshore rigs, refineries, pipelines, and ports in the Gulf of Mexico . . . . Katrina initially reduced oil supplies by an estimated 1.4 million barrels per day and natural gas supplies by an estimated 8.8 billion cubic feet per day."); *see also* A.M. Cruz & E. Krausmann, *Damage to Offshore Oil and Gas Facilities Following Hurricanes Katrina and Rita: An Overview*, 21 J. Loss Prevention in Process Indus. 620 (2008) ("Energy production from the Gulf region accounts for 30% of US oil supply and 20% of its natural gas.").

[9] *About NAS JRB New Orleans*, U.S. NAVY, https://tinyurl.com/3tvnj8sc (last visited Nov. 20, 2025) (describing NAS JRB New Orleans as home to Navy Reserve units, the 159th Fighter Wing (Louisiana Air National Guard),

- The Port of New Orleans, one of the largest ports in the United States and critical to military logistics;[10]
- The Louisiana Offshore Oil Port, which supplies 13% of U.S. oil and is critical to the military's fuel supply.[11]

The parishes are not seeking to second-guess the government's wartime decisions. *See infra* Part II. Rather, Congress *intended* Louisiana to regulate petitioners in this manner, enacting the Coastal Zone Management Act of 1971, 16 U.S.C. § 1451. *See* Parishes Br. 2-3, 42-43; La. Br. 5-6. "The key to more effective protection and use of the land and water resources of the coastal zone," Congress concluded, "is to encourage *the states* to exercise their full authority over the lands and waters in the coastal zone." 16 U.S.C. § 1451(i) (emphasis added). The parishes thus seek to litigate state-law claims in state courts based on a state statute designed to prevent crude oil

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Coast Guard Air Station New Orleans, and Marine Corps Reserve units with aviation operations supporting Navy and Marine Corps).

[10] U.S. Army Corps of Engineers, *Waterborne Commerce Statistics Center, Principal Ports, 2023 Port and State Data* (2023) (listing Port of New Orleans as No. 6 among America's ports by total tonnage and ranking Louisiana as home to five of the busiest 13 of America's ports as measured by total tonnage: South Louisiana (No. 2), New Orleans (No. 6), Greater Baton Rouge (No. 8), Lake Charles (No. 10) and Plaquemines (No. 13)).

[11] *Oil & Gas – Energy Diversity*, La. Econ. Dev., https://tinyurl.com/y3t26dab (last visited Nov. 20, 2025) ("The one-of-its-kind Louisiana Offshore Oil Port (LOOP) handles 13% of the nation's foreign oil and connects by pipeline to 50% of the nation's refining capability").

producers from harming wetlands that protect infrastructure vital to our national defense. As discussed, every bit of wetland lost directly increases the vulnerability of our critical infrastructure. Enforcing state laws that protect those wetlands therefore serves, rather than threatens, both the federal government's express goals, *see ibid.*, as well as our national security.

II. PETITIONERS' CRUDE PRODUCTION METHODS WERE NOT NECESSARY TO REFINE AVGAS FOR THE MILITARY DURING WORLD WAR II.

As discussed above, the parishes' suits challenge only conduct that occurred after the SLCRMA's effective date in 1980. *See supra* pp.8-9. But petitioners claim they are immune from suit in state court because some of their challenged exploration and extraction methods were used during World War II when petitioners also had contracts to deliver refined avgas to the military. Petitioners and their *amici* argue that their continuing crude production practices were once "necessary" to fulfill the military's avgas needs, implying that petitioners had no choice but to produce crude from Louisiana's coast and in the unlawful manner that destroyed it. That's false.

A. The Federal Government Did Not Concern Itself With Where Crude Oil Came From Or How It Was Produced.

During World War II, Louisiana—not the federal government—regulated the State's oil production. That is because the government left crude oil production decisions to state regulation and industry discretion. In 1943, the United States argued to this very Court that "state agencies, being acquainted

through past experience with the peculiar problems of their respective states and possessing adequate administrative personnel to secure the requisite knowledge concerning individual [oil producing] fields," were "well equipped to inaugurate and administer comprehensive programs of conservation and to adjust the interests of common owners in any pool." Br. for the Petroleum Administrator for War as *Amicus Curiae*, *Hunter Co., Inc. v. McHugh*, 320 U.S. 222 (1943) (No. 25), at *5. "Their activities," according to the government, were "important factors in the national program sponsored by the [PAW]." *Ibid.*

What the PAW argued during wartime ought to apply with even more force today. Although the PAW controlled refinery output and product allocation, it had hardly any say where crude was produced, let alone how. "Except in California, PAW did not concern itself with individual fields." *Wartime Petroleum Policy Under the Petroleum Administration for War: Hearings Before a Special Comm. Investigating Petroleum Res. Pursuant to S. Res. 36*, 78th Cong. 76 (1945) ("*Hearings*") (statement of Philip H. Bohart, Dir. of Prod. Div., PAW). The agency would certify an amount for each State, "then the State assumed the responsibility of allocating production between the fields"; "there was no noteworthy or substantial resistance to [industry] meeting the rates which PAW certified." *Ibid.*

The federal government did not need to direct crude oil production because it was unnecessary. Left largely to its own devices, private industry ensured crude supply met refinery demand. Dozens of other crude producers operated in Louisiana, Texas, Oklahoma, and California during the relevant period,

creating a surplus of crude in the Gulf area during the war. *See PAW History*, *supra*, at 217 ("[T]his gulf-coast-southwest area ha[d crude] productive capacity far exceeding its own demand."). Before the war, oil was already an enormous industry employing about one million people and consuming around two million tons of steel per year. *See Hearings*, *supra*, at 71 (statement of Philip H. Bohart, Dir. of Prod. Div., PAW). It had a reserve daily capacity of about one million barrels of crude to absorb increased demand once World War II began. *See id.* at 72 (statement of Philip H. Bohart). With "coordinated effort, schedules were met and no shortage was experienced." *Id.* at 80.

In the Gulf Coast, refined products piled up at refineries to the point where "these refineries would soon have to cut back their operations, or actually shut down for lack of storage capacity." *PAW History*, *supra*, at 217 (footnote omitted). Shell Oil's avgas contract, for example, reflects this surplus by requiring storage capacity for sixty days of avgas refined at their facilities; if full, Shell no longer had to refine avgas. *See, e.g.*, JA171.

And much of the avgas was not refined from crude oil to begin with. Rather, it was further refined from other petroleum products—like heating oil, motor gasoline, and gases that had been refined before the war and improved by new equipment during. *See* Surplus Prop. Admin., *Aviation-Gasoline Plants and Facilities: Report of the Surplus Property Administration to the Congress* 9-12 (1946). "In essence the expansion was an expansion in quality production, not in total [crude] refining capacity or basic refining installations." *Id.* at 12. "No new industry had to be created to meet the aviation-

gasoline demand." *Ibid.*; *see also PAW History*, *supra*, at 193 ("[W]hile nearly a billion dollars was spent for new refining facilities, only a small proportion of this was for increasing the crude capacity of the plants.").

B. The Federal Government Directed Only Avgas Delivery In The Contracts.

The federal government's wartime petroleum program was focused on obtaining avgas and other refined petroleum products for military use. The PAW's responsibilities "with respect to the domestic refining industry were (1) to direct the activities of all domestic refineries so as to obtain essential petroleum requirements, both military and civilian, and (2) to spark the drive for the construction of necessary new refining facilities." *Hearings*, *supra*, at 133 (statement of A.P. Frame, Dir. of Refin. Div., PAW).

The avgas contracts reflected this focus: They specified only avgas delivery. As petitioners acknowledge, the agreements had no "reference, let alone direction, pertaining to crude oil production." Petr. Br. 33 (quoting Pet. App. 33). The "contracts by their terms gave petitioners 'complete latitude to forego producing *any* crude.'" *Ibid.* (quoting Pet. App. 29-30) (alteration omitted) (emphasis added). In fact, the contracts contained a force majeure provision providing that if a refinery could not supply avgas as agreed due to delays in crude delivery or lack of availability, the refiner did not have to perform. *See, e.g.*, JA183-84 (Shell Oil avgas contract).

C. Petitioners' Choice To Maximize Crude Oil Profits Had Nothing To Do With Their Refining Obligations.

The crude oil produced during World War II was widely traded to meet refinery demands. *See* JA26 (*PAW History*, *supra*, at 215) (PAW committees "maintained constant studies as to where crude could be had" and "analyzed various crudes to determine which could be used by which plants"); JA26-27 (describing how public/private committees "worked out and recommended new schedules of crude shipments" and managed crude allocation across refineries). Some refineries purchased all their crude from other producers; indeed, petitioners purchased substantial quantities from third parties to refine into avgas. *See, e.g.*, JA211-12 ("From 1941-1945, the Shell Oil Company purchased over 174 million barrels of crude oil on the open market from non-Shell affiliated oil producers for use in their own refineries.") (footnote omitted); *see also* Pet. App. 30 (noting petitioners' "use of crude oil purchased on the open market from other producers to comply with their contractual obligations").

Meanwhile, the PAW only allocated enough crude to petitioners' refineries for them to fulfill their avgas obligations; producing more upstream crude did not mean refining more avgas downstream, as their refinery capacities were limited. *See, e.g.*, Pet. App. 38 n.92 ("[T]he PAW sent crude produced by [petitioners] in the Operational Areas to other companies' refineries"); JA27-28, 218-19 (*PAW History*, *supra*, at 215) (PAW established a "system of monthly allocations of *specific* volumes of crude to *specific* refiners on the basis, always, of providing first for the

minimum quantities estimated to be necessary to assure maximum output of war products"). Put simply, petitioners' choice to maximize profits using unlawful crude oil production practices in Louisiana's coastal zone was a business decision the war effort did not need and the government did not request.

III. REQUIRING A CAUSAL CONNECTION TO A FEDERAL DIRECTIVE WILL NOT THREATEN OUR NATIONAL DEFENSE.

A. For 200 Years Federal Contractors Could Not Remove State Court Cases Like This, Yet They Answered Their Country's Call.

The *amici curiae* brief submitted on behalf of General Myers and Admiral Mullen suggests that if petitioners are not permitted to remove the parishes' state law cases to federal court, future contractors will not agree to provide necessary supplies and equipment to the military. "After 9-11," they note for "example, our Nation needed specialized protective equipment, which the military did not have." Gen. Myers & Adm. Mullen *Amici* Br. 14. "If private-sector parties producing the equipment had said 'no,' fearing future liability from the government not spelling out every detail in their contracts," *amici* argue "that would have left our troops at great risk." *Ibid.*

That may be so. But General Myers and Admiral Mullen do not suggest that any federal contractor in fact said "no" when the need for specialized protective equipment arose in the aftermath of the terrorist attacks that brought down the Twin Towers, even though the federal officer removal statute would not be amended for another decade.

The causal-nexus requirement that applied in the aftermath of 9/11 is not new. The federal officer removal statute has existed in some form since 1815. *See Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 147-49 (2007). Since its first iteration, the United States had a Civil War and fought in World War I, World War II, the Korean War, the Vietnam War, Gulf War I, Gulf War II, and the "War on Terror." For much of that history, even many federal officers could not remove. *See ibid.* And since well before World War II, this Court has consistently required private parties to prove a causal nexus to remove under the federal officer removal statute. *See, e.g.*, *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431-33 (1999) (requiring "causal connection" and "essential nexus"); *Mesa v. California*, 489 U.S. 121, 131-33 (1989) (requiring "causal connection"); *Willingham v. Morgan*, 395 U.S. 402, 409 (1969) (same); *Maryland v. Soper (No. 1)*, 270 U.S. 9, 33 (1926) (same); *see also Watson*, 551 U.S. at 147-51 (discussing each of these cases).

No one claims that the inability of federal contractors to remove a case like this during those 200 years frightened private industry away. Quite the opposite. "Born in World War II, . . . the military-industrial complex" has "cut a swath through American history unmatched by the experience in any other nation. No country claimed as much for its military technology or achieved as much. No country worried more about militarization of its institutions. No country was shaped as forcefully by the science and technology of war." Alex Roland, *The Military-Industrial Complex: Lobby and Trope*, in *The Long War: A New History of U.S. National Security Policy*

Since World War II 361 (Andrew J. Bacevich ed., 2007).

In 2020, NAVSUP Fuels and the Supply Corporation celebrated their 225th anniversary supplying the Navy with petroleum products. *See NAVSUP Fuels: What the Fleet Runs On*, Navy Supply Corps Newsl. (Naval Supply Sys. Command, Mechanicsburg, Pa.), Spring 2020, at 1, 32, https://tinyurl.com/59475xs2; *see also* Gen. Myers & Adm. Mullen *Amici* Br. 7-8 & n.3 (quoting same publication to note that the Department of Defense works "hand-in-hand" with contractors "like Defendants-Petitioners" to obtain fuel). Petitioners themselves answered the call during World War II, negotiated contracts, and fulfilled them—all while the causal-nexus standard applied. They continue to do so today, despite a decade of rejected attempts to remove these and related state cases to federal court under the federal officer and other removal statutes.

B. A Federal Forum Is Available To Private Contractors When Warranted.

General Honoré appreciates that at times it may be appropriate for a government contractor acting under a federal officer with sufficient direction to be able to remove as the federal officer could. When federal officers specify how something must be done, for example, contractors following those specifications should not face state court liability for the reasons the federal officer removal statute has long been applied by the circuit courts to conduct causally linked to the federal directives.

Even after the 2011 Removal Clarification Act added the "relating to" language to the federal officer

removal statute, the circuits uniformly recognize that defendants seeking to remove must establish more of a causal connection than what petitioners present here. *See* La. Br. 22 & n.3; *see also* La. BIO 21-22. *Cf.* Br. of Former Gov. John Bel Edwards as *Amicus Curiae* Supporting Respondents, at 12-20 (Congress intended this conforming amendment to effectuate the Act's application to pre-suit discovery). Here, the panel affirmed the remand order because petitioners' WWII-era agreements to refine avgas for military use were too "tenuous" to be "related to" their upstream crude oil production. Pet. App. 33. Petitioners want much more: A federal forum for conduct federal officers neither directed nor cared about.

If this Court accepts petitioners' interpretation, any federal contractor could remove any lawsuit by pointing to any feeble connection between the challenged conduct and a federal contract. A weapons manufacturer sued for dumping environmental waste in violation of state law could claim the contamination "relates to" weapons production, even if federal law expressly leaves regulating such waste to the States. *Cf.* La. Br. 5-6 (discussing how federal law encourages states to regulate their own coastal zones and that the federal government has approved of Louisiana's SLCRMA under the federal CZMA); Parishes Br. 2-3, 42-43 (same). Federal courts will be flooded with private suits removed from state courts in which the federal government has no interest.

Moreover, the non-integrated producers' crude oil was just as necessary to fulfilling the military's avgas requirements as petitioners' crude. And all crude producers were directed to supply their crude oil to avgas refineries under the PAW's allocation program.

The non-integrated producers sought to remove as a federal officer might, to no avail. *See Plaquemines Parish v. Chevron USA, Inc.* (*Plaquemines II*), 2022 WL 9914869 (5th Cir. Oct. 17, 2022) (denying removal), *cert. denied*. 143 S. Ct. 991 (2023). The equipment manufacturers who sold drilling rigs and the workers who operated them were also necessary in some broad sense to producing the crude that was ultimately routed to avgas refineries during the war. Even so, petitioners do not suggest that any of them—the non-integrated firms or anyone else—should have the right to remove under Section 1442(a)(1). This Court should reject petitioners' bid to invoke federal officer removal as well.

CONCLUSION

The Court should affirm.

Respectfully submitted,

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