No. _____

In the
Supreme Court of the United States

CHEVRON U.S.A. INCORPORATED; CHEVRON U.S.A. HOLDINGS, INCORPORATED; CHEVRON PIPE LINE COMPANY; THE TEXAS COMPANY; EXXON MOBIL CORPORATION; BURLINGTON RESOURCES OIL & GAS COMPANY,

Petitioners,

v.

PLAQUEMINES PARISH; PARISH OF CAMERON; STATE OF LOUISIANA; LOUISIANA DEPARTMENT OF ENERGY AND NATURAL RESOURCES,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This petition arises from Louisiana parishes' efforts to hold petitioners liable in state court for, *inter alia*, production of crude oil in the Louisiana coastal zone during World War II. Petitioners removed these cases from state court under 28 U.S.C. §1442(a)(1), which as amended in 2011 provides federal jurisdiction over civil actions against "any person acting under [an] officer" of the United States "for or relating to any act under color of such office." The Fifth Circuit unanimously held that petitioners satisfy the statute's "acting under" requirement by virtue of their WWII-era contracts to supply the federal government with high-octane aviation gasoline ("avgas"). But the panel divided on the "relating to" requirement, with the two-judge majority holding that petitioners' wartime production of crude oil was "unrelated" to their contractually required refinement of that same crude into avgas because the contracts did not contain any explicit "directive pertaining to [petitioners'] oil production activities." App.38. Judge Oldham dissented, explaining that the majority's approach reinstates a variant of the "causal nexus" requirement that multiple circuits (and the U.S. Congress) have expressly rejected. The Fifth Circuit denied rehearing en banc by a vote of 7 to 6.

The questions presented are:

1. Whether a causal-nexus or contractual-direction test survives the 2011 amendment to the federal-officer removal statute.

2. Whether a federal contractor can remove to federal court when sued for oil-production activities undertaken to fulfill a federal oil-refinement contract.

PARTIES TO THE PROCEEDING

Petitioners are Chevron U.S.A., Incorporated; Chevron U.S.A. Holdings, Incorporated; The Texas Company; Chevron Pipe Line Company; Exxon Mobil Corporation; and Burlington Resources Oil & Gas Company. Petitioners were defendants-appellants below.

Respondents are Plaquemines Parish, Parish of Cameron, the State of Louisiana, and the Louisiana Department of Energy and Natural Resources. Respondents were plaintiffs-appellees below.

BP America Production Company, Shell Oil Company, Shell Offshore, Inc., and SWEPI, L.P., were also defendants-appellants below.

CORPORATE DISCLOSURE STATEMENT

Chevron U.S.A. Inc., Chevron U.S.A. Holdings, Inc., and Chevron Pipe Line Company are indirectly wholly owned subsidiaries of Chevron Corporation, a publicly traded company (NYSE: CVX).

The Texas Company is the former name of Texaco Inc., an indirect, wholly owned subsidiary of Chevron Corporation, a publicly traded company (NYSE: CVX).

Exxon Mobil Corporation is a publicly held corporation, shares of which are traded on the New York Stock Exchange under the symbol XOM. Exxon Mobil Corporation has no parent corporation, and no publicly held corporation owns ten percent (10%) or more of its outstanding stock.

Burlington Resources Oil & Gas Company LP is a privately held limited partnership that is owned by two privately held limited liability companies, BROG GP LLC and BROG LP LLC. The sole member of both BROG GP LLC and BROG LP LLC is Burlington Resources LLC, which is a privately held limited liability company. The sole member of Burlington Resources LLC is ConocoPhillips Company, which is a privately held corporation. ConocoPhillips Company is wholly owned by ConocoPhillips, which is a publicly traded corporation (NYSE: COP). No publicly held corporation or other publicly held entity holds 10% or more of the stock of Burlington Resources Oil & Gas Company LP.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Plaquemines Parish v. BP America Production Co.*, Nos. 23-30294, 23-30422 (5th Cir. May 29, 2024) (opinion and judgment)
- *Plaquemines Parish v. Total Petrochemical & Refining USA, Inc.*, No. 18-cv-5256 (E.D. La. Apr. 21, 2023) (order granting motion to remand)
- *Parish of Cameron v. Apache Corp. of Delaware*, No. 2:18-cv-688 (W.D. La. Dec. 22, 2022) (order granting motion to remand)
- *Plaquemines Parish v. Total Petrochemicals & Refining USA, Inc.*, No. 61-0002, 25th Judicial District Court for the Parish of Plaquemines (Division "B"), Louisiana (state-court petition filed, no judgment entered)
- *Parish of Cameron v. Apache Corp. (of Delaware) et al.*, No. 10-19579, 38th Judicial District Court for the Parish of Cameron, Louisiana (state-court petition filed, no judgment entered)

Petitioners are not aware of any other proceedings that are directly related to this case within the meaning of Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

For more than two centuries, Congress has authorized federal officers facing state-court litigation involving their official duties to remove the matter to federal court, where it is more likely to be adjudicated "free from local interests or prejudice." *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981); *see Willingham v. Morgan*, 395 U.S. 402, 405-07 (1969). Congress has also extended that same protection to private parties "acting under" federal officers. 28 U.S.C. §1442(a)(1); *see, e.g.*, *Maryland v. Soper*, 270 U.S. 9, 21 n.1, 30 (1926). That extension ensures that private parties are not deterred from assisting federal officials in discharging responsibilities that are nationally important but locally unpopular, ranging from tax-collection to Prohibition-enforcement to wartime priorities. In revisiting the federal-officer removal statute over time, Congress has uniformly broadened its scope—most recently, by explicitly extending the right to federal-officer removal to encompass not only suits "for" actions taken under federal direction, but any suit "relating to" such actions. Removal Clarification Act, Pub. L. No. 112-51, 125 Stat. 545 (2011). And in recognition of that repeatedly expressed congressional policy, this Court has emphasized that unlike other removal provisions, which are narrowly construed out of federalism concerns, the federal-officer removal provision should be broadly construed. *See, e.g.*, *Willingham*, 395 U.S. at 406; *Colorado v. Symes*, 286 U.S. 510, 517 (1932).

The Fifth Circuit's divided decision defies those principles and improperly narrows the scope of federal-officer removal in the face of Congress'

considered decision to broaden it. And it does so by effectively reimposing a variant of the causal-nexus requirement that six other courts of appeals have expressly rejected, exacerbating a lopsided circuit split and underscoring the general confusion in the lower courts on this recurring and important issue. The panel majority's decision—which avoided en banc reconsideration by a single vote—cries out for this Court's review.

These cases belong in federal court. They involve efforts by local governments to sue federal contractors in state court, in part for actions undertaken to fulfill federal contracts. The federal-officer removal statute exists for cases like this. Indeed, the Fifth Circuit unanimously and correctly recognized that these cases were different from earlier removal efforts by companies without federal contracts, and that they satisfied the federal-officer removal statute's "acting under" requirement. App.14-17, 37-38. But at that point, the panel fractured, with a two-judge majority reaching the remarkable conclusion that petitioners' exploration and production activities undertaken to fulfill their federal refinement contracts were unrelated to those federal refinement contracts, because those contracts did not include an explicit "directive pertaining to [those] activities." App.38.

As Judge Oldham explained in dissent, that holding is flatly irreconcilable with the statutory text. As amended in 2011, the federal-officer removal statute permits removal not only of suits "for" actions taken under federal direction, but also suits "relating to" such actions. Congress added that phrase after this Court had repeatedly made clear that "relating to"

is a term of considerable breadth, such that the amended act plainly allows removal of any suit bearing a "connection" or "association" with any act taken under federal direction. App.43-44. That test is readily satisfied here, because petitioners' WWII-era predecessors were vertically integrated companies that contracted with the federal government to furnish it with avgas and were sued for their efforts in fulfilling those contracts by extracting the primary, indispensable ingredient for manufacturing that avgas. Those extraction efforts were not just related to petitioners' federal contracts; they were indispensable, as "it is unclear how [petitioners] could have met their contractual obligations" *without* using the crude-oil production practices that respondents now claim were unlawful. App.46.

By demanding not just a relationship or connection, but an explicit contractual "directive pertaining to [petitioners'] oil production activities," App.38, the panel majority not only disregarded the statutory text, but also exacerbated an already entrenched division of authority in the federal courts of appeals. As Judge Oldham cogently explained, the panel majority effectively reintroduced a variant of the "causal-nexus" test that pre-dated the 2011 amendment to the federal-officer removal statute. App.57-58; *see* App.52, 54, 56-57. The federal courts of appeals are openly split on whether that requirement survives the 2011 amendment: At least six circuits have correctly held that the post-2011 federal-officer removal statute eliminated that requirement, while at least two circuits continue to demand a causal nexus. The decision below places the Fifth Circuit in a category of its own: Having

previously gone en banc to reject the causal-nexus test, a panel has now reintroduced a contractual-direction variant of the test over the objection of six judges, including the author of the earlier en banc opinion. This incoherence cries out for clarification from this Court.

The issue is also immensely consequential. Both Congress and this Court have long made clear that the protections of the federal-officer removal statute must extend beyond the federal officers themselves to those who assist them in carrying out important federal functions. Acting pursuant to a federal contract has long been the quintessential way for private parties to qualify for that protection. But the decision below eviscerates that critical protection, exposing federal contractors to suit in potentially hostile state courts for actions that are undertaken to fulfill their federal contracts but not explicitly demanded by the terms of those federal contracts. As multiple amici explained below, that approach will seriously complicate and deter future federal contracting and private-sector assistance to the government. It creates artificial incentives to lard up federal contracts with unnecessary directions and to impose massive retroactive liability on those who assisted the federal government in an hour of national need.

This Court should grant review to correct the panel majority's unduly narrow view of federal-officer jurisdiction, resolve the entrenched circuit split on the scope of the "relating to" test, and protect those charged with carrying out the business of the federal government from being subjected to local prejudices in state courts.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 103 F.4th 324 and reproduced at App.1-63. The Eastern District of Louisiana's remand order is reproduced at App.66-67; it incorporates by reference the opinion in a related case, *Parish of Plaquemines v. Northcoast Oil Co.*, No. 18-cv-5228 (E.D. La.), which is reported at 669 F.Supp.3d 584 and reproduced at App.68-96. The Western District of Louisiana's remand order is reproduced at App.97-98; it incorporates by reference the opinion in a related case, *Parish of Cameron v. Auster Oil & Gas, Inc.*, No. 2:18-cv-677 (W.D. La.), which is unreported but available at 2022 WL 17852581 and reproduced at App.99-125. The Western District of Louisiana's opinion denying petitioners' motion for reconsideration is unreported but available at 2023 WL 3974168 and reproduced at App.126-149.

JURISDICTION

On October 31, 2024, the Fifth Circuit denied a timely petition for rehearing en banc by a 7-6 vote. App.64-65. This Court has jurisdiction under 28 U.S.C. §1254.

STATUTORY PROVISION INVOLVED

The federal-officer removal statute, 28 U.S.C. §1442, is reproduced in the Appendix.

STATEMENT OF THE CASE

A. Legal Background

The federal-officer removal statute has a long and venerable pedigree. Congress first authorized federal-officer removal during the War of 1812 to protect federal officers who were being harassed for enforcing

a trade embargo. *See* Act of February 4, 1815, §8, 3 Stat. 195, 198. While that statute was temporary, Congress soon enacted a permanent replacement, this one protecting all officials involved in enforcing federal customs revenue laws. *See Tennessee v. Davis*, 100 U.S. 257, 268 (1879) (discussing 1833 Force Act). Congress likewise authorized removal for Union officers targeted by insurrectionists during the Civil War and Reconstruction, *Mitchell v. Clark*, 110 U.S. 633, 639 (1884), and prohibition enforcers implementing the Volstead Act, *Maryland v. Soper*, 270 U.S. 9, 31-32 (1926). Each statute was animated by a desire "to protect federal officers from interference by hostile state courts." *Willingham*, 395 U.S. at 405.

Over many decades, "Congress relaxed, relaxed, and relaxed again the limits on federal officer removal." App.44. Soon after the Civil War, Congress made removal available not only to federal officers themselves, but also to "any person acting under or by authority of any such officer" to enforce federal law in certain subject areas. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 148 (2007). And, shortly after World War II, Congress eliminated the subject-area restrictions, "expand[ing] the statute's coverage to include all federal officers" as well as those "acting under" them. *Id.* at 149. As this Court has explained, federal contractors are the quintessential example of private parties who "act[] under" federal direction; they go beyond mere "compliance with the law" by performing jobs the Government would otherwise have to perform itself, and helping the Government "produce … item[s] that it needs." *Id.* at 153-54. And in light of that history, this Court has repeatedly

confirmed that the federal-officer removal statute must be "liberally construed to give full effect to the purposes for which [it was] enacted," *Symes*, 286 U.S. at 517, and "should not be frustrated by a narrow, grudging interpretation," *Willingham*, 395 U.S. at 407; *see also, e.g.*, *Watson*, 551 U.S. at 147; *Manypenny*, 451 U.S. at 242.

Until relatively recently, defendants who invoked 28 U.S.C. §1442(a) had to "establish that the suit [wa]s '*for* a[n] act under color of [federal] office.'" *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999). This Court interpreted that provision to require a defendant seeking removal to demonstrate "a causal connection between the charged conduct and asserted official authority." *Id.* In the Removal Clarification Act of 2011, however, Congress expanded the scope of federal officer removal yet again, amending the statute to permit removal of an action "for *or relating to* any act under color of such office," rather than just actions "for" such acts. 28 U.S.C. §1442(a)(1) (emphasis added); *see* Pub. L. No. 112-51, 125 Stat. 545 (2011).

B. Factual Background

1. The present litigation arises from multiple cases filed in Louisiana state court by various Louisiana parishes seeking to hold oil and gas companies liable for exploration and production activities conducted in Louisiana's coastal zone. One such case was brought by respondent Plaquemines Parish against petitioner Chevron U.S.A., Inc. ("Chevron") and several other companies based in part on the WWII-era activities of two of Chevron's predecessors, Gulf Oil Company and The Texas Company, in two oil fields located within the parish.

App.9. Another was brought by respondent Parish of Cameron against Chevron as well as BP America Production Company ("BP") and Shell Oil Company, Shell Offshore, Inc., and SWEPI, L.P., (collectively, "Shell") based in part on Shell's WWII-era activities in a third oil field.[1] App.10.

Respondents allege that petitioners violated the permitting requirements of Louisiana's State and Local Coastal Resources Management Act ("SLCRMA"), La. Rev. Stat. §§49:214.21-42, which took effect in 1980. Yet they assail activities going back decades before permits were even available under SLCRMA. This anachronistic effort to hold petitioners liable for activities that long pre-dated their ability to obtain a SLCRMA permit defies not only basic chronology, but also SLCRMA's grandfather clause, which expressly provides that "uses legally commenced or established prior to the effective date of the coastal use permit program shall not require a coastal use permit." *Id.* §49:214.34(C)(2).[2]

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[1] BP and Shell reached a settlement with the Parish of Cameron during the pendency of the appeal. As the Fifth Circuit explained, however, that settlement does not affect federal-officer jurisdiction, which is determined based on "the claims in the state court petition as they existed at the time of removal." App.11 n.29. In all events, the question presented independently arises from the Parish of Plaquemines' claims against the Chevron defendants.

[2] In the context of rejecting the City of New Orleans' effort to avoid federal jurisdiction over a related case via fraudulent joinder, the Fifth Circuit recently rejected a similar effort to impose liability for activities pre-dating SLCRMA's effective date

Notwithstanding that grandfather clause, respondents insist that petitioners are liable under SLCRMA for pre-SLCRMA activities on the theory that "most, if not all, of [petitioners'] operations or activities … were not 'lawfully commenced or established' prior to the implementation of the coastal zone management program." Dkt.1-7 at 15, *Parish of Cameron v. Apache Corp. of Del.*, No. 2:18-cv-688 (W.D. La. filed May 23, 2018) (state-court petition); *see also Par. of Plaquemines v. Chevron USA, Inc.* ("*Plaquemines I*"), 7 F.4th 362, 366 (5th Cir. 2021) (related case). Among other things, respondents contend that oil production activities that occurred during WWII were not "lawfully commenced or established" because they supposedly "depart[ed] from prudent industry practices," App.5-6, such as "by dredging canals (instead of building overland roads), by using vertical drilling (instead of directional drilling), by using earthen pits at well heads (instead of steel tanks), by extracting too much oil, and by not building saltwater reinjection wells," *Plaquemines I*, 7 F.4th at 367.

C. Procedural History

1. Once it became clear that respondents were challenging petitioners' wartime work for the federal government, petitioners invoked federal officer removal. App.5-6. In related litigation involving similar lawsuits filed by these same parishes, the Fifth Circuit considered whether oil companies could

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as lacking a "reasonable basis" to support recovery and thus affirmed the dismissal of the in-state defendant from the case. *New Orleans City v. Aspect Energy, LLC*, No. 24-30199, 2025 WL 274969, at *5 (5th Cir. Jan. 23, 2025).

remove the cases based on evidence "that they had an 'unusually close and special relationship' with the federal government" during WWII. *Plaquemines Par. v. Chevron USA, Inc.* ("*Plaquemines II*"), 2022 WL 9914869, at *2 (5th Cir. Oct. 17, 2022), *cert denied*, 143 S.Ct. 991 (2023). The court held that the companies failed to demonstrate that they had "'act[ed] under' a federal officer's directions" because they did not present evidence that their WWII-era activities were performed pursuant to any "governmental contract[]" or similar "principal/agent arrangement." *Id.* at *2, *4. The court recognized, however, that "refineries[] who *had* federal contracts" would satisfy the "acting under" element, and "can likely remove under §1442." *Id.* at *4 (emphasis added).

In accordance with that decision, petitioners argued that the present litigation *does* belong in federal court, because it presents the very fact pattern supporting federal-officer removal that the Fifth Circuit had posited: These cases involve vertically integrated companies that (1) had federal contracts to supply the U.S. government with refined petroleum products during WWII, and (2) produced crude oil that they used to fulfill those contracts. App.9-10. The district courts nevertheless granted respondents' motion to remand these cases to state court. *Id.*

2. In a divided decision, the Fifth Circuit affirmed. The panel began by unanimously holding that unlike the earlier removal efforts by defendants without a federal contract, petitioners here "satisfy the 'acting under' requirement" of 28 U.S.C. §1442(a)(1) by virtue of their federal contracts to supply the federal government with avgas for the armed forces during

WWII. App.14-17, 40. The panel divided, however, on the "relating to" requirement. As to that requirement, the panel majority held that the challenged "exploration and production activities" were "unrelated" to the refining activities that petitioners carried out under their federal contracts—even though the challenged production activities produced crude that petitioners then refined to fulfill those federal contracts. The panel majority reasoned that the federal contracts themselves lacked "any reference, let alone direction, pertaining to crude oil." App.21; App.33. In the panel majority's view, because the federal contracts gave petitioners "complete latitude" over how to acquire the necessary crude—i.e., they could purchase it from other producers or extract it themselves—their exploration and production activities undertaken to fulfill their federal contracts were unrelated to their refining activities under those same federal contracts. App.29-30. The panel majority further held that it would "limit [its] analysis" to the express "directives in [petitioners'] federal refining contracts," and ignore all "federal regulations, designations, and reports involving oil production in the Operational Areas during World War II." App.23-26.

Judge Oldham dissented in relevant part, explaining that the panel majority's decision could not be reconciled with Congress' deliberate expansion of the scope of federal-officer removal in the Removal Clarification Act of 2011. *See* App.43-44. As Judge Oldham explained, before 2011, the federal-officer removal statute authorized removal of "actions 'for' an act under color of federal office"—a phrase that this Court interpreted to require "a 'causal connection'

between the charged conduct and asserted official authority." App.43; *Willingham*, 395 U.S. at 409. In 2011, however, Congress explicitly amended the statute to make it "significantly broader," by authorizing removal of any suit "*for or relating to any act under color of [federal] office*." App.43-44 (quoting 28 U.S.C. §1442(a)(1)).

Here, "the charged conduct—[petitioners'] petroleum exploration and production activities—clearly 'related to' an a 'act under color of federal office," i.e., petitioners' "contractually specified refining activities." App.45 (brackets and footnote omitted). After all, crude oil is the primary, indispensable component of refined avgas. App.45-46. Upon assuming a contractual duty to provide the U.S. military with unprecedented quantities of avgas, petitioners naturally responded "by increasing their own exploration and production of crude." App.45. There was accordingly a clear connection between petitioners' exploration and production practices to produce crude oil that they needed as the primary ingredient for avgas, and their refining of that same crude oil into avgas to satisfy their federal contracts. *See* App.53-54.

As Judge Oldham underscored, the panel majority's decision "reinstates a version of" the "causal-nexus test" that Congress eliminated in 2011. App.57-58; *see* App.47-57. In Judge Oldham's view, the text of the amended statute does not "[r]equir[e] an unsevered causal chain" between federal direction and the challenged action, or insist that "the outcome of the challenged conduct be contractually specified," as the panel majority demanded. App.53-54. Under

the statutory text, petitioners' exploration and production activities "plainly 'related to' their avgas contracts and hence satisfy today's federal officer removal statute." App.63.

3. Petitioners timely sought en banc review, explaining that the panel majority's decision is inconsistent with the statutory text as amended by Congress in 2011 and with the Fifth Circuit's own prior rejection of any causal-nexus requirement under that amended text in *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 292 (5th Cir. 2020) (en banc), as well as decisions from multiple other circuits. On October 31, 2024, the Fifth Circuit denied en banc rehearing by a vote of 7-6, with Judges Jones (the author of *Latiolais*), Richman, Willett, Duncan, and Wilson joining Judge Oldham in voting in favor of rehearing. App.64-65.

REASONS FOR GRANTING THE PETITION

The decision below adopts a crabbed view of federal-officer removal that flouts the text of 28 U.S.C. §1442, exacerbates a circuit split, and has serious implications for the federal government and federal contractors alike. In holding that a federal contractor facing state-court litigation over its efforts to support the federal government may not invoke federal-officer removal unless the relevant contract contained an explicit directive specifically addressing and limiting the contractor's discretion vis-à-vis the challenged conduct, the decision defies the plain text of §1442(a)(1)—as specifically broadened by Congress in 2011. That text rejects any contractual-direction or causal-nexus requirement, authorizing removal not only of civil actions "for" acts taken under federal

direction, but also any civil actions "relating to" acts taken under such direction. That clear statutory text, and Congress' deliberate decision to broaden the scope of federal-officer removal to reach actions "relating to" acts taken under federal direction, cannot be reconciled with the decision below.

The decision below is not only wrong, but exacerbates an entrenched circuit split that warrants this Court's review. Six other circuits have correctly concluded that Congress' amendment of the federal-officer removal statute in 2011 to encompass suits "relating to" acts under federal direction abrogated the causal-nexus requirement embodied in earlier versions of the statute. Those circuits have allowed removal for actions related to federal contracts, but in no way directed or commanded by them, such as the state-court efforts of federal defenders contractually obligated to represent defendants in federal court. *See In re Commonwealth's Motion to Appoint Counsel Against or Directed to Def. Ass'n of Phila.*, 790 F.3d 457 (3d Cir. 2015). In contrast, the Second and Eleventh Circuits have expressly rejected that majority view and continue to demand a causal nexus. And the decision below places the Fifth Circuit in a category of its own. Despite previously abandoning the causal-nexus test—in an en banc decision, no less—the Fifth Circuit has now hopelessly confused matters by reintroducing a particularly demanding variant of that test over the objection of six judges, including the author of the earlier en banc decision. The decision below cannot be reconciled with decisions like *Commonwealth's Motion* that allow removal based on connections far less direct than extracting crude so it can be refined to fulfill a federal contract.

This Court should not allow this ongoing confusion in the federal courts of appeals to continue.

And the need for this Court's intervention is all the more pronounced in light of the substantial importance of the issue—as underscored by Congress' own intervention on this very point in 2011. By extending the protection of a neutral federal forum not only to federal employees who are sued for their official acts, but also to private parties who help those federal officers carry out their duties, Congress ensured that federal contractors would not be forced to face lawsuits in state courts for actions that serve the national interest but may be locally unpopular. As multiple amici explained below, depriving federal contractors of that protection unless they can point to an explicit federal directive governing their challenged actions will seriously undermine the federal government's ability to find willing private partners to carry out its necessary functions. This Court should grant certiorari and reverse.

I. The Fifth Circuit's Decision Conflicts With The Clear Statutory Text And Decisions From Multiple Circuits.

A. The Decision Below Erroneously Adopts a Contractual-Direction Requirement That the Statute No Longer Requires.

Before 2011, the federal-officer removal statute authorized the removal of suits "*for* a[ny] act under color of [federal] office," a phrase this Court interpreted to require a defendant seeking removal to demonstrate "a causal connection between the charged conduct and asserted official authority." *Acker*, 527 U.S. at 431. In the Removal Clarification

Act of 2011, however, Congress amended the statute to permit removal of an action "for *or relating to* any act under color of such office." 28 U.S.C. §1442(a)(1) (emphasis added); *see* 125 Stat. 545.

As numerous courts have recognized, that amendment significantly broadened the scope of federal-officer removal. *See, e.g.*, *Commonwealth's Motion*, 790 F.3d at 471-72. In the years immediately before that 2011 amendment, this Court repeatedly emphasized that "[t]he ordinary meaning of the words 'relating to' is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" *Id.* (brackets omitted) (quoting *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 383 (1992)). Accordingly, the current version of §1442(a)(1) "does not require a causal connection between acts taken under color of federal office and the basis for the [lawsuit]." *District of Columbia v. Exxon Mobil Corp.*, 89 F.4th 144, 155 (D.C. Cir. 2023). "Rather, it is enough that acts taken under color of federal office are 'connected or associated' with the conduct at issue in the case. *Id.* at 155-56.

Moreover, this Court has also been at pains to emphasize that the federal-officer removal statute, unlike other removal statutes, should be "liberally construed" in favor of removal. *Watson*, 551 U.S. at 147; *see, e.g.*, *Manypenny*, 451 U.S. at 242; *Willingham*, 395 U.S. at 407; *Symes*, 286 U.S. at 517. Congress' deliberate and repeated broadening of the federal-officer removal provision cannot be frustrated by a miserly judicial construction that puts a thumb on the scales against removal.

In light of that clear statutory text and those settled interpretive principles, this should have been a straightforward case for removal. Petitioners are being sued by local governments in state court for, *inter alia*, actions undertaken to fulfill a federal contract. The fact that petitioners could have fulfilled the contract through other means—e.g., by purchasing crude produced by unrelated companies—or that the contract did not specify how extraction efforts should proceed is beside the point. The statute asks only whether production activities undertaken to fulfill the contract were "related to" the contractual refining obligations. And the answer to that question is self-evident: Petitioners' crude oil exploration and production activities are closely and inextricably related to their subsequent refining of that same crude oil to satisfy their federal contracts for refined avgas. The fact that the panel majority deemed those exploration and production activities unrelated to contractual refining underscores that it departed from the clear statutory text and effectively reinstated a particularly demanding variant of the causal-nexus test that Congress explicitly abrogated. That error should not be permitted to stand.

1. The relationship between petitioners' challenged exploration and production activities and their acts taken under federal direction here is clear and unmistakable. As the panel majority below recognized, "crude oil is a necessary component of avgas." App.28. It is undisputed that petitioners used crude oil that they extracted from the specific fields at issue in this case to fulfill their federal contracts. App.36 n.90. Consequently, the "charged conduct" here—petitioners' exploration and production

activities—is plainly "connected or associated" with petitioners' "act[s] pursuant to a federal officer's directions," i.e., their refining of massive amounts of avgas under federal contracts. App.45, App.47, App.53-54 (Oldham, J., dissenting). Indeed, it is hard to imagine how a vertically integrated company's production of raw materials could be anything but related to its use of those raw materials to manufacture a finished product for the government, especially when it comes to the production and refining of petroleum products—which is why even the panel majority was forced to concede that petitioners' federally directed "refinery activities" had "some relation to oil production." App.28-29. That is, of course, all that the text of §1442(a)(1) requires.

Respondents' specific claims further confirm that the challenged production practices were directly and integrally connected to petitioners' fulfillment of government contracts. Respondents allege, among other things, that petitioners extracted too much crude oil from the relevant fields during WWII and did so too hastily. App.20-21. But the quantity of oil that petitioners extracted, and the speed with which they extracted it, was directly related to the U.S. military's unprecedented need for refined avgas to fuel the war effort. *See, e.g.*, App.46 (Oldham, J., dissenting) (noting that the federal government "required U.S. oil and gas companies 'to increase oil production *by more than 44,000,000 gallons a day*'" during WWII). As Judge Oldham observed, "[i]t is unclear how [petitioners] could have met their contractual obligations with the federal Government" without dramatically expanding their own production from the relevant fields. App.46; *see* App.54. Moreover,

"[f]orgoing the challenged crude exploration and production practices would have hampered the federal interest in refined avgas explicitly outlined in the contracts." App.52. That is more than sufficient to show the necessary connection between petitioners' WWII-era federal avgas contracts and petitioners' WWII-era oil production practices for federal-officer removal purposes.

And the connection here is even closer than that, because petitioners' federal contracts themselves reinforced the close connection between refinement and crude-oil production in multiple ways. First, each of those contracts fixed the price that the federal government would pay for avgas based on the cost of producing crude oil and transporting it to refineries. *See, e.g.*, App.157-59. If the cost of crude went up, the government was required to pay more for the refined avgas. *See, e.g.*, App.157-59. The contracts likewise provided that the price of avgas could go up if the costs to petitioners "of transporting petroleum raw materials to [their] refineries" from their production fields substantially increased. *E.g.*, App.159-60.

Second, each of the federal contracts at issue here provided that if any new taxes were imposed on the "production ... of crude petroleum," the federal government itself would pay those increased taxes. *E.g.*, App.170. The contracts also provided that if petitioners were "required by [a] municipal" or "state" law to pay "any new or additional taxes" or other fees "by reason of the production ... [of] crude petroleum," the companies were "entitled" (in the federal government's view) to an "exemption" from those taxes "by virtue of [the purchasing agency's] governmental

status." App.171. That is, petitioners' federal contracts expressly contemplated both that petitioners might be subject to state or local taxation based on their production of crude oil, and that they should be exempt from that state or local taxation precisely *because* they were producing the crude oil to fulfill their federal refining contracts.

The context in which the challenged activities occurred further underscores the close connection between petitioners' wartime oil production and their fulfillment of their avgas contracts. During WWII, "a federal agency, the Petroleum Administration for War … established a crude allocation program that controlled the distribution and transportation of produced crude oil from the fields to specific refineries based on various factors that would maximize the output of war products." App.35. In carrying out that program, "the government designated the three fields at issue here as 'Critical Fields Essential to the War Program,' in part because they produced crude oil that was particularly suited for making avgas." App.23 n.64. That is, the federal government itself contemporaneously recognized the connection between petitioners' production of crude oil in the relevant fields and petitioners' federally directed refinement of that same crude into avgas. That government designation again confirms the same obvious point: Petitioners' production of crude oil was closely connected with their actions to fulfill their federal contracts by refining that crude oil into avgas. That connection easily satisfies the "relating to" element for federal-officer removal under §1442(a)(1).

2. The panel majority reached a different result only by asking the wrong question. Instead of assessing whether petitioners' challenged oil-production practices were "connected or associated" with petitioners' fulfillment of their federal contracts, *Exxon Mobil Corp.*, 89 F.4th at 155, the panel majority asked instead whether the challenged practices were "connected or associated with" *a specific directive* in petitioners' federal contracts. *See, e.g.*, App.19 (looking to the "relationship between" the "conduct challenged in [respondents'] complaints and *the relevant federal directives* in [petitioners'] refinery contracts" (emphasis added)); App.29 (asking whether the challenged "oil production activities ... had a sufficient connection with *directives in their federal refinery contracts*" (emphasis added)); App.37-38 (similar). And the panel majority seemed particularly concerned that the contracts gave petitioners "complete latitude" to buy crude rather than produce it.

But none of that is relevant under the post-2011 statutory text. Before 2011, when removal was available only "for" actions under color of federal authority, demanding this kind of direction or constraint in the federal contract might have made sense. But by adding the phrase "or relating to," Congress plainly broadened the statute. "Relating to" is a term of significant breadth that this Court has repeatedly construed to mean connecting with or associated with. *See, e.g.*, *Morales*, 504 U.S. at 383-84; *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983). The last thing that term means is "specifically directed by or constrained by"—but that is the requirement the panel majority superimposed on the

statute in finding petitioners' extraction activities unrelated to their refining activities.

As Judge Oldham explained in dissent, by requiring a federal directive that specifically addresses the challenged conduct and limits the defendant's discretion with respect to that conduct, the panel majority's reasoning departs from the statutory text and "reinstates a version"—indeed, a particularly demanding version—"of the old, discarded, causal-nexus test." App.57-58; *see* App.52.

3. The panel majority compounded its error by limiting its new causal test to the express language of the federal contracts themselves and declining to consider the broader regulatory background. According to the panel majority, because "compliance with federal regulations" is not *itself* "action taken under color of federal office," the overarching regulatory background has no role to play in determining whether the "relating to" element is met. App.24-25. Instead, the panel majority declared, courts should look solely to "the contents of the relevant federal contracts in determining whether the challenged conduct was 'connected or associated with' acts taken under color of federal office." App.25.

That analysis is wrong from start to finish. While compliance with federal regulations alone cannot show that a private party is "acting under" federal direction, *see, e.g.*, *Watson*, 551 U.S. at 153, that hardly makes federal regulation irrelevant to whether the challenged conduct and the defendant's actions under federal direction are *related*. Indeed, the presence of those regulations may help explain why the contract leaves such matters unaddressed. Here,

for example, the fact that the federal government not only required petitioners (by contract) to produce avgas, but also ensured (by regulation) that they would refine crude from these specific fields into avgas, demonstrates the government's own recognition of the close connection between petitioners' challenged production practices and their federally directed refining activities. *See* App.54-55. Moreover, the government's extensive wartime regulation of crude-oil production obviated the need for individual refinement contracts to include additional direction about where and how the necessary crude oil should be procured. The panel plainly erred by refusing to consider that regulatory background in assessing the relationship between the challenged conduct and petitioners' acts under federal direction, and insisting instead that federal-officer removal would only be available if petitioners could show an explicit contractual directive addressing their challenged conduct.

After asserting that the broader regulatory background was irrelevant to its analysis, the panel majority then switched gears to suggest that the federal government's wartime crude-oil allocation program "severed any connection between [petitioners'] production and refinement activities." App.36. That focus on causation underscores that the panel majority's analysis reintroduces a variant of the causal-nexus test. It also ignores that those allocation orders only underscore the close connection between production and refinement and the government's unique oversight of both due to wartime exigencies.

B. The Decision Below Exacerbates An Entrenched Circuit Split.

The decision below is not only profoundly flawed, but exacerbates a deep and entrenched circuit split. The federal circuits are firmly split on the question whether the causal-nexus test survives the 2011 amendment of the federal-officer removal statute. And the decision below confuses matters further by imposing a contractual-direction test in a circuit that previously rejected the causal-nexus test. The resulting confusion was enough for six members of the Fifth Circuit to vote for rehearing to restore clarity on a recurring and important issue of federal law. Now that the Fifth Circuit has fallen one vote short, only this Court can resolve the confusion and clarify that Congress meant what it said in adding "or relating to" to the statute.

1. At least six other courts of appeals have held that when Congress amended the federal-officer removal statute in 2011 to reach suits "relating to" acts taken under federal direction, it eliminated the causal-nexus requirement embodied in the earlier version of the statute. *See Exxon Mobil Corp.*, 89 F.4th at 155-56; *Bd. of Cnty. Comm'rs v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1251 (10th Cir. 2022); *Moore v. Elec. Boat Corp.*, 25 F.4th 30, 35 (1st Cir. 2022); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 944 (7th Cir. 2020); *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017); *Commonwealth's Motion*, 790 F.3d at 471-72. None of these circuits has interpreted "related to" to require an explicit contractual directive pertaining to the defendant's challenged conduct.

Commonwealth's Motion—the first federal appellate decision to address the import of the 2011 amendment—is illustrative. There, the Third Circuit recognized that "before 2011," defendants seeking to invoke federal-officer removal were required to show that the acts for which they were being sued "occurred at least in part '*because of* what they were asked to do by the Government.'" 790 F.3d at 471. But by adding the words "or relating to," the Third Circuit recognized, Congress deliberately expanded the scope of federal-officer removal to make it available even in cases without that kind of causal relationship. *Id.* After all, "[t]he ordinary meaning of the words 'relating to' is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection.'" *Id.* (brackets omitted) (quoting *Morales*, 504 U.S. at 383). By adding "or relating to" to the statute, Congress accordingly made it "sufficient for there to be a 'connection' or 'association' between the act in question and the federal office," eliminating any need to demonstrate a specific causal nexus. *Id.* That understanding is not only compelled by the clear statutory text, but "comports with the legislative history of the amendment" as well, "which shows that the addition … was intended to 'broaden the universe of acts'" that enable federal-officer removal. *Id.* at 471-72 (quoting H.R. Rep. No. 112-17, pt.1 (2011), *as reprinted in* 2011 U.S.C.C.A.N. 420, 425).

2. On the other side of the split, at least two circuits continue to apply the "causal nexus" standard despite Congress' amendment of the federal-officer removal statute. The Second Circuit has expressly rejected the majority view that "the causal-nexus

requirement recognized in pre-2011 cases … was abrogated by the Removal Clarification Act of 2011." *Tong v. Exxon Mobil Corp.*, 83 F.4th 122, 145 n.7 (2d Cir. 2023). Accordingly, the Second Circuit "continue[s] to apply the ca[us]al-nexus requirement." *Id.*; *see, e.g.*, *Veneruso v. Mt. Vernon Neighborhood Health Ctr.*, 586 F.App'x 604, 608 (2d Cir. 2014).

The same goes for the Eleventh Circuit, which has recently and repeatedly reaffirmed its longstanding view that a defendant seeking federal-officer removal "must establish a 'causal connection between the charged conduct and asserted official authority.'" *Georgia v. Meadows*, 88 F.4th 1331, 1343 (11th Cir. 2023) (quoting *Acker*, 527 U.S. at 431); *Georgia v. Clark*, 119 F.4th 1304, 1309-10, 1315-16 (11th Cir. 2024) (Rosenbaum, J., concurring) (reiterating that the Eleventh Circuit imposes a "causal connection" requirement).[3]

Adding to the confusion, the Eighth and Ninth Circuits continue to use the phrase "causal nexus," but appear to have watered down their respective tests in light of Congress' 2011 amendment to §1442(a)(1). *See*

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[3] The Eleventh Circuit's position is all the more remarkable because it has previously recognized that Congress explicitly amended §1442(a)(1) in 2011 to "broaden the scope of acts that allow a federal officer to remove a case to federal court," and that the "relating to" language that Congress added "is broad and requires only 'a "connection" or "association" between the act in question and the federal office.'" *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1144 & n.8 (11th Cir. 2017). The Eleventh Circuit nevertheless continues to insist that a removing defendant must demonstrate "a causal connection." *Id.* at 1144; *Clark*, 119 F.4th at 1309-10, 1315-16 (Rosenbaum, J., concurring); *Meadows*, 88 F.4th at 1343.

DeFiore v. SOC LLC, 85 F.4th 546, 557 n.6 (9th Cir. 2023) ("We read our 'causal nexus' test as incorporating the 'connected or associated with' standard reflected in Congress's 2011 amendment and the Supreme Court's decisions"); *Goncalves ex rel. Goncalves v. Rady Child.'s Hosp. San Diego*, 865 F.3d 1237, 1244-45, 1250 (9th Cir. 2017) (noting that the 2011 amendment "expanded" the availability of removal, but continuing to require a "causal nexus"); *Minnesota ex rel. Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 715 (8th Cir. 2023) ("describ[ing] the standard in terms of 'causal connection,'" but claiming to apply a "lower, post-amendment standard").[4]

3. The decision below plainly puts the Fifth Circuit in a category of its own. While the Fifth Circuit was at the vanguard of recognizing the import of the 2011 amendment to the federal-officer removal statute, going en banc to reject the causal-nexus test in *Latiolais*, it has now put itself in a class of one by adopting a particularly demanding sub-variant of the discarded causal-nexus test, as evidenced by the author of the en banc *Latiolais* opinion joining the en banc dissenters. Moreover, the decision below cannot be reconciled with decisions from other circuits

[4] Neither the Sixth Circuit nor the Federal Circuit has issued a published opinion addressing the effect of the 2011 amendment to the federal-officer removal statute. One unpublished Sixth Circuit opinion from 2016 recognizes that the 2011 amendment broadened the statute's reach. *Ohio St. Chiropractic Ass'n v. Humana Health Plan Inc.*, 647 F.App'x 619, 624-65 (6th Cir. 2016). On the other hand, a different unpublished Sixth Circuit opinion issued in 2019 applies a "causal connection" test without any mention of the 2011 amendment. *See Abernathy v. Kral*, 779 F.App'x 304, 307 (6th Cir. 2019).

rejecting the causal-nexus test and faithfully applying the statutory text to allow for removal in the absence of any contractual direction.

For example, the Third Circuit has specifically rejected the panel majority's view that removal is impermissible unless a specific federal directive addresses the challenged conduct. *Commonwealth's Motion*, 790 F.3d at 470-72. In *Commonwealth's Motion*, state prosecutors moved to disqualify the local federal public defender from representing clients in state-court post-conviction proceedings, and the public defender removed the controversy to federal court. *Id.* at 461. The Third Circuit found removal proper, concluding that the public defender was entitled to invoke federal-officer removal even though the relevant federal contracts addressed only federal-court habeas proceedings and did not mention—let alone mandate participation in—state-court post-conviction proceedings. *See id.* at 472.

Particularly relevant here, the Third Circuit refused to treat the lack of any explicit federal direction to appear in state-court proceedings as dispositive, and expressly rejected the argument that §1442(a)(1)'s "relating to" prong requires a defendant seeking removal to show that it "acted pursuant to a *federal duty* in engaging in the complained-of conduct." *Id.* at 470. While no federal directive required the public defender "to appear in [state post-conviction proceedings] on behalf of its clients," *id.*, the Third Circuit still held that the "relating to" requirement was satisfied, explaining that the significant "impact [state post-conviction proceedings] can have on a subsequent federal habeas petition"

provided the necessary relationship between the challenged conduct and the public defender's acts under federal direction. *Id.* at 472.

The Fourth Circuit recognized the same point in *Sawyer*. *See* 860 F.3d at 258. That case involved a shipbuilder whose death was allegedly "caused by exposure to asbestos while assembling boilers" that the defendant manufactured "for use aboard U.S. Navy vessels"; the plaintiffs alleged that the contractor negligently failed to warn its employees of the dangers of asbestos. *Id.* at 251-52. The Fourth Circuit allowed removal even though "no federal officer provided any direction regarding whether to warn [defendant]'s workers in the shipyard's boiler shop about asbestos." *Id.* at 258. The Fourth Circuit explained that §1442(a)(1), as amended in 2011, does not "demand[] a showing of a specific government direction"; it is enough "that the charged conduct *relate to* an act under color of federal office." *Id.*

The Fourth Circuit's rejection of a contractual-direction test in *Sawyer* underscores the incoherence of the decision below. The *Latiolais* decision arose in essentially the same factual context as *Sawyer*, and the en banc court seized on that factual context to reject the causal-nexus test. But if the panel majority's contractual-direction standard were applied to the facts of *Latiolais*, the case would have come out the other way (as evidenced by the district

court's remand order in *Sawyer*, which emphasized the lack of contractual direction).[5]

In short, the decision below exacerbates an entrenched split in the federal courts of appeals over whether and to what extent a causal-nexus standard survived the 2011 amendment to §1442(a)(1). This Court should grant certiorari and end the ongoing division in the courts of appeals on this important and recurring question.

II. The Question Presented Is Important, And This Is An Excellent Vehicle To Resolve It.

As this Court has explained, federal-officer removal dates back to the early days of our Nation (and has repeatedly been expanded) for "th[e] very basic reason" that those charged with carrying out the business of the federal government should not be forced to rely on potentially "hostile state courts" in litigating federal immunity and other federal defenses. *Willingham*, 395 U.S. at 405-07; *accord* App.40-44 (Oldham, J., dissenting). Congress has accordingly extended the protections of federal-officer removal beyond full-time officers to those "acting under" those federal officers to help them discharge

[5] The decision below also conflicts with *Sawyer* insofar as the panel majority limited its assessment of relatedness to "the contents of the relevant federal contracts," ignoring federal regulations. *See* App.24-25. *Sawyer* took the opposite approach: Although the federal contract in that case was apparently silent regarding safety warnings, the Fourth Circuit looked to "associated regulations and procedures" and "actual practice as it evolved in the field" to determine that the challenged conduct was "related to [the defendant's] performance of its contract with the Navy." 860 F.3d at 256, 258.

important federal responsibilities. The quintessential example of the kind of private parties protected by that "acting under" language are government contractors who "help[] the Government … produce … item[s] that it needs" and "fulfill other basic governmental tasks"—in recognition of the fact that those federal contractors likewise require protection from "[s]tate-court proceedings" that may "reflect 'local prejudice.'" *Watson*, 551 U.S. at 150, 153; *see Arizona v. Manypenny*, 451 U.S. at 241 (similar); *see also, e.g.*, *Mohr v. Trs. of Univ. of Pa.*, 93 F.4th 100, 105 (3d Cir. 2024) ("'Government contractors are [the] classic example' of private parties who are acting under the federal government.").

The issue of federal-officer removal is important enough to Congress that it has revisited the issue on numerous occasions, almost universally broadening the protections available. *See supra* pp.5-7. And in recognition of those congressional priorities, this Court has repeatedly admonished lower courts to interpret the federal-officer removal provision broadly. *See, e.g.*, *Watson*, 551 U.S. at 147; *see, e.g.*, *Manypenny*, 451 U.S. at 242; *Willingham*, 395 U.S. at 407; *Symes*, 286 U.S. at 517.

The decision below ignores those priorities and admonishments and deprives the 2011 amendment to the statute of its intended effect. Moreover, it does so in a context where the policies behind the federal-officer removal statute could hardly be more apposite. The underlying dispute is not just any state-law suit, but an effort by local governments to obtain massive recoveries from companies that assisted the federal war effort long ago. The memories of the national

imperatives that caused a reordering of the petroleum sector and an unprecedented effort to extract crude and refine avgas in service of the national defense have faded. The current-day financial challenges of local governments and the advantages of a lawsuit windfall over increasing local taxes, by contrast, are front of mind. Under those circumstances, the importance of providing a federal forum is beyond obvious.

But even beyond the dire circumstances facing petitioners in this case, the baleful implications of the decision below for federal contractors and the federal government are manifest. In our increasingly complex world, the federal government depends on federal contractors for critical services the government cannot furnish itself. Taking advantage of private-sector expertise and avoiding a further expansion of the federal-government bureaucracy that comes with taking all this work in-house make federal contracting more important than ever. Yet the decision below leaves federal contractors exposed to litigation in state court systems and creates perverse incentives for federal contracts to be larded up with specific directions. Accordingly, as the Chamber of Commerce and the National Association of Manufacturers pointed out in an amicus brief in support of rehearing, the uncertainty created by the panel majority's reimposition of a causal-nexus requirement will "inevitably have 'a chilling effect on [the] acceptance of government contracts.'" No.23-30294, Dkt.248 at 10 (quoting *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 134 (2d Cir. 2008)). And by deterring private-sector assistance to the federal government, the decision below (and the decisions of the other circuits that have

retained a causal-nexus requirement) threaten to "affect the government's ability to fulfill its needs 'at a reasonable cost.'" *Id.* at 11 (quoting *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398 (5th Cir. 1998)).

Even more troubling, the decision below will cause the private sector to think twice—or demand some combination of extensive directions or expensive indemnification provisions—before supporting defense priorities in an hour of national need. A majority of federal contracts even in peacetime relate to national defense, and the need for private-sector cooperation ramps up substantially during times of national crisis. But fulfilling those urgent national priorities may prove unpopular in certain localities, especially when lawsuits that promise to benefit localities are not filed until decades after the national exigency has passed. The federal-officer removal statute exists to protect against the inevitable chilling effect of that kind of state-court litigation. The decision below, by contrast, creates all the wrong incentives for private entities asked to help out in an hour of national need. As two former Chairmen of the Joint Chiefs of Staff explained in an amicus brief below, that approach would have "devastating implications for our national defense." No.23-30294, Dkt.247 at 13.

This case is also an excellent vehicle for resolving this issue. The proper application of the "relating to" element here was thoroughly litigated by the parties, addressed by both district court decisions, and explored by both the panel majority's published opinion and Judge Oldham's dissent. There are no

material disputes of fact regarding petitioners' WWII-era production and refining activities or the contents of petitioners' federal contracts. While at first blush it may seem like 2025 litigation concerning WWII-era events is an idiosyncratic vehicle for this Court's review, the very fact that state courts in Louisiana are allowing this litigation to proceed—and other defendants have felt the need to settle—only underscores the importance of a federal forum. And in all other respects, the WWII context underscores the stakes in these cases. When America needed the private sector to pitch in to address the exigency of producing sufficient avgas to fight the war effort, the private sector jumped in with both feet. With the benefit of 80 years of hindsight, a Louisiana jury might decide that it would have been better to use directional drilling or other novel and time-consuming methods that would have frustrated the war effort. Simply put, petitioners face the prospect of massive state-law liability for fulfilling a federal contract in wartime. The federal-officer removal statute exists to protect against that prospect, but the federal courts are in disarray about the proper application of that statute. This Court should grant certiorari and reverse.

CONCLUSION

This Court should grant certiorari.

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January 29, 2025

APPENDIX

TABLE OF APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30294

PLAQUEMINES PARISH,

Plaintiff-Appellee,

LOUISIANA STATE; LOUISIANA DEPARTMENT OF NATURAL RESOURCES, Office of Coastal Management, Thomas F. Harris, Secretary,

Intervenors-Appellees,

v.

BP AMERICA PRODUCTION CO., et al.

Defendants-Appellants.

No. 23-30422

PARISH OF CAMERON,

Plaintiff-Appellee,

LOUISIANA STATE; LOUISIANA DEPARTMENT OF NATURAL RESOURCES, Office of Coastal Management, Thomas F. Harris, Secretary,

Intervenor Plaintiffs-Appellees,

v.

BP AMERICA PRODUCTION CO., et al.

Defendants-Appellants.

Filed: May 29, 2024

Before Davis, Engelhardt, and Oldham,
Circuit Judges.

OPINION

W. Eugene Davis, *Circuit Judge*:

This consolidated appeal concerns whether lawsuits commenced in state court by Louisiana parishes against various oil and gas companies for their alleged state-law violations give rise to federal jurisdiction. The companies removed these cases to federal court pursuant to the federal officer removal statute, 28 U.S.C. § 1442(a)(1), asserting that they satisfy each of the statute's requirements in light of their refining contracts with the government during World War II. The district courts granted the parishes' motions to remand these cases to state court after concluding that the oil companies did not meet their burden of establishing federal jurisdiction. The oil companies now appeal those decisions. Because we conclude these cases were not properly removed under the federal officer removal statute, we AFFIRM the district courts' orders remanding these cases to state court.

I.

This litigation has a long procedural history, including two prior appeals to this Court. It originated in 2013 when several Louisiana coastal parishes, joined by the Louisiana Attorney General and the Louisiana Secretary of Natural Resources, filed forty-two lawsuits against various oil and gas companies in state court alleging violations of Louisiana's State and Local Coastal Resources Management Act of 1978 ("SLCRMA").

SLCRMA took effect in 1980, and requires parties engaging in certain "uses" within Louisiana's "coastal zone" to comply with a permitting scheme.[1] It defines "use" to include any "activity within the coastal zone which has a direct and significant impact on coastal waters," and defines "Coastal Zone" to include "the coastal waters and adjacent shorelands," defined by Louisiana law, that "are strongly influenced by each other."[2] As relevant here, SLCRMA creates a cause of action against parties that violate or fail to obtain the requisite coastal use permit.[3] However, there are several exemptions to SLCRMA's permitting requirement, including a "grandfather clause," which states that: "[i]ndividual specific uses legally commenced or established prior to the effective date of the coastal use permit program shall not require a coastal use permit."[4]

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[1] La. Stat. Ann. § 49:214.30(A)(1).

[2] *Id.* § 49:214.23(5), (13).

[3] *Id.* § 214.36 (D)-(E).

[4] *Id.* § 214.34(C)(2).

In each lawsuit, the coastal parishes sued various oil companies for their oil and gas exploration, production, and transportation operations in a different "Operational Area"[5] of the Louisiana coast. The parishes' "materially identical" petitions "allege that the companies violated SLCRMA by failing to obtain necessary coastal use permits or by violating the terms of the permits they did obtain."[6] Additionally, the parishes contend that the companies' pre-SLCRMA activities were not "lawfully commenced" and therefore do not fall within the grandfather clause exemption which would excuse such noncompliance.[7] The parishes seek damages under SLCRMA, including for "restoration and remediation costs; actual restoration of disturbed areas to their original condition; costs necessary to clear, revegetate, detoxify and otherwise restore the affected portions of the . . . Coastal Zone as near as practicable to its original condition."

The oil companies have attempted to remove these cases to federal court on three separate occasions.[8] First, in 2013, the companies removed

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[5] "The term 'Operational Area' is used throughout the plaintiffs' petition to describe the geographic extent of the area within which the complained-of operations and activities at issue in this action occurred." *Par. of Plaquemines v. Northcoast Oil Co.*, No. 18-5228, 2023 WL 2986371, at *1 (E.D. La. Apr. 18, 2023).

[6] *Par. of Plaquemines v. Chevron USA, Inc.* (*Plaquemines I*), 7 F.4th 362, 366 (5th Cir. 2021).

[7] *Id.*

[8] "A defendant who fails in an attempt to remove on the initial pleadings can file a second removal petition *when subsequent pleadings or events reveal a new and different ground for removal*." *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492-93

these cases on the grounds of federal question, general maritime law, the Outer Continental Shelf Lands Act, and diversity jurisdiction. The federal district courts rejected all four jurisdictional bases and remanded the cases to state court.[9]

After returning to state court, the oil companies filed motions seeking clarification about the specific state law violations underlying the parishes' lawsuits.[10] In response, in April of 2018, Plaquemines Parish issued an expert report—the *Rozel* report—in one of the pending cases, and certified that the report "represented the position of the Louisiana Department of Natural Resources in all forty-two cases."[11] The *Rozel* report "triggered" the potential application of SLCRMA's grandfather clause by placing at issue the companies' pre-SLCRMA conduct, including conduct that occurred during World War II.[12] Specifically, the *Rozel* report opined that the oil companies' pre-1980 production activities were not "lawfully commenced or established" for purposes of the grandfather clause because such activities did not

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(5th Cir. 1996) (emphasis in original) (internal quotation marks and citation omitted).

[9] *See, e.g.*, *Par. of Plaquemines v. Total Petrochemical & Refin. USA, Inc.*, 64 F. Supp. 3d 872, 906 (E.D. La. 2014).

[10] *Par. of Plaquemines v. Riverwood Prod. Co.* (*Riverwood I*), No. 18-5217, 2019 WL 2271118, at *2 (E.D. La. May 28, 2018), *aff'd in part, rev'd in part and remanded sub nom. Plaquemines I*, 7 F.4th 362.

[11] *Plaquemines I*, 7 F.4th at 366-67.

[12] *Northcoast*, 2023 WL 2986371, at *1.

begin in "good faith" by departing from prudent industry practices.[13]

According to the oil companies, the *Rozel* report "unveiled a new legal theory," which they relied on to remove these cases to the Eastern and Western Districts of Louisiana, this time alleging federal question and federal officer jurisdiction.[14] The parishes again moved to remand the cases to state court. The Eastern District of Louisiana designated *Plaquemines Parish v. Riverwood Production Co.* as the lead case and stayed the other cases pending a decision in *Riverwood*. The Western District of Louisiana adopted a similar approach and designated *Cameron Parish v. Auster Oil & Gas, Inc.*, as the lead case in that district.[15]

The courts in both *Riverwood I* and *Auster* ultimately granted the parishes' remand motions after concluding that neither federal question nor federal officer jurisdiction existed.[16] The oil companies appealed both decisions, and we consolidated the cases on appeal. In *Plaquemines I*, this Court affirmed the district court decisions on federal question jurisdiction, but remanded with respect to federal officer jurisdiction in light of an intervening en banc

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[13] *Plaquemines I*, 7 F.4th at 367.

[14] *Id.*

[15] *Northcoast*, 2023 WL 2986371, at *2.

[16] *Riverwood I*, 2019 WL 2271118, at *8-22; *Par. of Cameron v. Auster Oil & Gas Inc.*, 420 F. Supp. 3d 532, 540-50 (W.D. La. 2019), *aff'd in part, rev'd in part and remanded sub nom. Plaquemines I*, 7 F.4th 362.

decision, *Latiolais v. Huntington Ingalls, Inc.*,[17] which altered our federal officer removal precedent.[18]

On remand, the district court in *Riverwood II*, after considering the impact of *Latiolais*, again held there was no federal officer jurisdiction. The court first acknowledged that under *Latiolais*, the "new" federal officer removal test requires a defendant to show: "(1) it has asserted a colorable federal defense, (2) it is a 'person' within the meaning of the statute, (3) that has acted pursuant to a federal officer's directions, and (4) the charged conduct is connected or associated with an act pursuant to a federal officer's directions."[19] The court then proceeded to analyze whether the oil companies had met these four prongs, ultimately concluding they could establish all but the third "acting under" prong, which was unaltered by *Latiolais*.[20]

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[17] 951 F.3d 286 (5th Cir. 2020) (en banc). As explained in greater detail below, in *Latiolais*, we expanded the scope of the fourth prong of the federal officer removal test. Specifically, we replaced the "causal nexus" test with the broader "connected or associated with" test. Under the revised fourth element, a removing defendant must show that the conduct challenged in a plaintiff's complaint is "connected or associated with" acts the defendant has taken under color of federal office. *Id.* at 292-96.

[18] *Plaquemines I*, 7 F.4th at 373-75.

[19] *Par. of Plaquemines v. Riverwood Prod. Co.* (*Riverwood II*), No. 18-5217, 2022 WL 101401, at *4 (E.D. La. Jan. 11, 2022) (quoting *Latiolais*, 951 F.3d at 296).

[20] *Id.* at *6-10.

The oil companies again appealed, and this Court affirmed.[21] In *Plaquemines II*, we held that the companies had failed to satisfy the "acting under" prong of federal officer removal because their "compli[ance] with federal regulations or cooperat[ion] with federal agencies" was insufficient to bring a private action within § 1442(a)(1).[22] The *Plaquemines II* opinion concluded by stating: "As the district court noted, the 'refineries, who had federal contracts and acted pursuant to those contracts, can likely remove [under § 1442], but that does not extend to [parties] not under that contractual direction."[23] The Supreme Court denied certiorari in *Plaquemines II* on February 27, 2023.[24]

Following *Plaquemines II*, the district court in *Auster* again remanded that case to state court because the oil companies satisfied neither the "acting under" nor the "connected or associated with" requirements for federal officer removal.[25]

This background brings us to the present consolidated appeal which involves two cases that were stayed during the pendency of the above litigation. In the appeal from the Eastern District of

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[21] *Plaquemines Par. v. Chevron USA, Inc.* (*Plaquemines II*), No. 22-30055, 2022 WL 9914869, at *4 (5th Cir. Oct. 17, 2022) (per curiam) (unpublished).

[22] *Id.* at *3.

[23] *Id.* at *4 (quoting *Riverwood II*, 2022 WL 101401, at *7).

[24] *Chevron USA, Inc. v. Plaquemines Par., La.*, 143 S. Ct. 991 (2023) (mem.).

[25] *Par. of Cameron v. Auster Oil & Gas Inc.*, No. 18-677, 2022 WL 17852581, at *3-10 (W.D. La. Dec. 22, 2022).

Louisiana—*Plaquemines Parish v. BP*—the district court reopened the case in January 2023. The next day, Plaintiffs, Plaquemines Parish and the State of Louisiana, filed a motion to remand, arguing that the case was "indistinguishable from the relevant jurisdictional[,] factual[,] and legal issues in *Riverwood*."

Defendants, Chevron U.S.A., Inc. ("Chevron") et al., opposed the motion, arguing that the case was distinguishable from *Riverwood II* because two predecessors to Chevron—The Texas Company and Gulf Oil Company ("Gulf")—were vertically integrated oil companies that produced crude oil in the Operational Areas and used some of that crude at their refineries to comply with their World War II-era contracts with the government. Thus, unlike in *Riverwood II*, *Plaquemines II*, and *Auster*, where the oil companies could not show they were "acting under" a federal officer, Defendants here were federal contractors. In support of their new removal theory, Defendants relied on the language in *Plaquemines II* that "refineries, who had federal contracts and acted pursuant to those contracts, can likely remove [under § 1442]."[26]

The district court granted Plaintiffs' motion and remanded the case to state court for the same reasons it gave in *Parish of Plaquemines v. Northcoast Oil Co.* In *Northcoast*, the district court held that Defendants' "refinery-contract-based theory" satisfied neither the "acting under" nor the "connected or associated with"

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[26] 2022 WL 9914869, at *4 (quoting *Riverwood II*, 2022 WL 101401, at *7).

requirements for federal officer removal.[27] Specifically, the court emphasized that although Defendants may have been "acting under" a federal officer in the refinery context, the relevant refinery contracts "lack[ed] any connection" to the oil production activities at issue in the lawsuit.[28] The court stayed its remand order pending the resolution of this appeal.

The second case in this consolidated appeal—*Parish of Cameron v. BP*—is from the Western District of Louisiana. In that case, the district court granted Plaintiff Parish of Cameron's motion to remand for the same reasons the court gave in *Auster*. Defendants, Shell USA, Inc. ("Shell") et al., filed a motion for reconsideration, raising the same refinery-contract-based theory for removal. In that case, Defendant Shell had refinery contracts with the government during World War II, and its refineries used some of the crude oil Shell produced from the Black Bayou Field in Cameron Parish to fulfill those contracts. The district court denied Defendants' motion for reconsideration, concluding that Shell was unable to show it was "acting under" a federal officer, and that the oil production activities at issue in the lawsuit were not related to any refinery activities taken pursuant to Shell's federal contracts. The court also stayed its remand order pending the resolution of this appeal.

Defendants timely appealed both remand orders. We designated *Plaquemines Parish v. BP* as the lead

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[27] 2023 WL 2986371, at *4, 9-11.

[28] *Id.* at *9-10.

case among the related "refinery cases" pending before us from the Eastern District. And we consolidated *Plaquemines Parish v. BP* with *Parish of Cameron v. BP*,[29] the only refinery case appealed from the Western District.

II.

"An order remanding a case to state court is 'not generally reviewable.'"[30] However, an order remanding a case under the federal officer removal statute is "reviewable by appeal or otherwise."[31] We

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[29] After oral argument, Defendants, BP American Production Company ("BP") and Shell, informed the Court that they have reached a settlement with Cameron Parish and therefore withdraw their appeal in *Parish of Cameron v. BP*, No. 23-30422. BP additionally noted that it remained a party in the appeal from the Eastern District of Louisiana, *Plaquemines Parish v. BP*, No. 23-30294. Defendant Chevron also notified the Court that it has not settled nor intends to settle either appeal. Although Defendants' federal officer removal theory in the *Parish of Cameron* appeal is based on Shell's federal contracts, Shell's withdrawal from the appeal does not deprive this Court of jurisdiction. *See Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) ("To determine whether jurisdiction is present for removal, we consider the claims in the state court petition as they existed at the time of removal." (citation omitted)). Thus, "[o]ur analysis proceeds as if the Federal Officer Defendants had not been dismissed." *Bartel v. Alcoa S.S. Co.*, 805 F.3d 169, 172 n.2 (5th Cir. 2015), *overruled on other grounds by Latiolais*, 951 F.3d 286 ("These Federal Officer Defendants have since been dismissed from the action . . . [and although] the claims against them gave rise to potential removability we now consider, our analysis is unaffected by the dismissals.").

[30] *Plaquemines I*, 7 F.4th at 367 (quoting *Latiolais*, 951 F.3d at 290).

[31] 28 U.S.C. § 1447(d).

review a district court's remand order *de novo*.[32] But we review the "district court's factual determinations made in the process of determining jurisdiction . . . for clear error."[33]

Unlike other removal doctrines, "federal officer removal is not narrow or limited."[34] However, it remains the removing party's burden to establish federal jurisdiction exists.[35] And if the removing party establishes that one claim satisfies the requirements under § 1442(a)(1), the entire case is deemed removable.[36]

III.

Defendants removed these cases under § 1442(a)(1), which provides federal jurisdiction over state court actions filed against "any officer (or any person acting under that officer) of the United States or of an agency thereof, in an official or individual capacity, for or relating to any act under color of such office."[37] The statute's "basic purpose" is to protect the federal government from interference with its

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[32] *Latiolais*, 951 F.3d at 290 (citation omitted).

[33] *U.S. Fire Ins. Co. v. Villegas*, 242 F.3d 279, 283 (5th Cir. 2001) (citation omitted).

[34] *Butler v. Coast Elec. Power Ass'n*, 926 F.3d 190, 195 (5th Cir. 2019) (internal quotation marks and citation omitted); *see also Williams v. Lockheed Martin Corp.*, 990 F.3d 852, 859 (5th Cir. 2021) ("[T]he federal officer removal statute is to be broadly construed in favor of a federal forum." (internal quotation marks and citation omitted)).

[35] *Butler*, 926 F.3d at 195.

[36] *Morgan v. Huntington Ingalls, Inc.*, 879 F.3d 602, 606 (5th Cir. 2018).

[37] 28 U.S.C. § 1442(a)(1).

operations that would ensue if a state were able to arrest federal officers or agents acting within the scope of their authority and bring them to trial in state court on state-law charges.[38]

In order to remove a case under § 1442(a)(1), a private defendant must show that: "(1) it has asserted a colorable federal defense, (2) it is a 'person' within the meaning of the statute, (3) that has acted pursuant to a federal officer's directions, and (4) the charged conduct is connected or associated with an act pursuant to a federal officer's directions."[39] Here, Plaintiffs do not dispute that Defendants are "person[s]" within the meaning of § 1442(a)(1) and therefore satisfy the second requirement for removal.[40] Instead, Plaintiffs argue that Defendants are unable to meet the remaining three elements. Because the district courts held that Defendants failed

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[38] *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007) (internal quotation marks and citation omitted); *see also Glenn v. Tyson Foods, Inc.*, 40 F.4th 230, 232 (5th Cir. 2022) ("While the scope of federal officer removal has broadened, its purpose remains the same: to give those who carry out federal policy a more favorable forum than they might find in state court." (citation omitted)); Elizabeth M. Johnson, *Removal of Suits Against Federal Officers: Does the Malfeasant Mailman Merit a Federal Forum?*, 88 Colum. L. Rev. 1098, 1098-99 (1988) ("Congress enacted these statutes in response to conflicts between states and the federal government to protect officers carrying out controversial federal policies.").

[39] *Latiolais*, 951 F.3d at 296.

[40] *See Butler*, 926 F.3d at 201 (acknowledging that "the removal statute applies to private persons and corporate entities" (citations omitted)).

to establish the third and fourth elements, we begin our analysis with these two elements.

A.

Private persons, including corporations, may invoke the federal officer removal statute only if they were "acting under" a federal officer or agency. The phrase "acting under" describes "the triggering relationship between a private entity and a federal officer."[41] In describing the "acting under" inquiry, the Supreme Court in *Watson* acknowledged that it is a "broad" phrase that must be "liberally construed," but is "not limitless."[42]

In cases involving a private party, the "acting under" relationship "must involve an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior."[43] And although a removing defendant "need not show that its alleged conduct was precisely dictated by a federal officer's directive," it must show that a federal officer exerted "a sufficient level of subjection, guidance, or control over the private actor."[44] However, "the help or assistance necessary to bring a private person within the scope of the statute does *not* include simply *complying* with the law."[45] This is true "even if the regulation is highly detailed

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[41] *Watson*, 551 U.S. at 149.

[42] *Id.* at 147 (internal quotation marks and citations omitted).

[43] *Id.* at 152 (emphasis in original) (citation omitted).

[44] *St. Charles Surgical Hosp., L.L.C. v. La. Health Serv. & Indem. Co.* (*St. Charles II*), 990 F.3d 447, 454-55 (5th Cir. 2021) (internal quotation marks and citations omitted).

[45] *Watson*, 551 U.S. at 152 (emphasis in original).

and even if the private firm's activities are highly supervised and monitored."[46]

Here, the district courts held that Defendants could not satisfy the "acting under" requirement. Both courts concluded that although Defendants may have acted under a federal officer in *refining* petroleum products, they were unable to show they acted under a federal officer in *producing* crude oil.[47] We disagree.

A private party "working under a federal contract to produce an item the government needed" is the "archetypal case" of a defendant "acting under" a federal officer.[48] For example, in *Watson*, the Supreme Court cited with approval this Court's decision in *Winters v. Diamond Shamrock Chemical Co.*,[49]

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[46] *Id.* at 153.

[47] *Northcoast*, 2023 WL 2986371, at *8-10 (holding that Defendants failed to satisfy the "acting under" prong "by relying on federal directives governing conduct (refining) that is not implicated by the plaintiffs' lawsuit").

[48] *Williams*, 990 F.3d at 859; *see, e.g.*, *Latiolais*, 951 F.3d at 296 (holding that the removing defendant "performed the refurbishment and, allegedly, the installation of asbestos pursuant to directions of the U.S. Navy" and therefore "act[ed] under color of federal office"); *St. Charles Surgical Hosp., L.L.C. v. La. Health Serv. & Indem. Co.* (*St. Charles I*), 935 F.3d 352, 356 (5th Cir. 2019) (analyzing the terms of the defendant's contract with the Office of Personnel Management to conclude that the federal agency "enjoys a strong level of guidance and control over" the defendant); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1253 (10th Cir. 2022) (emphasizing that a contract for "[w]artime production is the paradigmatic example for this special [acting under] relationship").

[49] 149 F.3d 387 (5th Cir. 1998), *overruled on other grounds by Latiolais*, 951 F.3d 286.

wherein we held that Dow Chemical, a federal contractor, was "acting under" a federal officer when it manufactured Agent Orange, a product the government used during the Vietnam War.[50] Like Dow Chemical, Defendants here were federal contractors that refined a product—100-octane aviation gasoline ("avgas")—that the government needed to fight in World War II. And like Dow Chemical's contract with the Department of Defense, the terms of Defendants' federal contracts vested the government with control over the size and manufacturing capacity of their refineries.[51] Accordingly, Defendants have shown that they had the necessary relationship with the government to satisfy the "acting under" requirement.

The district courts came to the opposite conclusion by requiring Defendants to show not only that they "act[ed] under" a federal officer, but also that they acted pursuant to federal directives when they engaged in the conduct giving rise to Plaintiffs' suits. But such a requirement impermissibly conflates the "distinct" "acting under" and "connected or associated with" elements of the federal officer removal test.[52]

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[50] *Watson*, 551 U.S. at 153-54 (citing *Winters*, 149 F.3d at 398-99).

[51] *See infra* Part III.B.2; *Winters*, 149 F.3d at 398-99 (detailing the government's control over Dow Chemical's production of Agent Orange).

[52] *See St. Charles II*, 990 F.3d at 454 (emphasizing that although "the 'acting under' and 'connection' elements may often ride in tandem toward the same result, they are distinct"); *see also Betzner v. Boeing Co.*, 910 F.3d 1010, 1015 (7th Cir. 2018) (explaining that the "acting under color of federal authority requirement . . . is distinct from the acting under requirement in the same way a bona fide federal officer could not remove a

Specifically, it is inconsistent with the fact that "a defendant might be 'acting under' a federal officer, while at the same time the specific conduct at issue may not be 'connected or associated with an act pursuant to the federal officer's directions.'"[53] Thus, the district courts erred in holding that Defendants did not satisfy the "acting under" element because their federal contracts did not pertain to the oil production activities challenged by Plaintiffs' lawsuits.

B.

Under the fourth element of the federal officer removal test, "[s]ubject to the other requirements of section 1442(a), any civil action that is connected or associated with an act under color of federal office may be removed."[54] In other words, it is not enough for Defendants to have "act[ed] under" a federal officer if those acts were unrelated to the activities challenged in Plaintiffs' complaints.

In 2011, Congress amended the federal officer removal statute to expand the types of cases that can be removed from just cases "for" an act under color of federal office to include cases "for *or relating to*" such actions.[55] Despite the 2011 amendment, this Court continued to require removing defendants to show

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trespass suit that occurred while he was taking out the garbage" (internal quotation marks and citation omitted)).

[53] *St. Charles II*, 990 F.3d at 454.

[54] *Latiolais*, 951 F.3d at 296.

[55] *Id.* at 291-92 (emphasis added) (quoting 28 U.S.C. § 1442(a)); Removal Clarification Act of 2011, Pub. L. No. 112-51, § 2(b)(1)(A), 125 Stat. 545.

"that a causal nexus exists between the defendants' actions under color of federal office and the plaintiff's claims."[56] In 2020, the Court's en banc decision in *Latiolais* brought our case law into compliance with the amended statute by abandoning the "causal nexus" test and replacing it with the "connected or associated with" test, which requires a defendant to show that "the charged conduct is connected or associated with an act pursuant to a federal officer's directions."[57] In adopting this new test, we noted that Congress broadened the scope of actions removable under § 1442(a)(1) given that the ordinary meaning of the phrase "relating to" is "a broad one" that normally means "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with."[58]

Our application of the "connected or associated with" element in *Latiolais* demonstrates the expanded scope of this new test. In *Latiolais*, the plaintiff sued Avondale in state court alleging Avondale had negligently failed to warn him about the hazards of asbestos or provide him with adequate safety equipment during the refurbishment of a naval vessel.[59] Avondale removed the suit to federal court under § 1442(a)(1), asserting that its contracts with the Navy to build and refurbish naval vessels required

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[56] *Latiolais*, 951 F.3d at 291 (quoting *Winters*, 149 F.3d at 398).

[57] *See id.* at 296 (overruling cases that "erroneously relied on a 'causal nexus' test after Congress amended section 1442(a) to add 'relating to'").

[58] *Id.* at 292 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)).

[59] *Id.* at 289-90.

Avondale to use asbestos for thermal insulation.[60] The district court remanded the case after finding the old "causal nexus" test was not satisfied because there was no evidence that federal officers controlled Avondale's safety practices. After taking the case en banc, we reversed, holding that under the revised fourth element, removal was proper because Latiolais's negligence claims were "connected with" Avondale's "installation of asbestos pursuant to directions of the U.S. Navy."[61]

In this appeal, in order to determine whether Defendants have satisfied the fourth element of federal officer removal under *Latiolais*, we must first identify the conduct challenged in Plaintiffs' complaints and the relevant federal directives in Defendants' refinery contracts. We then turn to the question of whether the relationship between the two is sufficient to meet the "connected or associated with" test.

1.

The parties dispute which production activities Plaintiffs challenge in their complaints. As explained above, Plaintiffs assert that SLCRMA's grandfather clause does not excuse Defendants' noncompliance with the state-law permitting scheme because Defendants' oil production activities were not "lawfully commenced or established." In *Plaquemines I*, we identified the following ways in which Plaintiffs' *Rozel* report alleged that Defendants departed from prudent industry practices before 1980: "by dredging

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[60] *Id.*

[61] *Id.* at 296.

canals (instead of building overland roads), by using vertical drilling (instead of directional drilling), by using earthen pits at well heads (instead of steel tanks), by extracting too much oil, and by not building saltwater reinjection wells."[62]

In defining the specific challenged conduct here, Defendants rely on *Plaquemines I*'s summary of the *Rozel* report and, in particular, the statement that they "extracted too much oil." Based on this language, Defendants assert that the gravamen of Plaintiffs' complaints is that they extracted too much oil too quickly during World War II. Plaintiffs take issue with Defendants' (and by extension *Plaquemines I*'s) characterization of the challenged conduct, asserting that neither their complaints nor the *Rozel* report say that Defendants extracted crude oil at overly high production rates.

As identified by the district courts, Plaintiffs' complaints, read in conjunction with the *Rozel* report, target Defendants' oil production and exploration practices. Plaintiffs do not simply challenge the rate at which Defendants extracted oil from the Operational Areas. To be sure, Defendants have presented evidence, which we credit at this stage,[63] that adopting one of Plaintiffs' preferred production methods—the use of directional drilling instead of

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[62] *Plaquemines I*, 7 F.4th at 367.

[63] *Louisiana v. Sparks*, 978 F.2d 226, 232 (5th Cir. 1992); *see also Cnty. Board of Arlington Cnty., Va. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 256 (4th Cir. 2021) ("Generally, '[w]e credit Defendants' theory of the case when determining whether' there is such a connection or association . . . 'between the act in question and the federal office.'" (citations omitted)).

vertical drilling—would have slowed their production rates during World War II. But Defendants sole focus on the use of vertical drilling and related rate-of-production argument leads them to define the challenged conduct too narrowly by ignoring the other production and exploration practices challenged by Plaintiffs, such as the use of dredged canals and earthen pits, the spacing of wells, and the lack of saltwater reinjection wells. Thus, as properly defined, the challenged conduct here pertains to Defendants' exploration and production activities, which indirectly include the rate at which they extracted crude oil.

2.

In identifying the relevant federal directives, Defendants have produced several contracts that Shell and two predecessors of Chevron entered into with the Defense Supplies Corporation ("DSC"), a federal agency. As it pertains to Chevron's predecessors, both The Texas Company and Gulf contracted with DSC in 1942 to manufacture 100-octane avgas at their Port Arthur, Texas, refineries. The Texas Company's 1942 contract indicated that its Port Arthur refinery could produce 2,940 barrels of 100- octane avgas per day, but that it was "willing to expand its facilities" to enable production of 6,750 barrels of 100-octane avgas per day. The DSC agreed to loan The Texas Company $5.5 million to finance the expansion of the Port Arthur refinery.

Once the Port Arthur refinery expansion was complete, DSC contracted to "buy and receive" 5,900 barrels per day of 100-octane avgas for one year "in accordance with" the specifications attached to the contract and "any other specifications which by

mutual agreement shall be attached as an addendum." DSC also had the option to purchase additional quantities of avgas that The Texas Company had not contracted to sell to other parties. The Texas Company and DSC signed two subsequent contracts modifying the terms of the original contract to account for further expansions to the Port Arthur refinery and its increased refinery capacity.

Similarly, Gulf's 1942 contract acknowledged that its Port Arthur refinery was "currently expanding its facilities," which would increase production to 4,836 or 5,667 barrels per day, depending on the specifications. The contract called for Gulf to further expand its refinery to increase production to 8,739 or 9,969 barrels per day, depending on the specifications. DSC agreed to make advance payments to Gulf, up to $9.825 million, to help finance this expansion. Throughout Gulf's expansion, the contract specified that DSC would purchase increasing "minimum quantit[ies]" of avgas. The contract also set forth the relevant prices, specifications, and minimum quantities for these purchases.

Lastly, Defendant Shell asserts that it entered into at least 120 contracts with the government during World War II. In particular, Shell contracted with DSC in October 1942 to produce 100-octane avgas at its Houston and Norco refineries "in accordance with" the specifications attached to the contract. The contract indicated that production at Shell's "Norco, Louisiana refinery comprises aviation alkylate and cumene only, which are normally transported to the Houston, Texas refinery and are blended there with other aviation gasoline components produced at

Houston to make said aggregate production of" 9,000 barrels of 100-octane avgas.

The contract required Shell to provide DSC with its "pro rata share of the entire requirements of the United States Government," a term defined in further detail elsewhere in the contract. DSC also contracted for "the option from time to time" to purchase avgas that Shell had not contracted to sell to other parties. In addition to buying the 100-octane avgas "in its finished form," DSC also had the option to take alkylate and/or cumene directly from Shell's Norco refinery. In July 1944, Shell and DSC amended their 1942 contract in light of the Houston and Norco refineries' increase in production capacity to 12,000 barrels per day of avgas.

At oral argument, Defendants asserted that we are not limited to the above refinery contracts in identifying the relevant federal directives for purposes of determining whether they were "connected or associated with" the challenged conduct. Oral Arg. at 14:00-15:40. Instead, they contend that in cases involving federal contractors, courts should consider whether the charged conduct is related to actions the contractor took not only pursuant to its federal contract, but also actions taken pursuant to relevant federal regulations or directives. In light of this theory, and in recognition that their refinery contracts are silent as to oil production, Defendants point to various federal regulations, designations, and reports involving oil production in the Operational Areas during World War II.[64] Defendants contend that these

[64] For example, Defendants emphasize the fact that the government designated the three fields at issue here as "Critical

extra-contractual government documents provide relevant federal directives in analyzing the "connected or associated with" element and demonstrate that the government was involved in regulating *both* crude oil production and refinement.

As explained above, case law is clear that a private party does not "act[] under" a federal officer by complying with federal regulations, guidance, or expectations.[65] And the problem with Defendants' extracontractual argument is that they cite no authority for the proposition that simply being a federal contractor transforms a private party's actions in compliance with federal regulations or expectations into action taken under color of federal office for purposes of analyzing the "connected or associated

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Fields Essential to the War Program," in part because they produced crude oil that was particularly suited for making avgas and other products of high value to the war. Defendants rely on these designations as evidence that the government recognized that oil production in these fields were "connected or associated with" the refinement of avgas for the government and show that the government knew Defendants would use the crude produced in these fields at their refineries.

[65] *See Watson*, 551 U.S. at 153 ("The upshot is that a highly regulated firm cannot find a statutory basis for removal in the fact of federal regulation alone . . . [because] [a] private firm's compliance (or noncompliance) with federal laws, rules, and regulations does not by itself fall within the scope of the statutory phrase 'acting under' a federal 'official.'"); *Plaquemines II*, 2022 WL 9914869, at *3 ([M]erely being subject to federal regulations is not enough to bring a private action within § 1442(a)(1)."); *see also Mohr v. Trustees of Univ. of Pa.*, 93 F.4th 100, 105 (3d Cir. 2024) ("Advancing governmental policy while operating one's own business is not the same as executing a delegated governmental duty.").

with" element. To the contrary, in cases involving private federal contractors, courts look to the contents of the relevant federal contracts in determining whether the challenged conduct was "connected or associated with" acts taken under color of federal office.[66] Moreover, even if we considered Defendants' extra-contractual sources, Defendants are unable to connect the government's minimal regulation of crude oil production during World War II to their federal contracts for increased quantities of refined avgas.[67]

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[66] *See, e.g.*, *Latiolais*, 951 F.3d at 296 (concluding that the plaintiff's failure-to-warn claims were "connected or associated with" the defendant's installation of asbestos, which was required under the terms of its contract with the U.S. Navy); *Cnty. Board of Arlington Cnty.*, 996 F.3d at 256-57 (holding that the plaintiff's claim that pharmacies caused a public nuisance by filling certain opioid prescriptions was "connected or associated with" the pharmacies' contracts with the Department of Defense ("DOD") because the pharmacies "were required to fill those prescriptions to comply with their duties under the DOD contract").

[67] To the extent Defendants point to certain government designations or reports as evidence that the government "recognized" that Defendants would use the crude produced in the Operational Areas at their refineries, such documents, without any federal mandate, are insufficient to show that Defendants' production practices were connected to a government directive. *See Mitchell v. Advanced HCS, L.L.C.*, 28 F.4th 580, 590 (5th Cir. 2022) (holding that agency documents consisting of the government's "aspirations and expectations," or "permissive guidance," without any mandates, are "insufficient to establish the kind of relationship necessary to invoke the [federal officer removal] statute"); *In re Methyl Tertiary Butyl Ether ("MTBE") Prod. Liab. Litig.*, 488 F.3d 112, 129-30 (2d Cir. 2007) (holding that even if Congress and the Environmental Protection Agency expected defendants to use MTBE, defendants were unable to show they were "acting under federal officers when they added MTBE, and not some approved alternative, to

We therefore limit our analysis under the "connected or associated with" element to directives in Defendants' federal refining contracts.

3.

Having identified the relevant challenged conduct and federal directives, we now evaluate whether the relationship between the two is sufficient for purposes of the "connected or associated with" element of the federal officer removal test. The district courts held that Defendants were unable to satisfy this element given the lack of connection between their oil production and refining activities. In *Northcoast*, the court explained that:

> [T]he Removing Defendants fail to point to a single directive in the Gulf contract that touched upon its upstream oil production activities in Louisiana or anywhere else for that matter. No directive in the contract has anything to do with upstream oil production. In fact, the contract does not mention where the Port Arthur refinery was to get the large amounts of crude oil that would be necessary to feed the refinery although part (d) of the Price Escalation section does allude to the possibility that Gulf may at times purchase refining components from other suppliers . . . . The contract is simply not concerned with where or how Gulf would

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their reformulated gasoline"); *Riverwood I*, 2019 WL 2271118, at *17 n.44 ("The defendants point to no mandate that the federal government ordered the oil and gas companies to drill and produce these operational areas that would otherwise not have been developed but for the wartime directives.").

> obtain the crude oil necessary to produce the fuel that was to be sold to the government at the Port Arthur refinery. While anyone can infer that performance under the contract would require a lot of crude, the contract is utterly silent as [to] where the crude oil was to come from. The contract did not direct, require, or even suggest that Gulf produce its own crude in order to meet its contractual obligations.[68]

The district court in *Parish of Cameron* adopted this analysis from *Northcoast*.[69]

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[68] *Northcoast*, 2023 WL 2986371, *10.

[69] In addition to *Northcoast* and *Parish of Cameron*, at least three additional district court judges have ruled the same way in related refinery cases. Notably, in these additional rulings, the courts assumed without deciding that defendants could satisfy the "acting under" prong in light of their federal contracts, but concluded that the defendants' production activities were not sufficiently "connected or associated with" the federal directives in their refinery contracts for purposes of the fourth prong. *See, e.g.*, *Par. of Jefferson v. Destin Operating Co.*, No. 18-5206, 2023 WL 2772023, at *2 (E.D. La. Apr. 4, 2023) (Fallon, J.) ("Accordingly, the Court will proceed to examine prong four, since this prong presents the highest hurdle considering the facts in this case: is the conduct charged here connected or associated with an act pursuant to those directions?"); *Par. of Plaquemines v. Rozel Operating Co.*, No. 18-5189, 2023 WL 3336640, at *4 n.48 (E.D. La. May 10, 2023) (Morgan, J.) ("Because the Court finds the removing Defendants have failed to establish the [fourth] element, the Court need not address the other elements. However, for the sake of argument, . . . the Court will assume, without holding, that the Removing Defendants established the [third] element—that they acted under a federal officer's directive because they contracted with the government to refine crude oil."); *Jefferson Par. v. Chevron U.S.A. Holdings, Inc.*,

On appeal, Defendants contend the district courts' holdings are inconsistent with *Latiolais*'s expanded "connected or associated with" test, and that they easily satisfy this fourth element. Defendants' overarching argument is that as vertically-integrated companies they produced crude oil in the relevant Operational Areas—Black Bayou Field in Cameron Parish and Duck Club Field and Grand Bay Field in Plaquemines Parish—and used some of that crude at their refineries to manufacture petroleum products in fulfillment of their federal contracts. They additionally contend that if they had adopted Plaintiffs' preferred practice of directional drilling, it would have slowed their production rates, which in turn, would have hampered their ability to fulfill their refinery contracts which called for ever-increasing amounts of avgas. Defendants thus conclude that there is a "close and direct link . . . between the federal contracts for massively increased quantities of refined petroleum war products and the production of correspondingly enormous quantities of crude oil."

Defendants' federal contracts clearly pertain to their refinement of avgas and other petroleum products. But that is not to say that these refinery activities do not have some relation to oil production. This is of course because crude oil is a necessary component of avgas, and one way of obtaining crude

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Nos. 18-5224, 18-5213, 18-5218, 18-5220, 18-5230, 18-5252, 18-5260, 2023 WL 8622173, at *6 (E.D. La. Dec. 13, 2023) (Lemelle, J.) ("However, even assuming *arguendo* that the acting-under prong can be established, removing defendants fail to show their complained-of conduct in oil production has anything more than an attenuated connection to their actions under the direction of a federal officer.").

oil is to produce it.[70] However, we agree with the district courts that in these cases the relationship between Defendants' oil production and refinement activities was insufficient to satisfy the fourth element of federal officer removal.

Although Defendants need not show that a federal officer directed the specific oil production activities being challenged,[71] they still must show these activities had a sufficient connection with directives in their federal refinery contracts. Defendants fall short of meeting this requirement because, as emphasized by the district court, the contracts gave Defendants

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[70] The dissent relies on the fact that crude oil is a necessary component of avgas to support its contention that increased crude oil production is "connected or associated with" Defendants' contractual obligations to produce large quantities of avgas. To drive home this point, the dissent posits that even though Defendants' contracts did not include provisions regarding human labor to run their refineries, the hypothetical necessity of 250 additional laborers in the refinery to produce avgas would clearly be "connected or associated with" Defendants' refinery contracts. *Post*, at 39 (Oldham, J., dissenting). We agree. Hiring sufficient refinery employees to work at federally contracted refineries is clearly "connected or associated with" Defendants' contractual obligations to refine avgas. But would the same be true as to Defendants' decisions to hire employees to search for new oil reserves? Or employees to extract crude oil? (Assuming, of course, that these employees find or extract crude oil that is ultimately refined into avgas by Defendants' federally contracted refineries). These are more analogous examples to the question presented in the instant cases and are illustrative of the reach of an unduly expansive reading of the "connected or associated with" element.

[71] *See St. Charles II*, 990 F.3d at 454 ("[A] removing defendant need not show that its alleged conduct was precisely dictated by a federal officer's directive.").

"complete latitude . . . to forego producing any crude and instead to buy it on the open market."[72]

The lack of *any* contractual provision pertaining to oil production or directing Defendants to use only oil they produced is what distinguishes these cases from *Latiolais*.[73] In *Latiolais*, there was a direct connection between Avondale's lack of safety practices for *asbestos* installation and the requirement in its federal contract to use *asbestos*.[74] The same is not true here. Under Defendants' theory, their alleged failure to use prudent industry practices in extracting crude oil is connected to their increased need for crude oil, which in turn is connected to their contractual obligations to furnish the government with large amounts of 100-octane avgas because crude oil is a necessary component of avgas. But, as explained below, even that attenuated connection was severed by Defendants' lack of control over where their crude oil was refined and by their use of crude oil purchased on the open market from other producers to comply with their contractual obligations. Thus, unlike *Latiolais*, or even *Morales*,[75] the instant cases require

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[72] *Northcoast*, 2023 WL 2986371, at *10.

[73] *See Rozel Operating Co.*, 2023 WL 3336640, at *5 ("Clearly at odds with Defendants' interpretation of *Latiolais* is the fact that, in *Latiolais*, the charged conduct was still related to a federal officer's directive to use asbestos . . . ,[whereas] [n]owhere in any contract pointed to by the removing Defendants did a federal officer direct the oil production activities of Defendants.").

[74] *Latiolais*, 951 F.3d at 289, 297 (recognizing that "the Navy required installation of asbestos on the *Tappahannock*").

[75] *Morales*, 504 U.S. at 388 (holding that guidelines on airfare advertising were "related to" the rates, routes, or services of an

various intermediary (and ultimately severed) links to connect the federal directives and challenged conduct.

The dissent arrives at the opposite conclusion—that this case "fits neatly" within *Latiolais*'s holding.[76] In support of this conclusion, the dissent suggests that the omission of safety instructions for handling asbestos in *Latiolais*'s contract is equivalent to the omission of instructions for gathering crude oil in the contracts at issue here. But, as discussed above, such a comparison overlooks the fact that Avondale's federal contract required the use of asbestos, whereas the federal contracts here did not address crude oil production at all, let alone require Defendants to produce their own crude oil. Thus, the connection between Avondale's alleged lack of safety instructions regarding the installation of asbestos and the requirement in its federal contract to install asbestos is much closer than the tenuous connection between the oil production and exploration practices challenged here and Defendants' refinery contracts. These refinery cases would be more analogous to *Latiolais* if, for example, Defendants' federal contracts required them to produce their own crude oil but were silent as to the production practices challenged by Plaintiffs. Alternatively, *Latiolais* would be closer to these cases if Avondale's federal contract required it to refurbish ships with thermal insulation but did not specify what type of material should be used for insulation.

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air carrier given that every guideline makes "express reference to [air]fares").

[76] *Post*, at 42 (Oldham, J., dissenting).

Consequently, and contrary to the dissent's position, permitting removal here would expand the current limits of the "connected or associated with" element as applied in *Latiolais* and its progeny.[77] And although we are mindful of the broad nature of the statute's "relating to" language, as the Supreme Court has cautioned, even "broad language is not limitless."[78] We acknowledge that reasonable minds

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[77] *See, e.g.*, *Williams*, 990 F.3d at 859-60 (relying on Third Circuit caselaw consistent with *Latiolais* to hold that the plaintiff's asbestos-related claims for strict liability and failure to warn were "direct[ly] connect[ed]" to the government's "detailed material, design, and performance specifications for the fuel tanks" and the government's "controlled written materials and markings accompanying the fuel tanks, including all warnings and health-related safeguards associated with them"); *Cloyd v. KBR, Inc.*, No. 21- 20676, 2022 WL 4104029, at *1-3 (5th Cir. Sept. 8, 2022) (per curiam) (unpublished) (holding that the military contractors' claims that the defendant failed to implement adequate security measures and provide a safe place to work were connected with the defendant's actions under color of federal office in light of the evidence that the United States military directed and controlled the base and "retained authority over all force protection measures for individuals on base, decided what security protocols to implement, [and] dictated when contractors should take shelter"); *Trinity Home Dialysis, Inc. v. WellMed Networks, Inc.*, No. 22-10414, 2023 WL 2573914, at *4 (5th Cir. Mar. 20, 2023) (per curiam) (unpublished) (concluding that the conduct challenged by the plaintiff was "directly tied" to actions the defendants took under color of federal office because defendant "made this decision based on its determination that [plaintiff's] claims were not eligible for full reimbursement under the Medicare Act").

[78] *See Watson*, 551 U.S. at 147, 153 (cautioning against a "determination [that] would expand the scope of the [federal officer removal] statute considerably, potentially bringing within

can differ on where to draw the line between related and unrelated conduct under governing circuit precedent.[79] However, we ultimately conclude that these cases fall on the unrelated side of the line given the lack of any reference, let alone direction, pertaining to crude oil production in Defendants' federal contracts. To hold otherwise would permit a federal contractor with a non-frivolous federal defense to invoke federal jurisdiction under § 1442(a)(1) for conduct only "remote[ly]" or "tenuous[ly]"[80] related to its federal contracts and thereby impermissibly expand the scope of federal officer removal under our existing precedent.

Perhaps recognizing that removal here would be an expansion of existing precedent, Defendants assert, citing to *Latiolais*, that the colorable federal defense requirement will have a narrowing effect and weed out cases that would otherwise pass their near limitless interpretation of the "connected or associated with" element.[81] Oral Arg. at 11:30-12:04. Although *Latiolais* acknowledged that the colorable federal defense requirement may prevent the removal of cases

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its scope state-court actions filed against private firms in many highly regulated industries").

[79] *See Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 366 (5th Cir. 2023) (acknowledging that "*Latiolais* left unclear where to draw the line between related and unrelated activities").

[80] *Morales*, 504 U.S. at 390 (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983)).

[81] *See Latiolais*, 951 F.3d at 296 (explaining that although the 2011 amendment expanded the fourth element of federal officer removal, "the statute's requirement that a removing party assert a colorable federal defense remains a constitutional, viable, and significant limitation on removability" (citations omitted)).

that would otherwise satisfy the expanded "relating to" language, this Court nonetheless still required a removing defendant to show that the charged conduct was "connected or associated with an act pursuant to a federal officer's directions."[82] Thus, we do not read *Latiolais* as permitting courts to stretch the "relating to" requirement to permit the removal of cases where the defendant engaged in the challenged conduct on its own initiative in fulfillment of a tangentially related federal directive.[83] To do so would be to ignore the statute's "language, context, history, and purposes."[84] Specifically, it would read out of the statute the requirement that only civil actions "for or relating to" acts taken under color of federal office are removable.[85] This is particularly true given that Defendants contend that the colorable federal defense requirement is "not limited to defenses premised on the asserted federal direction" and can include

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[82] *Id.*

[83] *See Engelhoff v. Engelhoff ex rel. Breiner*, 532 U.S. 141, 146-47 (2001) (noting in the context of ERISA pre-emption the phrases "relate to" and "connection with" are "clearly expansive," but should not be applied with "uncritical literalism" that would "turn on 'infinite connections.'" (citations omitted)); *Glenn*, 40 F.4th at 232 (recognizing that the basic purpose of the federal officer removal statute is "to give those who carry out *federal policy* a more favorable forum" (emphasis added) (citation omitted)).

[84] *Watson*, 551 U.S. at 147, 151-53. Although *Watson* addressed the limits of the "acting under" element, we find its method of analysis—looking to § 1442(a)(1)'s "language, context, history, and purpose"—to be just as relevant to analyzing the limits of the "connected or associated with" element. *Id.* at 147-53.

[85] 28 U.S.C. § 1442(a)(1).

defenses that do "not relate to the official acts that gave rise to 'acting under' status."

* * *

Despite the lack of direction in their refinery contracts, Defendants contend that their ability to satisfy their federal refinery obligations was nonetheless related to their oil production practices because they were "vertically integrated" companies that both produced and refined crude oil. Specifically, Defendants assert that "when the government contracts with a vertically integrated refiner/producer, like [Defendants], the crude production used to fulfill the contract for refined avgas plainly relates to that contract."

We find Defendants' reliance on their statuses as vertically-integrated companies to be misplaced. As noted by one district court, Defendants' oil production and refining sectors were "two entirely separate operations requiring different skills, and different operations at different locations."[86] Moreover, the record here shows that a federal agency, the Petroleum Administration for War ("PAW"), established a crude allocation program that controlled the distribution and transportation of produced crude oil from the fields to specific refineries based on various factors that would maximize the output of war products. In allocating the crude oil, the PAW

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[86] *Par. of Jefferson v. Destin Operating Co.*, 2023 WL 2772023, at *3; *Northcoast*, 2023 WL 2986371, at *7 ("The separate functions [of upstream oil production and downstream refining operations] may be performed by different companies or a larger company may do both, as Gulf Oil was doing during World War II.").

considered neither the practices of the producer nor whether the company that produced the crude had an affiliated refinery.

The PAW's allocation program severed any connection between Defendants' production and refinement activities because Defendants could not control whether they refined their own crude. Instead, they were in the same position as companies that did not produce crude oil but had refineries with federal contracts. At base, whether or not Defendants happened to refine their own crude oil in fulfilling their federal contracts had nothing to do with any actions they took pursuant to a federal directive. Instead, it depended on "happenstance or logistical preference."[87] Particularly illustrative of this point is the outcome in *Plaquemines II*, in which one defendant, Humble Oil, was a vertically-integrated oil company that produced oil in the Operational Area and had a refinery under federal contract to refine avgas.[88] However, Humble Oil did not rely on its federal refinery contract in seeking removal due to the fact that none of the crude oil it produced in the relevant Operational Area was sent to its refinery.[89] Crucially, this means that the only difference between Humble Oil and Defendants here is that the PAW allocated to Defendants' refineries some of the crude oil they produced in the Operational Areas.[90] To

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[87] *Jefferson Par. v. Chevron*, 2023 WL 8622173, at *6.

[88] *Riverwood II*, 2022 WL 101401, at *7 & n.14.

[89] *Northcoast*, 2023 WL 2986371, at *6.

[90] *Id.* at *7. The dissent's assertion that the relevant difference is instead that Defendants here relied on their own refining contracts for removal overlooks the fact that Humble Oil could

permit removal here, but not in *Plaquemines II*, would lead to illogical and disparate results inconsistent with the overall purpose of the federal officer removal statute.[91]

Finally, Defendants make the conclusory assertion that had they adopted Plaintiffs' preferred extraction practices, it would have "hampered" their ability to fulfill their federal contracts. But Defendants point to no evidence, aside from their statuses as vertically-integrated companies that needed to refine increased quantities of avgas, to support this assertion. Although Defendants' conclusory assertion might be enough on its own if the only crude oil they refined was their own, the record does not support such a finding. Instead, the evidence makes clear that not only did Defendants lack control

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not rely on its own contracts *because* it did not refine the crude oil it produced in the Operational Area. *Post*, at 47 n.4 (Oldham, J., dissenting). Put differently, Humble Oil could not rely on its contracts to satisfy the "connected or associated with" test because none of the crude oil it produced in the relevant field, which was the basis of the plaintiffs' challenged conduct, was allocated to its federally contracted refinery by the PAW. Defendants here acknowledge this is the relevant difference, explaining that "[i]n contrast to the removing defendants in *Plaquemines II*, Defendants here did have government contracts under which they produced avgas and other war products using the oil they produced in the field at issue during WWII."

[91] *See Watson*, 551 U.S. at 152 ("When a company subject to a regulatory order (even a highly complex order) complies with the order, it does not ordinarily create a significant risk of state-court 'prejudice' . . . . Nor is a state-court lawsuit brought against such a company likely to disable federal officials from taking necessary action designed to enforce federal law." (internal citations omitted)).

over whether they refined their own crude oil, but that their refineries regularly relied on crude oil produced by other companies to fulfill their federal avgas contracts.[92] In sum, although Defendants' refining contracts indirectly required increased amounts of crude oil, that fact alone, absent some federal directive pertaining to Defendants' oil production activities, is insufficient to satisfy the "connected or associated with" element of federal officer removal.

Because Defendants do not satisfy the "connected or associated with" element of federal officer removal, we do not address whether they have asserted a colorable federal defense. Accordingly, we affirm the district courts' holdings that Defendants have not established federal officer removal jurisdiction on the grounds that they are unable to show that Plaintiffs' claims against them are "connected or associated with" actions they carried out pursuant to a federal directive.

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[92] For example, the record shows that the PAW sent crude produced by Defendants in the Operational Areas to other companies' refineries. Moreover, it also shows that Defendants during this time period purchased crude oil on the open market from other oil producers for use in their own refineries. As indicative of this fact, Plaintiffs emphasize that in only four of the thirteen SLCRMA cases pending against Defendant Shell did Shell refine its own crude oil produced in the relevant Operational Area in fulfillment of its federal contracts. In the other nine cases, Shell—the same vertically-integrated company that had federal contracts that required it to produce increased quantities of refined avgas—was able to satisfy its federal contracts without using its own crude produced in the Operational Areas.

IV.

For the foregoing reasons, we AFFIRM the district courts' orders remanding these cases to state court.

Andrew S. Oldham, *Circuit Judge*, dissenting.

I agree with the majority that the defendants "acted under" a federal officer in both producing and refining petroleum during WWII. Unfortunately, our agreement ends there. In my view, the defendants' actions also "relate to" instructions from federal officers. That means this case is removable to federal court.

I.

"The ordinary meaning of ['relating to'] is a broad one." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). I first (A) discuss the text and history of § 1442(a)(1). Then I (B) discuss the governing precedent. Finally I (C) address the majority's counterarguments, which do not displace the meaning of the statute and our precedent.

A.

1.

Federal officer removal has a long and complicated history. In 1815, Congress enacted the first ancestor of today's federal officer removal statute. In response to New England's opposition to the War of 1812, Congress protected federal interests in collecting customs duties by "insert[ing] into [the relevant] act . . . a provision . . . authorizing removal of all suits . . . against federal officers or other persons as a result of enforcement of the act." Richard H. Fallon, Jr., John F. Manning, Daniel J. Meltzer & David L. Shapiro, Hart and Wechsler's The Federal Courts and The Federal System 853 n.6 (7th ed. 2015) [hereinafter Hart & Wechsler] (citing Act of Feb. 4, 1815, § 8, 3 Stat. 195, 198-99). That act embodied a

specialized, limited, and short-term exercise of Congress's power to remove cases arising under federal law to federal courts. *See ibid.*; *see also Tennessee v. Davis*, 100 U.S. 257, 267-68, 271 (1880) (discussing the same act and power of Congress to authorize removal).

But over time, Congress repeatedly enacted new federal officer removal statutes, each time extending removal to new classes of defendants. *See* Hart & Wechsler, *supra*, at 853-54 n.6 (listing statutory developments of federal officer removal). In 1833, the "Force Bill" responded to South Carolina's tariff nullification threats in part by broadening federal officer removal to provide federal courts with removal jurisdiction over "any act done under the revenue laws of the United States, or under colour thereof." Act of Mar. 2, 1833, § 3, 4 Stat. 632, 633; *see also Davis*, 100 U.S. at 268 (discussing history of this act). Then, during and immediately following the Civil War, Congress passed a series of removal acts (1) conferring federal jurisdiction over suits for actions authorized by the President or Congress during the War and (2) extending the Force Bill to include *internal* revenue actions. *See* Hart & Wechsler, *supra*, at 853-54 n.6 (first discussing jurisdictional acts for war-time actions, Act of Mar. 3, 1863, § 5, 12 Stat. 755, 756-57, amended by Act of May 11, 1866, §§ 3-4, 14 Stat. 46, 46; Act of Feb. 5, 1867, 14 Stat. 385; Act of July 28, 1866, § 8, 14 Stat. 328, 329-30; Act of July 27, 1868, § 1, 15 Stat. 243, 243; then discussing Force Bill extension, Act of Mar. 7, 1864, § 9, 13 Stat. 14, 17; Act of June 30, 1864, § 50, 13 Stat. 223, 241 (cited as 13 Stat. 218); Act of July 13, 1866, §§ 67-68, 14 Stat. 98, 171-72).

Finally, in 1948, Congress amended the removal statute, "dropping its limitation to the revenue context" and expanding its "coverage to include all federal officers." *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 148-49 (2007); *see also* Act of June 25, 1948, ch. 89, Pub. L. No. 80-773, ch. 646, § 1442, 62 Stat. 869, 938. Thus, "[s]ince 1948, 28 U.S.C. § 1442 has permitted removal of any civil or criminal action against any federal 'officer' or 'person acting under the officer' for 'any act under color of such office.'" Hart & Wechsler, *supra*, at 426. That language stood until 2010, when § 1442(a)(1) read:

> A civil action . . . commenced in a State court against any of the following may be removed by them to the district court of the United States . . . : 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, sued in an official or individual capacity *for any act under color of such office* . . . .

(emphasis added).

According to the Supreme Court, the repeated extension and expansion of federal officer removal evinced a "very basic" congressional desire to protect federal "interest[s] in the enforcement of federal law through federal officials" from interference by state courts or officials. *Willingham v. Morgan*, 395 U.S. 402, 406 (1969); *see also Davis*, 100 U.S. at 263. And the Supreme Court held § 1442(a)(1)'s jurisdiction over suits for any act under "color of [federal] office" required "a 'causal connection' between the charged conduct and asserted official authority." *Willingham*,

395 U.S. at 409 (quoting *Maryland v. Soper (No. 1)*, 270 U.S. 9, 33 (1926)).

But in 2011, Congress passed the Removal Clarification Act, Pub. L. No. 112-51, 125 Stat. 545 (2011). In that act, Congress added the phrase "or relating to" to § 1442(a)(1)'s text—broadening § 1442(a)(1)'s coverage from actions "for" an act under color of federal office to actions "for or relating to" such acts. *See id.* at § 2(b), 545 ("Conforming Amendments"). The act sought to clarify "that State courts lack the authority to hold Federal officers criminally or civilly liable for acts performed in the execution of their duties" and to avoid any statutory suggestion that "would potentially subject Federal officers to harassment" by state courts. H.R. Rep. No. 112-17(I), at 1-2 (2011). In doing so, Congress explicitly recognized that the addition of "relating to" in § 1442(a)(1) was "intended to broaden the universe of acts that enable Federal officers to remove to Federal court." *Id.* at 6.

So today, 28 U.S.C. § 1442(a)(1) provides:

> A civil action . . . that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States . . . : 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, in an official or individual capacity, *for or relating to any act under color of such office* . . . .

(emphasis added).

The new language makes the federal officer removal statute significantly broader than its pre-2011 counterpart. The key phrase, "relating to," ordinarily means "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Morales*, 504 U.S. at 383 (quoting Black's Law Dictionary 1158 (5th ed. 1979)). How are we supposed to understand a phrase that broad? By looking to the statutory "context" to understand its "broad and indeterminate" reach. *Mellouli v. Lynch*, 575 U.S. 798, 811-12 (2015) (quotations omitted). And here, the statutory context is a story nearly as old as our Nation in which Congress relaxed, relaxed, and relaxed again the limits on federal officer removal.

2.

Enter this dispute. Defendants Shell and Chevron executed a series of contracts with the federal Defense Supplies Corporation during World War II. Through those contracts, defendants helped to supply unprecedented volumes of high-octane aviation gasoline ("avgas") to support our Nation's war effort. *See, e.g.*, ROA.23-30422.7868 (noting "a 1,185% increase in domestic 100-octane avgas production").

Those contracts were exceedingly broad and demanding. Some of them provided for dramatic expansion of the companies' refineries; some required multiple expansions. And in some contracts, the Government asserted the right to take not only the defendants' finished avgas but also their raw materials. Still more, and perhaps most importantly, some contracts allowed the Government to unilaterally demand more avgas than originally

specified, even requiring the refineries operate at full capacity to meet the new demand.

Here, the charged conduct[1]—defendants' petroleum exploration and production activities—clearly "relat[ed] to" an "act under color of [federal] office"—the contractually specified refining activities. The contracts required defendants to produce certain amounts of avgas, which varied across refinery, company, and contract. *See ante*, 18-20 (describing the specific requirements of each contract). But defendants could not simply snap their fingers and, voilà, make avgas. They had to make it out of *something*, and that something was crude oil. (Even the majority concedes this point, noting that "Defendants' refining contracts indirectly required increased amounts of crude oil . . . ." *Ante*, at 32.) So defendants satisfied their contractual avgas obligations by increasing their own exploration and production of crude. The exploration/production of crude was therefore undeniably "related to" the avgas refining contracts.

True, the contracts did not specify where or how defendants should acquire the massive amounts of crude oil needed to fulfill their avgas obligations. *See ante*, at 25-26. Nor, I suppose, did the contracts specify where or how the defendants would acquire additional human labor to increase output at their refineries. But there can be no doubt that human labor, like crude oil, is an indispensable, necessary, and direct step to

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[1] The majority notes that the parties dispute the exact parameters of the "charged conduct." *See ante*, at 17-18. But even accepting the majority's characterization of the conduct, all the conduct still clearly "relates to" the refining contracts.

producing avgas. If the defendants were contractually obligated to produce, say, one million barrels of avgas, and to do that they needed 250 additional human laborers to work in the refineries, we would obviously say the human labor is "related to" the refining contracts. And defendants' hiring practices to acquire the necessary, additional labor would likewise be "related to" the refining contracts. Without those practices, defendants could not meet their contractual obligations—hence underscoring the connectedness of the labor inputs and the avgas outputs. So too with crude oil, in my view.

To give a sense of scale, defendants point out that a combination of federal regulation and end-product contracts required U.S. oil and gas companies "to increase oil production *by more than 44,000,000 gallons a day*." *Cameron* (23-30422) Blue Br. at 11 (emphasis in original); *Plaquemines* (23-30294) Blue Br. at 11; ROA.23-30422.8295-96. Without that increase, it is unclear how defendants could have met their contractual obligations with the federal Government. And given their contractual obligations to produce avgas, defendants had to get the crude oil from *somewhere*, and *someone* had to figure out how to get 44 million extra gallons of crude oil out of the ground *every day*. Thus, defendants' increased exploration and crude-production efforts were "related to" their avgas contracts. In my view, that makes this case removable under § 1442(a)(1).

B.

If the plain language of § 1442 were not enough, our most recent en banc decision on the question

should be. *See Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286 (5th Cir. 2020) (en banc).

1.

In *Latiolais*, this court gave "relating to" its "ordinary meaning" and held civil actions "relat[e] to" acts under federal direction as long as "the charged conduct is *connected or associated* with an act pursuant to a federal officer's directions." 951 F.3d at 292, 296 (emphasis added); *see also Morales*, 504 U.S. at 383 (defining "relating to" in part as "to bring into association with or connection with"). Like the phrase "relating to," the phrase "connected or associated with" captures a broad range of conduct. *See Maracich v. Spears*, 570 U.S. 48, 59-60 (2013) (interpreting "in connection with"). And for good reason: *Latiolais* adopted its connected-or-associated test because Congress substantially broadened § 1442 in the 2011 amendment. *See* 951 F.3d at 290 ("Over time . . . Congress has broadened the removal statute repeatedly until it reached the coverage [seen in § 1442 today].").

Our pre-*Latiolais* test was narrower. Our old test was called the "direct causal nexus" standard. *Id.* at 291-92. The old test required "a causal nexus . . . between the defendants' actions under color of federal office and the plaintiff's claims." *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 398 (5th Cir. 1998). In other words, "mere federal involvement [did] not satisfy the causal nexus requirement; instead, the defendant [had to] show that its actions *taken pursuant to the government's direction or control* caused the plaintiff's specific injuries." *Savoie v. Huntington Ingalls, Inc.*, 817 F.3d 457, 462 (5th Cir.

2016) (emphasis added) (citing *Bartel v. Alcoa S.S. Co.*, 805 F.3d 169, 172-74 (5th Cir. 2015)). That test afforded the new § 1442 too little flexibility. Most importantly, it excluded claims *related to* actions under "the government's direction or control" from removal. *Ibid.*

The practical difference between "direct causal nexus" and "connect[ion] or associat[ion]" is obvious from *Latiolais* itself. There, the defendant contracted with the United States Navy "to build and refurbish naval vessels." *Latiolais*, 951 F.3d at 289. The contracts often required the defendant to use asbestos for the ships' thermal insulation. *Ibid.* The plaintiff, a machinist on one of the refurbished ships, was exposed to asbestos and diagnosed with mesothelioma many years later. *Ibid.* The plaintiff sued the defendant contractor, claiming the contractor "negligently failed to warn him about asbestos hazards and failed to provide adequate safety equipment." *Id.* at 290.

While the contracts required asbestos, they said *nothing* about whether the defendants could or should furnish safety warnings or equipment. *See Latiolais v. Huntington Ingalls, Inc.*, 918 F.3d 406, 407 (5th Cir. 2019), *rev'd en banc*, 951 F.3d 286. We emphasized "there [was] nothing to suggest that the Navy, in its official authority, issued any orders, specifications, or directives relating to safety procedures" *at all*—much less did the contracts say anything at all about safety. *Id.* at 410 (quotation omitted). And there was no evidence that the safety precautions—had the contractor employed them—would have impeded or even affected the contracts' objectives. *See id.* at 411 (concluding that the "failing to warn, train, and adopt

safety procedures regarding asbestos . . . were private conduct *that implicated no federal interests*." (emphasis added) (quotation omitted)).

A panel of this court therefore initially found the plaintiff could not satisfy the old, too-strict "causal nexus requirement." *Id.* at 411. And I suppose that makes sense in a world where § 1442 requires a direct causal connection between the charged conduct and the Government's contracts. After all, nothing in the contracts *prohibited* defendants from warning about asbestos or providing safety equipment, and hence nothing in the contracts *caused* the defendants' tortiously negligent safety violations. The defendant contractor alone made those tortious choices in deciding how to fulfill their contractual obligations to furnish asbestos-insulated boats.

But our en banc court reversed and broadened the § 1442 standard to match the statutory text. While the contracts did not prohibit providing, say, safety gear to shipworkers, the defendants' failures to provide safety gear was certainly connected or associated with the asbestos contracts. *Latiolais*, 951 F.3d at 296. Obviously, the underlying facts and the nature of the challenged conduct did not change between our panel decision and our en banc review. But our new test swept more broadly, encompassed more actions, and more appropriately recognized that safety measures for asbestos installation "relate[d] to" the asbestos installation. *Ibid.*

Latiolais's shift therefore highlights that our new test has very real consequences, especially for federal contractors. Without *Latiolais*, those contractors might otherwise face a Catch-22: limit their actions to

the bare words of a federal contract and insist that the Government control every action related to that contract, or risk suit in a potentially hostile state court for any associated acts taken to better fulfill that contract. For example, the defendants in this case, I suppose, could have said their avgas contracts make no provision for hiring human laborers, so it was simply impossible for the defendants to meet the Government's wartime demands. But after the 2011 amendment to § 1442 and after our decision in *Latiolais*, government contractors do not face that absurd choice.

2.

This case fits neatly into the *Latiolais* holding. True, as the majority highlights, the contracts here did not specify where and how the defendants should find the millions upon millions of gallons of crude oil they needed to make avgas. At most, the contracts "allude to the possibility that [defendants] may at times purchase refining components from other suppliers" but "did not direct, require, or even suggest that [defendants] produce [their] own crude in order to meet [their] contractual obligations." *Parish of Plaquemines v. Northcoast Oil Co.*, 669 F. Supp. 3d 584, 597 (E.D. La. 2023); *see also ante*, at 23 (same). But "direct, require, or . . . suggest" is not the § 1442 standard—as *Latiolais* itself proves. Instead, under *Latiolais*, discretionary decisions need only be "connected or associated with" a federal instruction to warrant removal.

So too here. The majority admits "crude oil is a necessary component of avgas, and one way of obtaining crude oil is to produce it." *Ante*, at 24-25. But

in the same way the *Latiolais* contracts were utterly silent as to safety measures, the contracts here omitted instructions for gathering the required component parts of avgas. And in the same way that the *Latiolais* defendants made an independent decision to forgo safety measures to produce their final product, defendants here decided to increase crude production to meet the demand for their final product. That the defendants in either case had "complete latitude" to take associated actions in the process of fulfilling their federal directives in no way severs the connection between those actions and that direction.

If anything, this case is easier than *Latiolais*. When it comes to refurbishing ships with asbestos, you might reasonably imagine two different arguments a contractor could make to justify removal. In the first, the asbestos safety measures would have slowed down the contractor's work on the ships, created undue expense, or otherwise impeded the accomplishment of the federal interest in getting the ships back at sea ASAP. In that hypothetical situation, the decision to forgo safety measures would obviously relate to the federal directive—indeed, it might even be necessary. Alternatively, the asbestos safety measures might have no bearing whatsoever on the speed, cost, or feasibility of the federal refurbishment directive. In that case, it is much less clear that the safety decisions would properly fall within § 1442's "relating to" prong—and they certainly were *not* necessary to refurbish the ships and get them back in service.

Latiolais presented the second scenario. *See* 918 F.3d at 411 (panel opinion). Nonetheless, our en banc court held the safety measures "relate[d] to" the

federal contracts. *Latiolais*, 951 F.3d at 296 (en banc). But in this case, we have the first, much easier scenario. Forgoing the challenged crude exploration and production practices would have hampered the federal interest in refined avgas explicitly outlined in the contracts. So if the conduct in *Latiolais* related to the federal directive, so too must the conduct here.

To hold otherwise is to find that discretion destroys the connection between a federal directive and the challenged conduct—just as our old, now-jettisoned causal-nexus test once did. *Latiolais* bars such an interpretation of § 1442 and requires us to find these defendants acted in "connection . . . with" their federal directives.

C.

Finally, the majority makes several arguments suggesting the connection between crude production and avgas refining is too attenuated to satisfy § 1442(a)(1). With all respect to my learned and esteemed colleagues, I think the majority's arguments miss the mark.

1.

First, the majority contends the petroleum production practices during WWII bore only an "attenuated connection" composed of "various intermediary . . . links" to refining avgas. *Ante*, at 26. I do not understand how this helps the majority because it concedes crude and avgas were "link[ed]." If defendants needed to increase avgas production, they necessarily needed to find more crude. And how they chose to find more crude is necessarily linked and hence necessarily "related to" increasing their avgas production. The majority says, no, the supply chain

had two hermetically sealed links: Defendants used certain exploration and production practices because of increased need for crude oil (link one), and there was increased need because of the refining contracts (link two). But even on the majority's telling these supply-chain links are, well, linked. And hence they are connected.

The majority next contends the appropriate single link—the one purportedly more akin to *Latiolais*—would have been if the "federal contracts required [defendants] to produce their own crude oil but were silent as to the production practices challenged by Plaintiffs." *Ante*, at 27. But again, even if the facts *did* reveal "various" links, the majority would underread *Latiolais*. Requiring that the outcome of the challenged conduct be contractually specified so that "relating to" only encompasses discretionary choices about *how* to accomplish the expressly directed action walks back *Latiolais*'s "connected or associated with" test. Even the facts in *Latiolais* were not that closely "related": The contract specified the use of asbestos, not what safety protocols the contractor would employ. The challenged conduct dealt with shortcomings in those protocols, not the defendant's choice of how to install the asbestos. *See Latiolais*, 918 F.3d at 407 (panel opinion) (describing government contracts and oversight of safety measures). To claim the case before us contains "various intermediary . . . links" is to acknowledge that *Latiolais* itself contained at least two links— apparently one too many in the majority's own § 1442 framework.

2.

Second, the majority contends that, even if there was an "attenuated connection" between the production practices and refining contracts, *ante*, at 26, the Petroleum Administration for War ("PAW") "severed" the causal chain necessary for § 1442 removal, *ante*, at 30-31.[2] But this contention suffers from similar flaws. Requiring an unsevered causal chain takes us back to the old, now-discarded, pre-*Latiolais* standard and ignores the expansiveness of the new "relating to" language in § 1442. Moreover, there is no reason to think that PAW's control over crude shipments somehow rendered irrelevant the production choices made by defendants and other oil companies. Across all the contracts (Shell, as the majority points out, boasts at least 120 government contracts, *see ante*, at 19), the companies needed a gargantuan volume of crude oil. So, predictably, they engaged in expanded production practices and produced massively increased volumes of crude oil, which the PAW then distributed and directed—for the production of avgas and other refined products. Such Government direction of raw materials does not make the decision to produce those raw materials *unrelated* to the back-end government contracts—contracts also

[2] Relatedly, the majority finds defendants' "oil production and refining sectors were two entirely separate operations requiring different skills, and different operations at different locations." *Ante*, at 30 (quotation omitted). But even if the on-the-ground execution of the production and refining sectors were "entirely separate," that fact has little bearing on the defendants'—vertically-integrated companies with coordinated operations across many inter-related areas—decision-making process *vis-à-vis* their federal contracts.

heavily influenced by the same government agency.[3] The direction simply inserts the Government into another layer of control to ensure oil companies met their production targets (including for avgas). Such interconnectedness cannot possibly show that the oil companies production practices were *not* "connected or associated with" their refining duties.[4]

3.

Finally, I respectfully disagree with the majority that my reading of § 1442 would "expand the current limits" of the *Latiolais* test. *Ante*, at 27. As already discussed, the challenged actions here are akin to the

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[3] As defendants explain, "PAW also played an important role in negotiating the contracts with the companies that produced 100-octane avgas. . . . PAW determined 'the price and technical details of avgas production and procurement.'" *Plaquemines* (23-30294) Blue Br. at 13 (quoting *Exxon Mobil Corp. v. United States*, No. H-10-2386, 2020 WL 5573048, at *11 (S.D. Tex. Sept. 16, 2020)).

[4] The majority also contends that this "severing" places defendants in the same position as the oil producers in *Plaquemines Parish v. Chevron USA, Inc.* (*Plaquemines II*), No. 22-30055, 2022 WL 9914869 (5th Cir. Oct. 17, 2022) (per curiam) (unpublished), leaving the cases distinguishable only by the fact that the producers there did not receive any of their own crude from the PAW allocation, while our defendants did. *Ante*, at 30-31. But what distinguishes the *Plaquemines II* producers from our defendants is not primarily that ours received some of the crude oil they produced. Rather, the distinguishing feature is that the *Plaquemines II* producers failed to rely on their own refining contracts to remove the action against it to federal court. *Plaquemines II*, 2022 WL 9914869, at *4. They instead removed as subcontractors and therefore failed § 1442's "*acting under*" prong. *Id.* at *1, 4. *Plaquemines II* therefore tells us nothing about whether our defendants' actions "related to" their refining contracts.

actions in *Latiolais*. And none of the cases the majority cites as *Latiolais*'s "progeny" disprove this. *See ante*, at 27-28 n.77. Rather, each one simply reaffirms the "connected or associated with" test.

The majority cites *Cloyd v. KBR, Inc.* for the principle that the federal Government must have "retained authority" over the relevant decisions by federal contractors. *Ante*, at 27 n.77 (citing No. 21-20676, 2022 WL 4104029, at *1-3 (5th Cir. Sept. 8, 2022)). But *Cloyd* stands for no such proposition. Instead, that case simply restated the *Latiolais* rule, confirming that "causation" was *no longer* the § 1442(a)(1) test. *Cloyd*, 2022 WL 4104029, at *3. Although the facts in *Cloyd did* demonstrate causation between the federally controlled actions and the charged conduct, the panel nonetheless clearly understood that circumstance just made for an easy case. *Id.* at *3. That *Cloyd*'s facts satisfied *Latiolais* and § 1442 does not mean that *only Cloyd*'s facts can satisfy *Latiolais* and § 1442.

The majority then cites *Trinity Home Dialysis, Inc. v. WellMed Networks, Inc.* for the principle that challenged conduct must be "directly tied" to actions under color of federal authority. *Ante*, at 27-28 n.77 (citing No. 22-10414, 2023 WL 2573914, at *4 (5th Cir. Mar. 20, 2023)). But it isn't clear that defendants' crude production activities *were not* "directly tied" to their federal contracts. Indeed, one could consider those activities a direct result of the contractual obligations. And in any event, *Trinity* applied the *Latiolais* test and confirmed that defendants can have discretion or latitude in decision-making while also taking actions that "relate to" the overarching federal

direction. 2023 WL 2573914, at *4. There, although WellMed exercised "discretion to determine whether a claim [was] covered," that discretion "ar[ose] from the authority expressly delegated to [WellMed]" and therefore demonstrated only latitude in how the federal directive was carried out, not a lack of connection. *Id.* at *4.

Finally, the majority cites *Williams v. Lockheed Martin Corporation* for the principle that *Latiolais* requires a "direct connection" to Government-controlled specifications. *Ante*, at 27 n.77 (citing 990 F.3d 852, 859-60 (5th Cir. 2021)). But, as the majority correctly notes, *Williams* applied the Third Circuit's § 1442 precedent, not *Latiolais*. 990 F.3d at 858-60. Moreover, the panel there highlighted that federal control over the details of the final product at issue—such as the "material, design, and performance specifications . . . [and] materials and markings accompanying the [products]"—"demonstrate[d] a direct connection" between the federal direction and any claims related to the final product. *Id.* at 860. Similar here. The federal contracts controlled all details of the final product, high-octane avgas. So claims concerning the materials needed to manufacture that product clearly *relate to* actions under color of federal authority. All told, the majority could *at best* claim these were easier cases under the *Latiolais* test than the case before us today. But none reduces *Latiolais*'s interpretation of "relating to" in § 1442 to the cribbed one adopted by the majority.

II.

Today, the majority reinstates a version of the old, discarded, causal-nexus test. That approach

apparently is driven by the majority's fear that properly embracing the amended text of § 1442 and *Latiolais* would render § 1442 "limitless." *See ante*, at 28. Again, with deepest respect for my esteemed and learned colleagues, I think that fear is misplaced.

For one thing, the majority itself fully explains the limited nature of the "acting under" prong of federal officer removal: § 1442 applies only to defendants engaged in conduct "to assist, or to help carry out, the duties or tasks of the federal superior," not those merely subject to extensive federal regulation, *Watson*, 551 U.S. at 152-53 (emphasis omitted), or those "simply complying with the law," *see ante*, at 13 (emphasis omitted) (quoting *id.* at 152); *see also St. Charles Surgical Hosp., LLC v. La. Health Serv. & Indem. Co. (St. Charles II)*, 990 F.3d 447, 455 (5th Cir. 2021) ("[T]he 'acting under' inquiry . . . requir[es] . . . the federal officer 'exert[] a sufficient level of subjection, guidance, or control' over the private actor." (citation omitted)).

But more importantly, the majority misunderstands the role of § 1442's colorable federal defense prong. Focusing narrowly on the scope of "relating to," the majority instead worries that § 1442(a)(1) would be rendered "limitless" without today's narrowing construction. *Ante*, at 28 (citing *Watson*, 551 U.S. at 147, 153).[5]

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[5] Most of the concern about creating a "limitless" removal test seems to derive from *Watson*. *See ante*, at 28 & n.78 (citing *Watson*, 551 U.S. at 147, 153). But *Watson*'s cautionary word about "expand[ing] the scope" of § 1442 predates the 2011 amendment *and*, as is discussed by the majority, that statement concerns the scope of § 1442's "acting under" prong. *See ante*, at

I first (A) explain why the colorable federal defense prong of the removal test serves to curb the test's expansiveness. Then I (B) discuss one of these defendants' colorable defenses.

A.

As a preliminary matter, the colorable federal defense requirement does not come from the text of § 1442. Instead, it derives from Article III as a way of meeting "arising under" jurisdiction. *See Mesa v. California*, 489 U.S. 121, 136-37 (1989). Therefore, even if Congress had chosen *not* to limit the removable conduct of federal officers to actions "relating to" official directives, the statute would still be backstopped by Article III's limits.

As a substantive matter, the federal defense requirement is admittedly broad in its own right. But it simply ensures § 1442 "is broad enough to cover all cases where federal officers can raise a colorable defense arising out of their duty to enforce federal law." *Willingham*, 395 U.S. at 406-07. It hinges federal jurisdiction on federal defenses because "[o]ne of the primary purposes of the removal statute . . . was to have such defenses litigated in the federal courts." *Id.* at 407; *see also Mesa*, 489 U.S. at 128 (concluding *Davis*, 100 U.S. 257, "upheld the constitutionality of the federal officer removal statute precisely because the statute predicated removal on the presence of a

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12. Its relevance therefore pales in comparison to other cases' reminders not to saddle § 1442 with "a narrow, grudging interpretation." *See Latiolais*, 951 F.3d at 290 (citing *Willingham*, 395 U.S. at 407; *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981); and *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431, (1999)).

federal defense"). And it would thwart that purpose to require "a clearly sustainable defense[:] [t]he suit would be removed only to be dismissed." *Willingham*, 395 U.S. at 407. "Congress certainly meant more than th[at] when it chose the words 'under color of . . . office.' . . . The officer need not win his case before he can have it removed." *Ibid.*

Following that logic, our court has confirmed "an asserted federal defense is colorable unless it is 'immaterial and made solely for the purpose of obtaining jurisdiction' or 'wholly insubstantial and frivolous.'" *Latiolais*, 951 F.3d at 297 (quoting *Zeringue v. Crane Co.*, 846 F.3d 785, 790 (5th Cir. 2017) *overruled in part by Latiolais*, 951 F.3d 286). Because § 1442 "is a pure jurisdictional statute," the removing defendant need only supply a defense that can "serve as the federal question that endues the court with jurisdiction." *Zeringue*, 846 F.3d at 789 (quotation omitted). Thus, in the same way a complaint asserting a federal claim need not prove-up that claim from the outset, so too a defendant asserting a colorable defense for the purposes of § 1442 need not convince us of the merits of that defense. *See id.* at 790.

Given that breadth, one might reasonably wonder whether the colorable-defense requirement "remains a constitutional, viable, and significant limitation on removability." *Latiolais*, 951 F.3d at 296 (citing *Mesa*, 489 U.S. at 136-37; Anthony J. Bellia, Jr., *The Origins of Article III "Arising Under" Jurisdiction*, 57 Duke L.J. 263 (2007)). In my view, it does.

Mesa proves it. There, two United States Postal Service mailtruck drivers committed criminal traffic

violations while on duty. *Mesa*, 489 U.S. at 123. California charged one driver with "misdemeanor-manslaughter" after she struck and killed a cyclist. *Ibid.* And the state charged the other driver with "speeding and failure to yield" after he "collided with a police car." *Ibid.* Both drivers were clearly acting in the scope of their federal duties. Both drivers removed to federal court, asserting only that "the state charges arose from an accident involving defendant which occurred while defendant was on duty and acting in the course and scope of her employment with the Postal Service." *Ibid.* (citation omitted). But the Supreme Court held both drivers' cases should be remanded for lack of federal jurisdiction under § 1442 because their petitions failed to raise any "colorable claim of federal immunity or other federal defense." *Id.* at 124. Simply acting as a federal employee was not enough.

Mesa thus confirms that even where the other prongs of § 1442 are indisputably met—there could be no serious argument that the mailtruck drivers did not act under federal authority or that the challenged conduct was not precisely the act authorized—the colorable federal defense element still has teeth. Moreover, *Mesa* demonstrates there will be factual situations in which a federal officer or someone acting under a federal officer could be engaged in activities *related to* the federal authority, yet no federal defense will apply. *See Mesa*, 489 U.S. at 136 (discussing the consequences of eliminating the federal defense requirement). The colorable defense element still bears these contours today, and so *Latiolais*'s new test—however expansive it may be—did not render § 1442 "limitless."

B.

Here, Shell and Chevron assert "immunity, preemption, and due process" as their colorable federal defenses. *Plaquemines* (23-30294) Blue Br. at 48; *Cameron* (23-30422) Blue Br. at 43. Because defendants need only assert one such defense, I discuss only preemption. (This is not to say that the other defenses might not also be colorable.)

State laws are preempted "where compliance with both federal and state regulations is a physical impossibility . . . ." *Boggs v. Boggs*, 520 U.S. 833, 844 (1997) (citation omitted); *see also* Caleb Nelson, *Preemption*, 86 Va. L. Rev. 225, 228 (2000). The Supreme Court has also said preemption applies "where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Boggs*, 520 U.S. at 844 (citation omitted).

Defendants contend federal regulations preempt the parishes' claims in various ways. To consider just one example, they claim federal regulations during WWII authorizing oil production activities conflict with the parishes' assertion that those same production activities were unlawful.[6] The parishes' claims contest wartime practices highly regulated by the PAW and government contracts. If those practices violated Louisiana law, then it may have been

[6] The majority contends that the federal regulations cannot support the "relating to" analysis because regulations cannot satisfy the "acting under" prong of § 1442. *Ante*, at 21-22 (citing *Watson*, 551 U.S. at 153). However, it does not follow from *Watson* that regulations could not give rise to federal defenses under this separate § 1442 prong.

impossible to comply with both the federal directives and Louisiana law. Defendants therefore suggest the state law "is inconsistent with the federal scheme[, it] must give way." *Maryland v. Louisiana*, 451 U.S. 725, 751 (1981); ROA.23-30294.34357; *see also Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963) ("A holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility for one engaged in interstate commerce."). That is clearly enough to raise a colorable federal defense.

* * *

During World War II, defendants were tasked with producing vast amounts of avgas for our Nation's war efforts. With our Greatest Generation deployed in harm's way on battlefields and airfields all around the world, defendants increased their crude production so they could meet the Armed Forces' demands for avgas. The defendants' decisions 80 years ago plainly "related to" their avgas contracts and hence satisfy today's federal officer removal statute. With deepest admiration and respect for my colleagues who reach a different conclusion, I would vacate the remand orders and allow this case to proceed where it belongs: in federal court.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30294

PLAQUEMINES PARISH,

Plaintiff-Appellee,

LOUISIANA STATE; LOUISIANA DEPARTMENT OF NATURAL RESOURCES, Office of Coastal Management, Thomas F. Harris, Secretary,

Intervenors-Appellees,

v.

BP AMERICA PRODUCTION CO., et al.

Defendants-Appellants.

No. 23-30422

PARISH OF CAMERON,

Plaintiff-Appellee,

LOUISIANA STATE; LOUISIANA DEPARTMENT OF NATURAL RESOURCES, Office of Coastal Management, Thomas F. Harris, Secretary,

Intervenor Plaintiffs-Appellees,

v.

BP AMERICA PRODUCTION CO., et al.

Defendants-Appellants.

Filed: Oct. 31, 2024

Before Davis, Engelhardt, and Oldham,
Circuit Judges.[*]

ORDER

Per Curiam:

The petition for panel rehearing is DENIED. The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing (Fed. R. App. P. 35 and 5th Cir. R. 35).

In the en banc poll, six judges voted in favor of rehearing (Judges Jones, Richman, Willett, Duncan, Oldham, and Wilson), and seven judges voted against rehearing (Chief Judge Elrod and Judges Stewart, Southwick, Graves, Higginson, Engelhardt, and Ramirez).

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[*] Judges Jerry E. Smith, Catharina Haynes, James C. Ho, and Dana M. Douglas, did not participate in the consideration of the rehearing en banc.

Appendix C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

No. 18-5246

JEFFERSON PARISH,
Plaintiff,
v.
ATLANTIC RICHFIELD CO., et al.,
Defendants.

No. 18-5256

PLAQUEMINES PARISH,
Plaintiff,
v.
TOTAL PETROCHEMICAL & REFINING USA, INC., et al.,
Defendants.

Filed: Apr. 21, 2023

ORDER

For the same reasons given when the Court granted the motion to remand filed in Civil Action 18-

5228, *Parish of Plaquemines v. Northcoast Oil Co., et al.*,

Accordingly;

IT IS ORDERED that the Motions to Remand filed in the captioned cases are **GRANTED** and these actions are **REMANDED** to the state court from which they were removed.

April 21, 2023

[handwritten: signature]

Jay C. Zainey

United States District Judge

Appendix D

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

No. 18-5228

PARISH OF PLAQUEMINES,
Plaintiff,

v.

NORTHCOAST OIL CO., et al.,
Defendants.

Filed: Apr. 18, 2023

ORDER AND REASONS

Before the Court is a Motion to Remand (Rec. Doc. 62) filed jointly by the plaintiff, the Parish of Plaquemines, and the plaintiff-intervenors the State of Louisiana, through the Louisiana Department of Natural Resources, Office of Coastal Management, and its Secretary, Thomas F. Harris, and the State of Louisiana *ex rel.* Jeff Landry, Attorney General. The Removing Defendants oppose the motion.[1] The motion, submitted for consideration on February 1,

[1] The Removing Defendants in this action are Chevron U.S.A. Inc., Chevron U.S.A. Holdings Inc., Chevron Pipe Line Company, and BP Products North America Inc. (Rec. Doc. 1, Notice of Removal at 1).

2023, is before the Court on the briefs without oral argument.

For the reasons that follow, the Court concludes that the Motion to Remand filed in this case should be GRANTED and this civil action REMANDED to state court.

I.

This case is one of numerous cases filed in state court against a legion of oil and gas companies under a Louisiana state law called the State and Local Coastal Resources Management Act of 1978, La. R.S. § 49:214.21, *et seq.*, ("SLCRMA"), along with the state and local regulations, guidelines, ordinances, and orders promulgated thereunder. The SLCRMA regulates certain "uses" within the Coastal Zone of Louisiana through a permitting system and provides a cause of action against defendants who violate a state-issued coastal use permit or fail to obtain a required coastal use permit. The several lawsuits pertain to the defendants' decades-long oil production activities on the Louisiana coast.

Each individual lawsuit challenges oil production activities occurring in a specifically defined area, the "Operational Area," of the Louisiana coast. The term "Operational Area" is used throughout the plaintiffs' petition to describe the geographic extent of the area within which the complained-of operations and activities at issue in this action occurred. The Operational Area at issue in this case lies in West Bay Oil and Gas Field located in Plaquemines Parish.

Twenty-eight of the cases were filed by Plaquemines and Jefferson Parishes in 2013 and then removed to this Court on numerous grounds, including

diversity, OCSLA, maritime and federal question jurisdiction. Of those 2013 cases, the judges of this district designated *Plaquemines Parish v. Total Petrochemical & Refining USA, Inc.*, et al., 13-cv-6693, as the lead case. On December 1, 2014, this Court entered its Order and Reasons remanding the case to state court for lack of subject matter jurisdiction. *Parish of Plaquemines v. Total Petrochemical & Refining USA, Inc.*, 64 F. Supp. 3d 872 (E.D. La. 2014). After that decision all of the other parish cases were eventually remanded by the judges presiding over them.

The cases then progressed in state court until May 2018 when the defendants re-removed the cases on grounds of federal officer removal and federal question jurisdiction.[2] Although the SLCRMA did not go into effect until 1980, the plaintiffs' allegations (as clarified by a preliminary expert report produced in

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[2] Federal officer removal was a new theory supporting removal but federal question jurisdiction had been raised in the 2013 removals and rejected. As a general rule, once a case is remanded to state court, a defendant is precluded only from seeking a second removal on the same ground. *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 492 (5th Cir. 1996). The prohibition against removal "on the same ground" does not concern the theory on which federal jurisdiction exists, *i.e.*, federal question or diversity jurisdiction, but rather the pleading or event that made the case removable. *Id.* (citing *O'Bryan v. Chandler,* 496 F.2d 403, 410 (10th Cir. 1974)). Even though the Court rejected federal question jurisdiction in 2014, the defendants identified a new basis for federal question jurisdiction when they re-removed the SLCRMA cases in 2018. That new basis for federal question jurisdiction has now been firmly rejected by the Fifth Circuit foreclosing federal question jurisdiction as a basis for removal in any of the pending SLCRMA cases.

2018—the *Rozel* report) triggered the potential applicability of the statute's grandfathering provision, La. R.S. § 49:214.34(C)(2), which placed at issue pre-SLCRMA conduct, some of which occurred during World War II. The defendants were convinced that their World War II era activities presented a new opportunity for removal, *i.e.*, federal officer removal.[3] Although all of the SLCRMA cases were re-removed in 2018, only a subset of them actually involved World War II era activities.

This time the judges of this district designated *Plaquemines Parish v. Riverwood Production Co., Inc., et al.*, 18-cv-5217, assigned to the late Judge Martin L.C. Feldman, as the lead case ("*Riverwood*"). This Court (like the other judges of this district) stayed the six cases assigned to it (including this one) pending the decision in *Riverwood*.[4] A similar approach was adopted in the Western District of Louisiana because several SLCRMA cases had been removed in that district too. The lead case chosen in the Western

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[3] World War II era activities have become relevant to this case because the SLCRMA's grandfathering clause exempts from the coastal use permitting scheme activities "legally commenced or established" prior to the effective date [1980] of the coastal use permit program, La. R.S. § 49:214.34(C)(2). The plaintiffs' contention is that the defendants' pre- 1980 activities, including those dating back to the 1940s, were not "legally commenced" thereby depriving the defendants of the exemption. Therefore, the defendants' pre-SLCRMA conduct is relevant to the plaintiffs' SLCRMA causes of action in this case.

[4] Most of the cases had been stayed previously at the defendants' behest because the defendants sought to have the Judicial Panel on Multidistrict Litigation coordinate proceedings in the various SLCRMA cases. The Panel denied the request.

District of Louisiana was *Cameron Parish v. Auster Oil & Gas, Inc.,* 18-cv-0677 ("*Auster*"). The cases in this district remained stayed pending the outcomes in *Riverwood* and *Auster*, at times over the plaintiffs' strenuous objections, which included seeking mandamus relief. The defendants had persuasively argued, when opposing the plaintiffs' motions to re-open the cases, that allowing *Riverwood* to proceed to conclusion before taking up any of the other motions to remand in the SLCRMA cases would be beneficial because the cases had common issues.

On May 28, 2019, Judge Feldman issued a comprehensive Order and Reasons in *Riverwood* that explained his conclusion that the case should be remanded to state court. Judge Feldman was persuaded that the removal was untimely; and even if it was timely, the defendants had failed to establish that the requirements for federal officer removal jurisdiction were satisfied, or that the case involved any specific federal issue sufficient to support federal question jurisdiction. *Parish of Plaquemines v. Riverwood Prod. Co.*, No. 18-5217, 2019 WL 2271118 (E. D. La. May 28, 2019) (Feldman, J.). The defendants appealed *Riverwood*, and the Fifth Circuit consolidated it with the appeal in *Auster*, where the presiding judge had likewise granted the plaintiffs' motion to remand. Initially the Fifth Circuit affirmed Judge Feldman's decision based on timeliness grounds, mooting any other jurisdictional issues.[5]

[5] Judge Robert R. Summerhays, who presided over *Auster* in the Western District of Louisiana, had concluded that the removal was timely but that neither federal question jurisdiction nor federal officer removal jurisdiction applied. *Parish of*

Parish of Plaquemines v. Chevron USA, Inc., 969 F.3d 502 (5th Cir. 2020) (withdrawn and superseded). Although en banc rehearing was denied, the panel granted rehearing, withdrew its earlier opinion, and superseded it with one reversing *Riverwood* on the issue of timeliness, but affirming Judge Feldman on the finding that no federal question jurisdiction existed to support removal on that basis.[6] *Parish of Plaquemines v. Chevron USA, Inc.*, 7 F.4th 362 (5th Cir. 2021) ("*Plaquemines I*").

As to the potential for federal officer removal jurisdiction, the Fifth Circuit reversed Judge Feldman, not because he had erred, but solely because the en banc court had decided *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 290 (5th Cir. 2020), after Judge Feldman had issued his decision in *Riverwood*.[7] The Fifth Circuit remanded the *Riverwood* case to

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Cameron v. Auster Oil & Gas Inc., 420 F. Supp. 3d 532 (W.D. La. 2019).

[6] *Plaquemines I* laid to rest the timeliness issue and the issue of federal question jurisdiction, neither of which were challenged beyond the appeal in *Plaquemines I*. Thus, following *Plaquemines I*, the sole issue going forward in *Riverwood* was whether federal officer removal applied. No one questions that *Plaquemines I*'s timeliness determination in favor of the defense, and the rejection of federal question jurisdiction in favor of the plaintiffs, applies with equal force to all of the removed SLCRMA cases. For those issues there is simply no basis to legitimately distinguish the other SLCRMA cases from *Riverwood*.

[7] As described by Judge Feldman, in *Latiolais* the Fifth Circuit "overhauled its federal-officer jurisdictional test" by eschewing the "causal nexus" element of the test in favor of a new standard that encompassed a "broader and elusive" "related to" element. *Parish of Plaquemines v. Riverwood Prod. Co.*, No 18-5217, 2022 WL 101401, at *3 (E.D. La. Jan. 11, 2022).

Judge Feldman to determine, now with the benefit of *Latiolais*, whether federal officer jurisdiction applied. *Plaquemines I*, 7 F.4th at 365.

Unpersuaded that *Latiolais* changed the outcome, Judge Feldman issued his decision finding once again that the defendants were not entitled to remove the case under federal officer removal, that the case did not belong in federal court, and that the motion to remand should be granted.[8] *Parish of Plaquemines v. Riverwood Prod. Co.*, No. 18-5217, 2022 WL 101401, at *3 (E.D. La. Jan. 11, 2022). The Fifth Circuit affirmed, *Parish of Plaquemines v. Chevron USA, Inc.*, No. 22-30055, 2022 WL 9914869 (5th Cir. Oct. 17, 2022) ("*Plaquemines II*"), denied rehearing, denied rehearing en banc, and even denied the removing defendants' motion to stay issuance of the mandate while the defendants sought a writ of certiorari from the United States Supreme Court.

With no stay in place, the defendants in *Riverwood* filed their petition with the United States Supreme Court for review of the federal officer removal issue. The Fifth Circuit issued the *Riverwood* mandate on December 15, 2022, and Judge Sarah S. Vance, who was assigned the case following Judge Feldman's death, remanded the *Riverwood* action to state court. Given that the Fifth Circuit refused to

[8] It is not surprising that *Latiolais* did not change the outcome in *Riverwood* because Judge Feldman's decision in *Riverwood* did not turn on the eschewed causal nexus element of federal officer removal. Rather, Judge Feldman had explained why the removing defendants in *Riverwood* had not satisfied the "acting under" requirement for federal officer removal, and the test for that requirement had not been affected by *Latiolais*.

issue a stay in *Riverwood*, and as a result *Riverwood* itself was returned to state court notwithstanding the pending writ application, the suggestion that the Court should delay ruling on the motions to remand in its own SLCRMA cases pending further litigation in federal court was not persuasive. (CA18-5238, Rec. Doc. 79, Order and Reasons at 6). Therefore, on February 15, 2023, this Court remanded to state court Civil Actions 18-5238, 18-5262, 18-5265, which did not involve any World War II era conduct upon which to argue in support of federal officer removal. The Court noted when remanding those cases that if federal officer jurisdiction was lacking in *Riverwood* which *did* involve wartime activities, it certainly could not apply to a case that did *not* involve wartime activities. (Rec. Doc. 79, Order and Reasons at 6-7). Further, those cases did not involve a party with a World War II era refinery contract, which became the basis for the new theory of federal officer removal at issue in this case. And with the potential for federal question jurisdiction now firmly foreclosed by *Plaquemines I* and *Plaquemines II*, the defendants in Civil Actions 18-5238, 18-5262, and 18-5265 had no non-frivolous arguments to make in support of removal in those cases.[9]

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[9] Moreover, the Court had reviewed the petition for certiorari filed in the *Riverwood* case and had concluded that even if both questions presented in the petition were answered in the affirmative, it would not affect the remand decision in Civil Actions 18-5238, 18-5262, and 18-5265. Those civil actions involved neither World War II era activities nor any defendant implicated by the refinery argument (discussed below) that the Court referred to (by the name "the Related Refinery Case argument") when remanding those other cases.

The issue of the pending writ application in *Riverwood* has become a moot point because on February 27, 2023, after all of the briefing was concluded in this case, the United States Supreme Court denied the *Plaquemines II* writ application. *Chevron USA, Inc. v. Plaquemines Parish*, No. 22-715, 2023 WL 2227757 (U.S. Feb. 27, 2023). Thus, the Fifth Circuit's *Plaquemines I* and *Plaquemines II* decisions have now conclusively resolved the jurisdictional issues presented in *Riverwood*.[10]

In short, *Riverwood* holds that the removal in 2018 was timely, federal question jurisdiction was not present, and none of the removing defendants' several theories for satisfying the "acting under" requirement for federal officer removal jurisdiction had merit, this latter issue being grounded on the removing defendants' World War II era activities and on World War II era refinery contracts that belonged to other parties. *Riverwood* dealt a heavy blow to the defendants, who had been arguing in this district for years (when opposing the plaintiffs' periodic attempts to adjudicate motions to remand in certain of the SLCRMA cases) that *Riverwood* would resolve jurisdictional issues that cut across all of the removed SLCRMA cases. While *Riverwood* was a lost cause, the

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A notice of appeal has been filed by the defendants as to the remand orders in Civil Actions 18-5265 and 18-5238.

[10] In *Auster*, Judge Summerhays concluded on remand that *Latiolais* did not change his decision as to federal officer removal as well. *Parish of Cameron v. Auster Oil & Gas, Inc.*, No. 18-cv-0677, 2022 WL 17852581 (W.D. La. Dec. 22, 2022). Judge Summerhays issued his decision after the Fifth Circuit had already affirmed Judge Feldman in *Plaquemines II*. *Auster* has been appealed but as of this writing the appeal is in its infancy.

defendants in the other SLCRMA cases like this one rallied to find a way to distinguish their cases from *Riverwood*, and hence a new refinery-based argument for federal officer removal was born. As explained in greater detail below, the Removing Defendants' new refinery argument purports to be based on an observation that the Fifth Circuit made in dicta in *Plaquemines II* pertaining to refineries that had federal contracts during the World War II era, and the potential for federal officer removal to be available for those refineries.

The remaining three SLCRMA cases pending in this Section, of which the instant case is one, involve World War II era oil production activities, that although conducted during a time of significant governmental regulation, will not (without more) suffice for federal officer removal—this is precisely what *Riverwood* dictates and the Removing Defendants have conceded this argument. But the Removing Defendants contend that this case involves a defendant who not only engaged in World War II era oil production activities in the Operational Area but who also used some of that Operational Area crude to perform under its own World War II era federal refinery contract, thereby distinguishing this case from *Riverwood* in a material and outcome-altering way. The availability of a federal forum for this case and the handful of SLCRMA cases that are still pending in federal court depends solely on whether the requirements for federal officer removal are satisfied

based on the defendants' latest refinery-contract-based theory for federal officer removal.[11]

II.

The plaintiffs herein maintain that the relevant jurisdictional factual and legal issues presented in the present case are indistinguishable from the *Riverwood* case and *Riverwood* therefore controls the removal/remand decision in this case. According to Plaintiffs, *Riverwood* implicitly rejected the very refinery argument that the Removing Defendants are making now, and this case should be remanded to state court without further delay.

According to the Removing Defendants, *Plaquemines II*, albeit in dicta, actually outlined the specific facts that would give rise to federal officer removal when World War II era activities are present, and this particular case presents the very scenario that the Fifth Circuit was referring to when distinguishing a non-removable case like *Riverwood*

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[11] The Court notes that very recently Judge Eldon E. Fallon of this district remanded two of his SLCRMA cases, Civil Actions 18-5206 and 18-5242. After explaining that he had kept his SLCRMA cases stayed based on the understanding that the outcome in *Riverwood* would be determinative of federal jurisdiction in all of the other SLCRMA cases in this district, Judge Fallon proceeded to address and reject the removing defendants' new federal officer removal theory based on a World War II era refinery contract. *Parish of Jefferson v. Destin Oper. Co.*, No. 18-5206, 2023 WL 2772023 (E.D. La. Apr. 4, 2023); *Parish of Jefferson v. Equitable Petrol. Corp.*, No. 18-5242, 2023 WL 2771705 (E.D. La. Apr. 4, 2023). So Judge Fallon has already rejected the same argument that is before the Court in the instant motion to remand. The Court agrees wholeheartedly with Judge Fallon's reasoning.

from a removable case like this one. To the point, this case involves a World War II era refinery contract unlike those relied upon in *Riverwood*, that satisfies the "acting under" requirement for federal officer removal where *Riverwood* failed. Therefore, so say the Removing Defendants, *Riverwood* does not control the remand decision here, this case satisfies all of the requirements for federal officer removal, and the plaintiffs' motion to remand should be denied.

The Court will not dwell on the reasons that it was persuaded that *Riverwood* would provide all of the answers necessary to adjudicate the propriety of removal in all of the other SLCRMA cases, including this one,[12] or that the defendants have used *Plaquemines II* as a guide to craft a new removal theory that navigates around the jurisdictional obstacles of *Riverwood*. The Court likewise will not dwell on the question of whether the ultimate rejection of federal officer removal in *Riverwood* by *Plaquemines II* applies with equal force to all of the remaining SLCRMA cases. Rather, the Court begins it analysis with *Riverwood* but proceeds to address the merits of the Removing Defendants' new theory for federal officer removal.

The Court will assume the reader's familiarity with Judge Feldman's rulings in *Riverwood*, and the Fifth Circuit's *Plaquemines I* and *Plaquemines II*

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[12] Judge Fallon alluded to this in his reasons when granting the motions to remand filed in his cases. Those motions were granted, however, on the merits of the defendants' new theory of federal officer removal. See note 11 above.

decisions.[13] But in order to understand the specific removal argument that the Removing Defendants are making in this case and why they believe that this case succeeds where *Riverwood* failed, and to provide context for the dicta in *Plaquemines II*, a short synopsis of *Riverwood*'s theory of federal officer removal jurisdiction, and the reasons that it was rejected, is helpful.

As a reminder, the federal officer removal statute allows for "any officer (or any person ***acting under*** that officer) of the United States or of an agency thereof . . . for ***or relating to*** any act under color of such office . . ." to remove to federal court a civil action commenced in state court against him." 28 U.S.C. § 1442(a)(1) (emphasis added). Under this statute, the removing defendant has the burden of showing that 1) it has asserted a colorable federal defense, 2) it is a "person" within the meaning of the statute, 3) it has acted pursuant to a federal officer's (or agency's) directions, and 4) the charged conduct is connected or associated with an act pursuant to a federal officer's directions. *Plaquemines II*, 2022 WL 9914869, at *2 (citing *Box v. PetroTel, Inc.*, 33 F.4th 195, 199 (5th Cir. 2022)).

The first two prongs of the test were not problematic for the removing defendants in *Riverwood*; the third prong, often referred to as the

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[13] For clarity, the Court points out that at times it refers to *Riverwood* when in context the Court is actually referring generally to some aspect of the Fifth Circuit's *Plaquemines I* and *Plaquemines II* decisions. The Court will at times refer specifically to *Plaquemines I* and *Plaquemines II* for points specific to one or the other of those opinions.

"acting under" prong, presented the stumbling block. The *Plaquemines II* panel declined to reach the fourth prong for federal officer removal since it was a moot point.

The removing defendants in *Riverwood* were not officers of the United States or of any agency of the United States—they were private corporate parties being sued for their oil producing activities in the coastal parishes of Louisiana. As private parties, the removing defendants could only remove under § 1442(a)(1) if they could establish that they had "acted under" an officer or agency of the United States when they engaged in the oil producing activities being challenged in the plaintiffs' lawsuit.

While a private party's contract with the federal government does not guarantee satisfaction of "acting under," it certainly goes a long way when trying to establish that requirement for federal officer removal.[14] Of course the specific activities being challenged in *Riverwood* (as in this case and all of the SLCRMA cases) were oil production activities and no defendant in *Riverwood* (or any SLCRMA case including this one) had a contract with the federal government for oil production at any time, much less during the World War II era. The removing defendants in *Riverwood* therefore crafted several theories as to why they had "acted under" a federal

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[14] *See, e.g.*, *St. Charles Surgical Hospital, LLC v. Louisiana Health Service & Indemnity Co.*, 935F.3d 352, 356 (5th Cir. 2019) (examining the terms of the contract at issue to search for the requisite level of guidance and control over the private party before concluding that the private party's contract with a federal agency satisfied the acting under prong).

officer when engaging in World War II era oil producing activities, theories which were based in large part on the federal government's extensive regulation and oversight of the oil industry during World War II. The removing defendants were convinced that the extensive government regulation and oversight that they operated under during World War II elevated them to the level of federal contractors, even in the absence of an actual contract. That theory was rejected both by Judge Feldman and by the Fifth Circuit because Supreme Court precedent foreclosed the suggestion that a person could be acting under a federal officer when operating in an industry regulated by the federal government, regardless of how extensive that regulatory scheme might be. *See Watson v. Philip Morris Cos.*, 551 U.S. 142 (2007) (addressing and rejecting federal officer removal by a cigarette manufacturer). Complying with extensive federal regulations neither created a "special relationship" with the government nor rose to the level of acting under the federal government's direction for purposes of federal officer removal jurisdiction.

The removing defendants also argued in *Riverwood* that at the very least they should be treated as federal subcontractors because even though they had no contracts of their of their own with the federal government for oil production, *they did have contracts with refineries who had contracts with the federal government* to deliver fuel to be used in the war effort. But the panel rejected that argument in *Plaquemines II* because the removing defendants had not shown that they were subjected to the federal government's guidance or control as subcontractors. 2022 WL 9914869, at *4. Afterall, the removing

defendants in *Riverwood* were oil producers not oil refiners and they could not satisfy the "acting under" prong by piggy-backing on federal contracts to which they were not parties, at least not in the absence of demonstrating the necessary federal guidance or control.[15]

It was in response to the removing defendants' subcontractor argument, which was grounded on a refinery contract, that the Fifth Circuit quoted in dicta a sentence from Judge Feldman's opinion on remand that has become the basis of the new federal officer removal argument: "As the district court noted, the 'refineries, who had federal contracts and acted pursuant to those contracts, can ***likely*** remove [under § 1442], but that does not extend to [parties] not under that contractual direction." *Plaquemines II*, 2022 WL 9914869, at *4 (quoting *Plaquemines*, 2022 WL 101401) (emphasis added). This single sentence observation has helped embolden the Removing Defendants in trying to distinguish the remaining SLCRMA cases from *Riverwood*.

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[15] Note, not being a named party to a federal contract is not fatal to establishing that a private party was "acting under" a federal officer so long as the contract being relied upon imposes the required level of supervision and control over the party relying on that contract for federal officer removal. *See Cloyd v. KBR, Inc.*, No. 21-20676, 2022 WL 4104029, at *3 (5th Cir. Sept. 8, 2022) (not published); *Trinity Home Dialysis, Inc. v. Wellmed Networks, Inc.*, No. 22-10414, 2023 WL 2573914, at *3 (5th Cir. Mar. 20, 2023) (not published). In *Riverwood* none of the refinery contracts relied upon demonstrated any level of supervision or control vis à vis the removing defendants and this was fatal to their position.

Although all of the *Riverwood* defendants were sued for oil production activities (not refining activities), at least one of those defendants, Humble Oil (predecessor to Exxon Mobil), had been an oil producer *and* a refiner during World War II. Humble Oil had not only operated the Potash Field, which was part of the Operational Area in *Riverwood*, but its refinery had also supplied aviation fuel to the government during World War II pursuant to a federal contract. For reasons not explained in *Riverwood*, Exxon did not rely on that contract when arguing in favor of federal officer removal, *Riverwood*, 2022 WL 101401, at *7 n.14 (noting that Humble Oil was not relying on its own refinery contract in support of its "acting under" argument), instead relying on the federal contracts of the refineries that Humble had supplied with the Potash Field crude. In other words, in *Riverwood* none of the Potash Field crude production, which was the basis of the plaintiffs' allegations in the case, was actually sent to Humble's refinery to perform under its own federal contract.[16]

Obviously, the removing defendants in *Riverwood* were not blind to the potential for federal officer removal based on World War II era refinery contracts with the federal government because they tried mightily to use them to their advantage. *Riverwood* expressly rejected the notion that an oil producer defendant that sent its Operational Area crude to another company (including an affiliate company) for refining under a federal contract "acts under" a federal officer for purposes of removal. It bears repeating that

[16] According to Plaintiffs, the Potash Field crude was sent to a Humble affiliate for refining.

the problem with the refinery contracts in *Riverwood* was not the defendants' lack of privity with the federal government but rather that the refinery contracts presented in *Riverwood* did not impose the necessary level of federal guidance or control over the oil producer defendants who wanted to rely on those contracts for federal officer removal.

The scenario presented in the instant case involves removal by a World War II era oil producer defendant that, like Humble Oil in *Riverwood*, also happened to have a federal refinery contract during World War II but who *did* refine some of its Operational Area crude in performing under that federal contract. The Removing Defendants point out that in the instant case Gulf Oil Corp., a predecessor to removing defendant Chevron U.S.A., Inc., was acting as *both* a refiner who provided refined petroleum products to the government pursuant to a contract, *and* as a producer of crude oil in the Operational Area of this case. Whereas in *Riverwood* no individual corporate defendant produced the crude that it refined pursuant to a federal contract, the Removing Defendants point out that Gulf Oil produced oil from the Operational Area in this case and transported it to its own refinery, who then performing under its wartime government contract, used that same crude to produce aviation fuel for the government. The Removing Defendants contend that such a defendant would satisfy the "acting under" prong of federal officer removal, the prong where *Riverwood* failed, rendering removal to federal court proper.

As the Court explains below, the refinery contract in this case is no different than the refinery contracts relied upon in *Riverwood* because it imposed no federal supervision or control whatsoever over Gulf Oil's oil production activities. One aspect of *Riverwood* that does cut across all of the SLCRMA cases is that the defendants cannot show that any one of them acted under a federal officer when engaging in oil production activities during World War II. So crucially, the Removing Defendants have altered their "acting under" argument by abandoning any effort to establish that any defendant acted under a federal officer when engaging in oil production activities, which is what this lawsuit and all of the SLCRMA lawsuits are about. The Removing Defendants now contend that the more relaxed post-*Latiolais* connection test relieves them of that burden under the facts of this case. Whereas in *Riverwood* the defendants struggled and failed to prove that they had acted under a federal officer when engaging in oil production activities, the Removing Defendants' new theory is that defendant Gulf Oil acted under a federal officer when refining aviation fuel during World War II pursuant to a federal supply contract. Then since Gulf sent some of the Operational Area's crude to its refinery to use when performing under the federal contract, Gulf's crude oil production activities, including the activities being challenged in this lawsuit, are related to the performance under the refinery contract, thereby making the case removable.

III.

The Court now turns to the Motion to Remand filed in this action and to the merits of the Removing

Defendants' current argument in support of federal officer removal for this case.

The Removing Defendants' argument in support of federal officer removal in this case is based on the wartime activities of Gulf Oil Corp., a predecessor to defendant Chevron U.S.A., Inc., who is one of the Removing Defendants.[17] During World War II, Gulf was an integrated oil company having both "upstream" oil production operations such as those being challenged in the Operational Area delineated in this lawsuit, and "downstream" operations such as the refining of crude oil into gasoline, fuel, and other petroleum products. No one would dispute that crude oil is the primary component that a refinery uses to produce fuel and that was certainly the case in the 1940s. But upstream oil producing operations in the field and downstream refining operations at the plant are "two entirely separate operations requiring different skills, and different operations at different locations." *Destin Oper. Co.*, 2023 WL 2772023, at *3) (Fallon, J.); *Equitable Petrol. Corp.*, 2023 WL 2771705, at *3 (Fallon, J.). The separate functions may be performed by different companies or a larger company may do both, as Gulf Oil was doing during World War II.

The Removing Defendants have produced a contract dated August 10, 1942, between Gulf Oil

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[17] So long as a single claim satisfies the federal officer removal statute, the entire case may be removed. *Savoie v. Huntington Ingalls, Inc.*, 817 F.3d 457, 463 (5th Cir. 2016) (citing 14C Charles Alan Wright & Arthur R. Miller, Federal Practice And Procedure § 3726 (4th ed.2015)), *overruled on other grounds, Latiolais*, 951 F.3d at 296 n.9.

Corporation and Defense Supplies Corporation, a federal entity.[18] (Rec. Doc. 63-2 at 90). The contract is a sales or supply agreement for Gulf to refine for and sell to the government 100-octane aviation gasoline to be produced at its refinery located in Port Arthur, Texas. The agreement is more than just a refining/supply agreement because Gulf agreed to expand its Port Arthur, Texas facility in order to increase its production capacity for aviation gas for the government. In return, the government agreed to pay Gulf millions of dollars upfront toward the expansion of the privately-owned facility. The contract does not mention crude oil production.

The Court will assume that in light of the federal contract, Gulf was acting under a federal officer to produce military petroleum products at its refinery in Port Arthur, Texas during World War II.[19]

Next, in the interest of resolving any factual disputes in favor of maintaining federal jurisdiction,[20]

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[18] According to the Removing Defendants' expert, the Defense Supplies Corporation ("DSC") was a government corporation organized in August 1940 as a subsidiary of the Reconstruction Finance Corporation to finance plant expansion and purchase 100-octane aviation gasoline. (Rec. Doc. 63-1, Declaration of Alfred M. ("A.J.") Gravel at 11 n.7).

[19] The plaintiffs dispute that the Gulf Oil refining contract contains the requisite level of supervision and control necessary to satisfy the acting under prong. *See* note 14 above.

[20] Though generally remand to state court is favored when removal jurisdiction is questionable, removal jurisdiction under the federal officer removal statute must be broadly construed resolving any factual disputes in favor of federal jurisdiction. *Joseph v. Fluor Corp.*, 513 F. Supp. 2d 664, 671 (E.D. La. 2007) (Fallon, J.) (citing *Willingham v. Morgan,* 395 U.S. 402, 407

the Court will assume that in 1942, on a regular basis, Gulf extracted oil from the Operational Area at issue in this lawsuit, and transported that crude to its Port Arthur refinery, where it was used to make aviation fuel for the government under the contract. The Removing Defendants' expert's report refers only to a March 1942 delivery of crude from West Bay Field to the Port Arthur refinery, (Rec. Doc. 63-1, Gravel declaration ¶ 148), which predates the federal contract but the Court will not belabor this point. Also, the Court will assume that production was ramped up in the Operational Area during World War II at least in part for the purpose of making aviation fuel in Port Arthur, Texas in accordance with the federal contract.

Having made the foregoing legal and factual assumptions in favor of the Removing Defendants, one need only follow the crude as it traveled from the Operational Area of the Louisiana coast to the refinery in Port Arthur, Texas, to conclude that the World War II era oil production operations in West Bay field are connected to Gulf's aviation gas refining in Port Arthur, the latter being conducted pursuant to a federal contract. Recognizing, as the Removing Defendants do, that crude oil production, much less the operations being challenged in this case, were not under federal direction, the final piece of the federal officer removal puzzle turns on a legal question—can the related to prong of federal officer removal as broadened in *Latiolais* be used to relieve the Removing

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(1969); *Louisiana v. Sparks,* 978 F.2d 226 (5th Cir.1992)). Unlike other removal statutes, the analysis proceeds "without a thumb on the remand side of the scale." *Trinity Home Dialysis*, 2023 WL 2573914, at *2 (citing *Latiolais*, 951 F.3d at 290).

Defendants of having to show—which they cannot do—that a federal officer directed Gulf's oil production activities. Or put another way, can the Removing Defendants satisfy the acting under prong by relying on federal directives governing conduct (refining) that is not implicated by the plaintiffs' lawsuit.

In *Latiolais* the en banc Fifth Circuit recognized that federal officer removal is not just for acts under a federal officer but also for those "relating to," or connected or associated with those federal acts. *Latiolais*, 951 F.3d at 296. So for instance, in *Latiolais* a ship builder who had refurbished a navy vessel pursuant to a government contract that required asbestos was allowed to remove the plaintiff's suit grounded on the defendant's negligence in failing to warn him about the hazards of asbestos and to provide adequate safety equipment—conduct that was not dictated by the government contract and therefore was not taken pursuant to a federal officer's directions. Removal was allowed because it was not necessary to show that any specific government directive was the moving force of (caused) the negligence being sued upon. It was enough that the plaintiff's negligence claims were related to a federal directive to use asbestos in the refurbishing of the vessel.

The Removing Defendants' position is that just like the defendant in *Latiolais* could remove without showing that the complained-of conduct (failure to warn and failure to provide safety equipment) occurred at the behest of federal officers, they do not have to show that their oil production activities occurred at the behest of federal officers. It is enough,

say the Removing Defendants, that Gulf's oil production activities are related to its activities as a refiner acting under a federal officer, and that both of these sets of activities came together in an integrated corporate entity. And the Removing Defendants contend that to hold them to any other standard would be to improperly conflate the "acting under" and "for or relating to" elements of the test in a way that simply reimposes the causal nexus requirement that the Fifth Circuit jettisoned in *Latiolais*.

To be sure, the Removing Defendants' latest argument in support of federal officer removal is creative and does have a superficial appeal to it. But the Court is persuaded that the argument fails because this case satisfies neither the acting under requirement nor the related to requirement for federal officer removal. The acting under and related to requirements for federal officer removal are distinct and both must be satisfied. *St. Charles Surgical Hosp., L.L.C. v. Louisiana Health Serv. & Indem. Co.*, 990 F.3d 447, 454 (5th Cir. 2021). The Removing Defendants cannot use the separate "related to" prong to circumvent the requirements of the distinct "acting under" prong when the federal contract that they are relying upon contains no federal directives whatsoever—none—related to the plaintiffs' allegations in this lawsuit.

While *Latiolais* abandoned the stringent causal nexus test to recognize that the specific conduct being challenged need not have been directed by a federal officer, it nonetheless tethered its analysis to the specific federal directive that the plaintiff's claims were related to, *i.e.*, the directive to use asbestos in the

refurbishment of a navy vessel. The defendant was acting under a federal officer when refurbishing the vessel for the navy, and in particular when using asbestos in the project, but it would no longer be necessary after *Latiolais* to show that any specific government directive was the cause of the negligence being sued upon. So while post-*Latiolais* the reach of the related to prong brings conduct not specifically directed by a federal officer into the scope of removal, the conduct must relate nonetheless to carrying out the directives of a federal officer. This is not the same as saying that a federal officer must have directed the specific conduct being challenged.

This case lacks any connection between crude oil production activities and the directives of a federal officer as dictated by the federal contract. The Removing Defendants have attempted to elide past that problem by defining the federal directive as broadly as possible, *i.e.*, produce military petroleum products at the refinery in Port Arthur, Texas, and then creating a factual connection between oil production in Louisiana to federal activity at the refinery. But every case that the Court has reviewed, including the post-*Latiolais* decisions, that grounds federal officer removal on relatedness to a federal contract, examines the directives of that contract when determining whether all of the requirements for federal officer removal are met, and in particular whether the plaintiff's claims relate to the directives of a federal officer.

But in this case the Removing Defendants fail to point to a single directive in the Gulf contract that touched upon its upstream oil production activities in

Louisiana or anywhere else for that matter. No directive in the contract has anything to do with upstream oil production. In fact, the contract does not mention where the Port Arthur refinery was to get the large amounts of crude oil that would be necessary to feed the refinery although part (d) of the Price Escalation section does allude to the possibility that Gulf may at times purchase refining components from other suppliers. (Rec. Doc. 63-2at 9). The contract is simply not concerned with where or how Gulf would obtain the crude oil necessary to produce the fuel that was to be sold to the government at the Port Arthur refinery. While anyone can infer that performance under the contract would require a lot of crude, the contract is utterly silent as where the crude oil was to come from. The contract did not direct, require, or even suggest that Gulf produce its own crude in order to meet its contractual obligations.

So, in no way did the government direct Gulf to produce its own crude, and in no way did Gulf agree to do that as part of the agreement. The agreement does not even allude to the possibility of Gulf producing its own crude to fulfill the contract. The contract does not concern itself with adequate crude supplies, or assurances of ramped up production. No direction or hint is given in that area. Gulf could have sourced the crude from anywhere based on economics, and Gulf obviously left its options open on that front without committing itself. Gulf had complete latitude under the contract to forego producing any crude and instead to buy it on the open market.

In *St. Charles Surgical Hosp., L.L.C. v. Louisiana Health Serv. & Indem. Co.*, 990 F.3d 447, 455 (5th Cir.

2021), the Fifth Circuit recognized that a defendant may be acting under the government pursuant to a contract—like Gulf was in 1942—but it is possible that the alleged conduct underlying the plaintiffs' claims is not connected or associated with (or related to) any federal directive from the government. In other words, a defendant that acts under the government for some purposes does not necessarily act under the government "for all purposes." *Id.*

In this case, Gulf Oil may have acted under a federal officer when refining oil in Port Arthur, Texas but it did not act under a federal officer when producing that oil in Louisiana. And because the Gulf refinery contract only contains directives pertaining to refining, there is no federal directive in the contract to tether Gulf's oil production activities to, including the specific oil production activities at issue in this lawsuit. And Gulf Oil's integrated corporate structure does not change the analysis because just as in *Riverwood*, the problem is not necessarily one of privity but rather that the refinery contracts contain no federal control and supervision as to oil production activities. As such, even if the Removing Defendants have satisfied the acting under requirement for "some purpose" like refining they cannot relate the plaintiffs' allegations to any federal directive present in this case. As Judge Fallon noted when remanding his similarly situated SLCRMA cases, under the defendants' theory a company with a single federal contract could remove essentially any claim for activities outside the scope of the contract but arguably connected to it, which may mean virtually anything.

Finally, the dicta in *Plaquemines II* that the Removing Defendants rely upon does not support their new theory for federal officer removal and it is a far cry from demonstrating that the Fifth Circuit believed that an oil producer who acted as both a producer and a refiner pursuant to a federal contract could remove so long as it refined some of the crude from the Operational Area in that case. The defendants read much into a single unremarkable statement that refineries with their own federal contracts would "likely" be able to remove. But the Fifth Circuit would not have been suggesting that refineries could remove for claims based on oil production activities because refineries do not produce crude and they do not engage in oil producing activities like those being challenged in this lawsuit. Common sense would dictate that what the appellate court meant was that the refineries whose federal contracts the *Riverwood* defendants were trying to latch onto could satisfy the acting under requirement and remove if they had been sued for activities taken pursuant to the federal directives in their refinery contracts, *i.e.*, refining activities. The Removing Defendants' reliance on the Fifth Circuit's dicta in *Plaquemines II* is misplaced.

In sum, even beyond the holdings of *Riverwood, Plaquemines I*, and *Plaquemines II*, the Court is persuaded that the Removing Defendants' current refinery-contract-based argument lacks merit, that federal officer removal jurisdiction does not apply to this case, and that the plaintiffs' motion to remand must be granted.

Accordingly and for the foregoing reasons;

IT IS ORDERED that the Motion to Remand (Rec. Doc. 62) filed jointly by the plaintiff, the Parish of Plaquemines, and the plaintiff-intervenors the State of Louisiana, through the Louisiana Department of Natural Resources, Office of Coastal Management, and its Secretary, Thomas F. Harris, and the State of Louisiana *ex rel.* Jeff Landry, Attorney General is GRANTED. This matter is REMANDED to the state court from which it was removed.

April 18, 2023

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Jay C. Zainey

United States District Judge

Appendix E

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

No. 18-cv-00688

PARISH OF CAMERON,

Plaintiff,

v.

APACHE CORP. OF DELAWARE, et al.,

Defendants.

Filed: Dec. 22, 2022

JUDGMENT

The present matters before the Court are two Motions to Remand [ECF No. 53 and 57] filed by the Plaintiffs. For the reasons stated in the Court's Memorandum Ruling in the related case of Parish of Cameron, et al v. Auster Oil & Gas, Inc., et al, Civil Action Number 2:18-cv-677,

IT IS ORDERED THAT the Motions to Remand [ECF No. 53 and 57] are GRANTED. In order to permit the Defendants an opportunity to seek an extended stay of this ruling, the Court will temporarily stay the effect of the remand for a period of twenty (20) days. If no further stay is entered by this or a higher court within twenty (20) days, the

Clerk is directed to transmit the case back to the state court.

THUS DONE in Chambers on this 22nd day of December, 2022.

[handwritten: signature]

Robert R. Summerhays

United States District Judge

Appendix F

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

No. 18-cv-00677

PARISH OF CAMERON, et al.,
Plaintiff,

v.

AUSTER OIL & GAS INC., et al.,
Defendants.

Filed: Dec. 22, 2022

REASONS FOR DECISION

The present matters before the Court are a Motion to Remand [ECF No. 67] filed by the Parish of Cameron and a Motion to Remand [ECF No. 71] filed by intervenor-plaintiffs, the State of Louisiana ex rel., the Louisiana Attorney General, and the Louisiana Department of Natural Resources (hereafter, state and parish parties referred to collectively as "Plaintiffs"). The original removal was based on the "federal-officer removal" provision in 28 U.S.C § 1442(a)(1). The Court had previously granted the two motions to remand.[1] On appeal, the United States

[1] ECF No. 147.

Court of Appeals for the Fifth Circuit vacated the Court's remand order and remanded the case for the Court to consider whether the circuit court's intervening decision in *Latiolais v. Huntington Ingalls, Inc.*[2] supports removal under section 1442(a)(1). Finding that it does not, the Court GRANTS the motions to remand [ECF Nos. 67 and 71].

I.
BACKGROUND

Several Louisiana parishes filed forty-two lawsuits against various oilfield-related defendants[3]

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[2] 951 F.3d 286,290 (5th Cir. 2020)

[3] Alpine Exploration Companies, Inc., Anadarko E&P Onshore, LLC, Anderson Exploration Company, Incorporated, Apache Corporation (Of Delaware), Apache Oil Corporation, Atlantic Richfield Company, Auster Oil and Gas, Inc., Badger Oil Corporation, Ballard Exploration Company, Inc., Bay Coquille, Inc., Bepco, L.P., Bopco, L.P., BP America Production Company, Brammer Engineering, Inc., Burlington Resources Oil & Gas Company, LP, Cedyco Corporation, Central Resources, Inc., Centurion Exploration Company, Chevron Pipe Line Company, Chevron U.S.A. Holdings, Inc., Chevron U.S.A., Inc., Condor Petroleum Corporation, ConocoPhillips Company, Covey Energy, Inc., Crimson Exploration Operating, Inc., Cypress E&P Corporation, Darsey Operating Corporation, Davis Oil Company, Davis Petroleum Corporation, Denbury Onshore, LLC, Denovo Oil & Gas, Inc., Devon Energy Production Company, L.P., Diasu Oil & Gas Company, Dominion Oklahoma Texas Exploration & Production, Inc., Endeavor Energy Resources, L.P., Energen Resources Corporation, Energy Properties, Inc., Energyquest II, LLC, Enervest Operating, L.L.C., Estate of William G. Helis, Exchange Oil & Gas Corporation, Exco Resources, Inc., Exxon Mobil Corporation, Fieldwood Sd Offshore LLC, Freeport Sulphur Company, Freeport-Mcmoran Oil & Gas L.L.C., Gas Transportation Corporation, Graham Royalty, Ltd., Great

(hereafter, all defendants in these matters will collectively be referred to as "Defendants") in state court alleging violations of permits issued under the

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Southern Oil & Gas Company, Inc., Gulfport Energy Corporation, Helis Oil & Gas Company, L.L.C., Henry Production Company, Inc., Hess Corporation, Hilcorp Energy Company, Hilliard Petroleum Inc., Linder Oil Company, A Partnership, Honeywell International, Inc., HRC Energy Holdings (La), Inc., Hunt Oil Company, Iberia Operating Corporation, Indian Exploration, Inc., Inexco Oil Company, Jones Co., Ltd., Kerr-Mcgee Oil And Gas Onshore LP, Kilroy Company Of Texas, Inc., La Mesa Production Inc., Latex-Star, Inc., Leads Resources L.L.C., Linder Oil Company, A Partnership, LLOG Exploration & Production Company, L.L.C., LLOG Exploration Company, L.L.C., Lopco, Inc., Louisiana Energy Production LLC, Lyons Petroleum, Inc., Mar-Low Corporation, Marsh Engineering, Inc., Mccormick Operating Company, Merit Energy Company, LLC, Mobil Oil Exploration & Producing, Mobil Oil Exploration & Producing Southeast Inc., Mosaic Global Holdings, Inc., Northwest Oil Company, Oleum Operating Company, L.C., Omni Operating Co., Oxy USA Inc., Palace Operating Company, Petroquest Energy, L.L.C., Resource Securities Corporation, Resources Investment Corporation, Rogers Oil Co., Sable Minerals, Inc., Samuel Gary Jr. & Associates, Inc., Shell Offshore, Inc., Shell Oil Company, Shocker Energy Of Louisiana, Inc., Shoreline Southeast LLC, SM Energy Company, Southeast Inc., Southport Exploration, Inc., Star Energy, Inc., Swepi LP, SWN Production Company, LLC, Taylor Energy Company, LLC, Texas Pacific Oil Company, Inc., Texas Petroleum Investment Company, The Louisiana Land And Exploration Company, LLC, The Meridian Resource & Exploration LLC, The Texas Company, Toce Energy, L.L.C., Total Petrochemicals & Refining USA, Inc., Transco Exploration Company, Transcontinental Oil Corporation, Union Oil Company of California, Vernon E. Faulconer, Inc., Vintage Petroleum, L.L.C., Wagner Oil Company, Walter Oil & Gas Corporation, WEC Onshore, LLC, White Oak Operating Company, LLC., Whiting Petroleum Corporation, Williams Exploration Company, Xplor Energy Operating Company, Xto Energy Inc., Zadeck Energy Group, Inc., Zenergy, Inc.

State and Local Coastal Resources Management Act of 1978 ("SLCRMA") also known as the Coastal Zone Management Act, La. Rev. Stat. § 49:214.21 *et seq.*, and associated regulations, rules, and ordinances ("CZM laws") based upon the defendants' dredging, drilling, and waste disposal in coastal parishes.[4]

SLCRMA provides a cause of action against companies that either violate a state-issued coastal use permit or fail to properly obtain a coastal use permit when required. The act also contains certain exemptions from the coastal use permitting requirements, namely, uses which do not have a significant impact on coastal waters and activities which were "lawfully commenced" prior to the enactment of SLCRMA—the so-called "historical use" or "lawfully commenced" exemption.[5] Plaintiffs assert that Defendants' pre-SLCRMA activities were not lawfully commenced and therefore do not fall within the exemption.

The cases had been previously removed to this Court on the basis of admiralty jurisdiction, federal jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1349(b)(1), and federal question jurisdiction under 28 U.S.C. § 1331. As for OCSLA, the Court concluded that the activities involved did not take place on the Outer Continental Shelf. The Court also found that admiralty claims brought at law in state court pursuant to the Saving to Suitors' Clause are not removable in the absence of an independent jurisdictional basis. Finally, the Court

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[4] *See, e.g.*, *ECF No.* 1, att. 59, pp. 3-26.

[5] La. R.S. § 49:214.34(C)(2); (A)(10).

held that the defendants could not establish federal question jurisdiction because the remedies sought were specifically limited to those arising under state law.[6] The Court, therefore, remanded the cases to state court.

Defendants then, for a second time, removed this case along with eleven other cases. The current Notice of Removal, filed on May 23, 2018, asserts federal-officer jurisdiction under 28 U.S.C. § 1442(a)(1) and federal question jurisdiction under 28 U.S.C. § 1331.[7] Defendants contend that they first became aware of these removal grounds when they received an expert report in a related case on April 30, 2018.[8] Defendants argued that this expert report reveals for the first time that Plaintiffs' claims primarily attack activities undertaken before SLCRMA's effective date (1980), including activities that were subject to extensive and exclusive federal direction, control, and regulation during World War II.[9]

Plaintiffs filed motions to remand, arguing that (1) Defendants' claim of federal-officer jurisdiction is without merit; (2) Defendants' federal question jurisdiction basis for removal has already been rejected; and (3) removal was untimely because the expert report cited as the basis for removal was received months, if not years, after the removing

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[6] See *Cameron Parish v. Auster Oil & Gas, Inc.*, W.D. La. 2:16-cv-530, ECF No. 89, 101 and 102.

[7] ECF No. 1.

[8] Expert report issued by Plaintiffs in the case of *Parish of Plaquemines v. Rozel Operating Co.* (the "*Rozel Report*").

[9] ECF No. 1.

defendants knew or should have known the factual underpinnings of Plaintiffs' claims. Defendants opposed the motions to remand.[10] On September 26, 2019, the Court granted the two motions to remand, holding that removal was timely but that Defendants had not established grounds to remove under Section 1442(a)(1) nor had they established a basis for federal question jurisdiction.[11] Defendants filed a Notice of Appeal and the Fifth Circuit consolidated the present case with a related action pending in the United States District Court for the Eastern District of Louisiana, *Parish of Plaquemines v. Chevron USA, Inc., et al.*, for purposes of the appeal.[12]

On August 5, 2021, the Fifth Circuit issued an opinion affirming the Court's ruling on the motions to remand in part, reversing the Court's remand orders in part, and remanding both the present case and *Parish of Plaquemines* to the Western District of Louisiana and Eastern District of Louisiana, repectively.[13] The Fifth Circuit ruled that Defendants timely removed the cases from state court.[14] The Fifth Circuit panel also affirmed the rulings of the district courts in both cases that the Defendants had not established grounds for federal question jurisdiction under 28 U.S.C. § 1331. The circuit, however, remanded the cases for both district courts to determine federal-officer removal jurisdiction in light

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[10] ECF Nos. 67, 71.

[11] ECF No. 147.

[12] ECF No. 156.

[13] ECF No. 147.

[14] *Id.* at 8-18.

of the circuit's intervening decision in *Latiolais v. Huntington Ingalls, Inc.*[15] In *Latiolais*, the circuit overruled its prior "causal nexus" requirement for federal-officer removal jurisdiction. On remand, the parties filed supplemental briefs addressing the new test set forth by the circuit in *Latiolais*.

On January 11, 2022, the district court in the Eastern District of Louisiana issued its second ruling on the motion to remand filed in *Parish of Plaquemines v. Chevron*.[16] The district court in *Parish of Plaquemines* applied the Fifth Circuit's new test under Latiolais and granted the motions to remand filed in that case.[17] The defendants in that case then, once again, filed a Notice of Appeal to the Fifth Circuit. On October 17, 2022, the Fifth Circuit issued an opinion affirming the Eastern District's remand order in the *Plaquemines Parish* case.[18]

II.

LAW AND ANALYSIS

A. Federal-Officer Removal.

A defendant may remove any action against "[t]he 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, [sued in] an official or individual capacity for any act under color of such

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[15] 951 F.3d 286, 290 (5th Circuit 2020).

[16] No. 18-5217, 2022 WL 101401 (E.D. La. Jan.11,2022).

[17] *Id.*

[18] *Plaquemines Parish v. Chevron USA. Inc.*, No. 22-30055, 2022 WL 9914869 (5th Cir. Oct. 17,2022).

office."[19] "[F]ederal officer removal under § 1442 is unlike other removal doctrines: it is not narrow or limited."[20] The Supreme Court requires "a liberal interpretation of § 1442(a) in view of its chief purpose—to prevent federal-officers who simply comply with a federal duty from being punished by a state court for doing so."[21] Section 1442 applies to any "private persons 'who lawfully assist' the federal-officer 'in the performance of his official duty.'"[22] Section 1442(a) creates an exception to the "well-pleaded complaint" rule in that "the raising of a federal question in the officer's removal petition . . . constitutes the federal law under which the action against the federal-officer arises for Article III purposes."[23] A defendant may remove a case under section 1442(a) by showing "(1) that it is a person within the meaning of the statute, (2) that it has a colorable federal defense, (3) that it acted pursuant to a federal-officer's directions, and (4) that a causal nexus exists between [its] actions under color of federal office and the plaintiff's claims."[24] There is no dispute that Defendants qualify as "persons" under the first requirement. The Court, however, concluded in its original remand ruling that Defendants could not satisfy the "acting under" or "causal nexus"

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[19] 28 U.S.C. § 1442(a).

[20] *Texas v. Kleinert*, 855 F.3d 305, 311 (5th Cir. 2017).

[21] *State of La. v. Sparks*, 978 F.2d 226, 232 (5th Cir. 1992).

[22] *Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 151 (2007).

[23] *Mesa v. California*, 489 U.S. 121, 136 (1989).

[24] *Legendre v. Huntington Ingalls, Inc.*, 885 F.3d 398, 400 (5th Cir. 2018).

requirement for federal-officer removal jurisdiction under section 1442(a)(1). The "causal nexus" requirement was subsequently overruled in favor of the more lenient test in *Latiolais*.

B. The "Acting Under" Prong.

To satisfy § 1442(a)'s "acting under" prong, a defendant must show "an effort to assist, or to help carry out, the duties or tasks of the federal superior."[25] The *Watson* court distinguished a party's *compliance* with federal regulations from actions "helping the Government to produce an item that it needs."[26] Assistance that "goes beyond simple compliance with the law and helps officers fulfill other basic governmental tasks" meets § 1442(a)'s "acting under" requirement.[27] To establish that a person is "acting under" a federal official, a removing party must show a "substantial degree of direct and detailed federal control over the defendant's work . . . ."[28] This relationship between the defendant and the federal office or official must involve "subjection, guidance, or control."[29] It is not sufficient to merely show that "the relevant acts occurred under the general auspices of a federal office or officer."[30]

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[25] *Watson*, 551 U.S. at 152.

[26] *Id.* at 153.

[27] *Id.*

[28] *In re "Agent Orange" Prod. Liab. Litig.*, 304 F. Supp. 2d 442, 447 (E.D. N.Y.2004).

[29] *Zeringue v. Crane Co.*, 846, F.3d 785, 793 (5th Cir. 2017) (citing *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142 (2007))."

[30] *Ryan v. Dow Chem. Co.*, 781 F. Supp. 934, 947 (E.D.N.Y. 1992)

The cases applying this "acting under" requirement provide useful guidance as to how to draw the line between "direct control" and mere regulation. Many cases where courts have found sufficient control and direction to satisfy the "acting under" requirement involve government contractors who manufacture products according to detailed specifications and oversight by an agency or officer of the federal government.[31] For example, in *Winters*, the plaintiff sued for personal injuries received as a result of exposure to Agent Orange while working as a civilian nurse for the United States Agency for International Development in Vietnam.[32] Diamond Shamrock was a government contractor that supplied the mix of herbicides known as Agent Orange to the United States Defense Department.[33] The Fifth Circuit affirmed the district court's conclusion that Diamond Shamrock was "acting under" a federal

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[31] *See, e.g.*, *Zeringue*, 846 F.3d 785 (5th Cir. 2017) (government directives to use asbestos); *Savoie v. Huntington Ingalls, Inc.*, 817 F.3d 457, 460, 465 (5th Cir. 2016) (government requirement that contractor use asbestos in the thermal installation of Navy ships); *In re Asbestos Products Liab. Litig. (No. VI.)*, 7 F. Supp. 2d 736 (E.D. Pa. 2011) ("acting under" requirement satisfied where government contractor established that the government had approved reasonably precise specifications that called for the use of asbestos and that the contractor's products conformed to those specifications); *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 399 (5th Cir. 1998) (government contracted with the defendants for a specific mixture of herbicides known as Agent Orange); *Holdren v. Buffalo Comps, Inc.*, 614 F. Supp. 2d 129 (D. Mass. 2009) (contractor complied with precise design specifications).

[32] 149 F.3d at 390.

[33] *Id.*

officer or office in supplying this mix of herbicides. The court observed that the Defense Department mandated a specific mixture of herbicides making up Agent Orange and that "the defendants were compelled to deliver Agent Orange to the government under threat of criminal sanctions."[34] The court concluded that the federal government exercised direct control over the composition and production of Agent Orange.[35] In other words, the plaintiffs injuries resulted from an aspect of the product that was mandated and controlled by the federal government under the terms of a contract with Diamond Shamrock.[36]

Similarly, in *Zeringue*, the plaintiff sued multiple defendants for damages caused by asbestos exposure.[37] The plaintiff alleged exposure while deployed with the U.S. Navy as well as exposure when he worked in the Avondale Shipyard near Navy vessels that contained asbestos.[38] The court found that the defendants had "acted under" a federal officer or office with respect to these asbestos exposure claims because the Navy had mandated the use of asbestos insulation in its contract specifications and the defendants complied with those requirements.[39] According to the court, "equipment could not have been installed aboard Navy vessels unless it was first

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[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] 846 F.3d 785.

[38] *Id.* at 788.

[39] *Id.*

determined by the Navy to be in conformity with all applicable Navy specifications."[40] The court further noted that had the defendant not complied with the specifications and provided these products to the government, "the Navy would have had to build those parts instead."[41] In all of these cases, the plaintiffs' claims arose out of conduct *mandated* by the government.

On the other hand, two cases where the courts concluded that the "acting under" requirement was not satisfied illustrate the limits of federal-officer removal: *Watson*,[42] and *In re Methyl Tertiary Butyl Ether ("MTBE") Prod. Liab. Litig*.[43] In *Watson*, the plaintiffs alleged that Phillip Morris manipulated the design of its "light" cigarettes so that they tested for lower levels of tar and nicotine.[44] The industry's testing process for measuring tar and nicotine was operated under the regulatory supervision of the Federal Trade Commission (FTC). The Supreme Court concluded that Phillip Morris was not "acting under" the FTC even though the testing process for tar and nicotine was heavily regulated.[45] The Court noted that a private party's compliance with federal law or acquiescence to a federal agency's order does not satisfy the "acting under" requirement of the federal-officer removal statute, "even if the regulation is

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[40] *Id.* at 792.

[41] *Id.*

[42] 551U.S.142.

[43] 480 F.3d 112 (2d Cir. 2007).

[44] 551 U.S. 142.

[45] *Id.*, at 157.

highly detailed and even if the private firm's activities are highly supervised and monitored."[46] In other words, differences in the degree of regulatory oversight alone cannot bring a regulated party within the contours of section 1442(a):

> As we have pointed out, however, differences in the degree of regulatory detail or supervision cannot by themselves transform Philip Morris' regulatory compliance into the kind of assistance that might bring the FTC within the scope of the statutory phrase "acting under" a federal "officer." And, though we find considerable regulatory detail and supervision, we can find nothing that warrants treating the FTC/Philip Morris relationship as distinct from the usual regulator/regulated relationship. This relationship, as we have explained, cannot be construed as bringing Philip Morris within the terms of the statute.[47]

The Court also distinguished the "government contractor" line of cases, such as the Agent Orange and asbestos cases, by reasoning that the defendants in those cases were assisting the federal government by producing an item that the government required pursuant to a contract.[48] No such contractual relationship existed in the *Watson* case.

In *MTBE Prod Liab. Litig.*, the plaintiffs brought claims against private companies that "manufactured,

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[46] *Id.*, at 143.

[47] *Id.*

[48] *Id.*

refined, marketed, or distributed gasoline containing MTBE" on the grounds that this additive contaminated water supplies.[49] The defendants attempted to remove the case under the federal-officer removal statute on the grounds that the federal Clean Air Act and regulations promulgated by the Environmental Protection Agency (EPA) required them to reformulate their gas with additives such as MTBE to "oxygenate" the gas and therefore reduce emissions in certain metropolitan areas.[50] The district court concluded that the defendants had satisfied the "acting under" requirement for removal on the grounds that the defendants used MTBE because EPA regulations required them to oxygenate their product for certain metropolitan areas.[51] Even though other additives had been approved to oxygenate gasoline, the district court noted that "both Congress and the EPA were aware that the defendants would have to use MTBE in order to comply with the Clean Air Act's requirements."[52] The district court further noted that MTBE was the only approved additive available in a quantity sufficient to comply with the EPA's regulations.[53] The Second Circuit reversed. According to the court, there was no evidence of "an explicit directive in either the Clean Air Act or its implementing regulations" that required the use of

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[49] 480 F.3d at 114.

[50] *Id.*

[51] *Id.*

[52] *Id.* at 126.

[53] *Id.*

MTBE.[54] In other words, while the statute and implementing regulations required defendants to oxygenate their gas, the regulations did not mandate that this be done by the addition of a specific additive, namely MTBE.[55] Nor did the court find evidence that these regulations were implemented with the knowledge that the use of MTBE was the only way that the defendants could comply with the directives of the EPA's regulations.[56]

C. Defendants' "Acting Under" Allegations.

In the present case, Defendants contend that Plaintiffs' claims challenge the following aspects of their pre-SLCRMA activities, and that these activities were governed by federal regulations and directives during World War II:

- how Defendants spaced wells;
- Defendants' use of dredged canals instead of roads;
- Defendants' use of vertically drilled wells;
- Defendant's use of earthen pits and centralized tank batteries;
- Defendants' practices involving water discharged from drilling sites and the failure to re-inject saltwater; and
- Defendants' use of inadequate tubing.[57]

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[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] Defendants' Mem. at 24-31 [ECF No. 97]. The Court notes that Plaintiffs challenge how Defendants have characterized

Defendants characterize the U.S. oil and gas industry as essentially an agent of the federal government during World War II, and that the industry's activities were tightly controlled to support the country's war efforts.[58] They contend that federal regulations and directives issued during the war mandated the activities challenged by Plaintiffs. Specifically, in 1941, President Franklin Roosevelt created the Office of Petroleum Coordinator,[59] which subsequently was renamed the Petroleum Administration for War ("PAW").[60] PAW issued directives to the oil industry to manage the allocation of material for necessary operations and to maximize oil and gas production needed for the war. One example offered by Defendants is PAW-issued directives mandating the spacing of oil wells in order to preserve materials.[61] Defendants argue that since PAW controlled the materials necessary for drilling activities, oil companies were required to comply with PAW mandates in order to function. They also argue that the government set production quotas. Plaintiffs, however, argue that PAW did not "order" oil and gas companies to meet quotas, but rather imposed conservation measures known as "allowables," or

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their allegations but the court need not resolve that dispute in addressing the elements of § 1442(a).

[58] Defendants' Mem. At 13-15 [ECF No. 97].

[59] *See* Exhibit X-10 at 353-54, 359; X-11 at 703 to ECF No. 97.

[60] *See* Exhibit X-9 at 141 to ECF No. 97; see also X-47; X-11 at 738 to ECF No. 97.

[61] *See* Exhibit X-29 to ECF No. 97.

ceilings on the amounts that producers were allowed to produce so that reservoirs were preserved.[62]

On remand from the Fifth Circuit, Defendants filed supplemental briefs and evidence raising an additional ground for federal-officer removal under section 1442(a)(1).[63] Defendants argue that, under *Latiolais*, the removing party's conduct at issue in the case "need only be 'connected or associated' with the federal-officer's directions."[64] Defendants contend that the new test articulated in *Latiolais* provides a basis for federal-officer jurisdiction based not on the conduct of oil and gas producers alone, but on the connection between oil and gas production and downstream refineries that operated under government contracts during World War II.[65] Defendants contend that, in order to satisfy the terms of their contracts and meet government production demands, these contractors required increased production from upstream oil and gas producers.[66] According to Defendants "oil producers were also government subcontractors, operating under government direction, to provide the government with critical input for products required for the war effort, further differentiating their 'special relationship' with the government from mere regulation."[67]

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[62] *See* Exhibit 33 to ECF No. 97.

[63] ECF Nos. 170, 175.

[64] ECF No. 170 at 1.

[65] *Id.*

[66] *Id.* at 2-5.

[67] *Id.* at 14.

D. The Fifth Circuit Addresses the "Acting Under" Requirement in *Plaquemines Parish*.

Following the supplemental briefing in this case, the Fifth Circuit decided the *Plaquemines Parish* case.[68] That case addresses the grounds for federal-officer removal under section 1442(a)(1) in a case with nearly the same factual underpinnings for removal. As here, the defendants in *Plaquemines Parish* argued that federal government regulation of oil and gas production during World War II satisfied the "acting under" requirement for federal-officer removal jurisdiction.[69] The defendants in *Plaquemines Parish* similarly argued that oil and gas producers acted as "subcontractors" to refineries during World War II, that these refineries were government contractors heavily regulated by the federal government during World War II, and that this subcontractor relationship satisfies *Latiolais*' requirement that the conduct at issue be "connected or associated" with the directives of a federal officer.[70] With respect to federal government regulation of oil and gas producers, the Fifth Circuit held that the evidence in the record showed nothing more than the fact that the producers were subject to government regulation.[71] According to the circuit, the removing party's actions "must involve an effort to *assist*, or to help *carry out*, the duties or

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[68] *Plaquemines Parish, et al v. Chevron, Inc., et al*, 2022 WL 9914869 (5th Cir. 2022)

[69] *Id.*

[70] *Id.* at *2-3.

[71] *Id.* at 3.

tasks of the federal superior."[72] The Fifth Circuit concluded that merely complying with federal regulation or cooperating with federal agencies—as the evidence shows in the present case—does not amount to carrying out "the duties or tasks of the federal superior," and thus does not support removal under section 1442(a)(1).[73]

With respect to the defendants' subcontractor arguments, the Fifth Circuit held that there was no evidence in the record of any contract creating a subcontractor relationship with the defendant producers.[74] According to the Fifth Circuit, mere "supplier relationships" are insufficient to create a subcontractor relationship.[75] The circuit further reasoned that, even if a subcontract existed, the presence of a subcontractor relationship is not sufficient to support federal-officer removal jurisdiction unless the subcontractor can independently show how they, as opposed to the prime contractor, were "subject to the federal government's guidance and control."[76] The circuit reiterated that the evidence in the record did not establish the level of control or guidance to support federal-officer removal with respect to the defendant producers. Accordingly, the Fifth Circuit affirmed the Eastern District's order remanding that case to state court.

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[72] *Id.* (*quoting Watson*, 551 U.S. at 151-52) (emphasis in original).

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.* at *4.

E. Have Defendants Established the "Acting Under" Requirement for Federal-Officer Removal under Section 1442(a)(1)?

The Fifth Circuit's analysis in *Plaquemines Parish* did not alter the analysis that this Court must apply in determining the "acting under" prong of section 1442(a)(1). Applying the reasoning of *Watson*, *MTBE Prod. Liab. Litig.*, and *Plaquemines Parish* to the facts of this case, Defendants have not demonstrated the "subjection, guidance, or control" required to show that they were acting under a federal office or officer.[77] First, unlike *Winters* and *Zeringue*, Defendants have not shown that their World War II era activities were mandated by PAW or any other federal agency. For example, Defendants point to no actual federal directive governing well spacing.[78] Nor have they shown that PAW or any other federal agency mandated vertically drilled wells.[79] Defendants have referred to three specific instances of

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[77] *Zeringue v. Crane Co.*, 846 F.3d 785, 793 (5th Cir. 2017) (*citing Watson v. Philip Morris Cos., Inc.*, 551 US 142 (2007))."

[78] Plaintiffs' Mem. at 12 [ECF No.67-1].

[79] *Id.* While Defendants cite specific federal directives, as Plaintiffs point out, these directives do not mandate or otherwise direct and control the activities challenged by Plaintiffs. *Id.* For example, Defendants cite Petroleum Administrative Order (PAO) 11 as an example of a directive banning directional drilling and a PAW letter interpreting PAO 11 to require an exception for directional drilling. Defendants' Mem. at 11. At most, this PAO and PAW letter show that the federal government required an *exception* for directional drilling. This requirement, however, was eliminated eight months after the issuance of PAO 11. *Id.* Moreover, directional drilling was never "banned."

federal involvement with operations in the East and West Hackbeny fields.[80] Each of the three instances involved applications for exceptions to Order M-68, which is the PAW order issued regarding conservation of materials.[81] Each of the three applications were approved and the companies seeking permission were allowed to obtain materials under less stringent requirements.[82] Critically, Defendants have not offered any instances where PAW prohibited any of their activities in these areas. As in *MTBE Prod. Liab. Litig.*, there is no evidence that PAW and other federal agencies directed Defendants' activities or that they mandated how Defendants were to comply with federal regulations and directives. In sum, the record demonstrates little more than a regulated industry complying with the requirements of a federal regulatory regime. But as *Watson* emphasized, compliance with a regulatory regime standing alone does not amount to the control and direction required as grounds for federal-officer removal.[83]

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[80] *See* Exhibit 122 to ECF No. 97 (approved application for an exception to Order M-68 m order to obtain material for 4 wells The Texas Company proposed to drill on less stringent spacing requirements); Exhibit 123 to ECF No. 97 (approved application for an exception to Order M-68 to obtain materials for 12 wells Stanolind Oil and Gas proposed to drill on less stringent spacing requirements); and Exhibit 124 to ECF No. 97 (approved application for an exception to Order M-68 to obtain materials to replace flowlines from above mentioned Stanolind wells).

[81] Exhibit 30 to ECF No. 97.

[82] *See* Exhibit 122 to ECF No. 97; Exhibit 123 to ECF No. 97; and Exhibit 124 to ECF No. 97.

[83] 551 U.S. at 157.

Second, as in *Plaquemines Parish*, the record does not reflect the government contractor relationship that existed in *Winters* and *Zermgue*. In those cases, the courts highlighted the fact that the defendants were supplying products needed by the federal government pursuant to contracts, and that without these contracts the government would have to produce the products themselves. In this context, a state court lawsuit that targeted a contractor's activities under a government contract would threaten the government's ability to procure the goods that it needs. On the other hand, mere compliance with federal regulations does not raise the same policy concern. As explained by the *Watson* Court:

> Without evidence of some such special relationship, Philip Morris' analogy to Government contracting breaks down. We are left with the FTC's detailed rules about advertising, specifications for testing, requirements about reporting results, and the like. This sounds to us like regulation, not delegation. If there is a difference between this kind of regulation and, say, that of Food and Dmg Administration regulation of prescription drug marketing and advertising (which also involve testing requirements), *see Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1316 (C.A.D.C.1998), that difference is one of degree, not kind.[84]

Here, federal agencies likely entered into contracts for the sale of oil, gas, and other petroleum products

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[84] *Id.*

during World War II to support the war effort. But as noted by Plaintiffs, the oil and gas industry includes "upstream" activities—exploration and production of oil and gas—and "downstream" activities—the actual refinement of crude oil into usable petroleum products.[85] Although Defendants gloss over this distinction, any World War II contracts would have generally involved "downstream" refined petroleum products, while the federal regulation at issue here involved "upstream" exploration and production activities.[86] Thus, unlike Winters and Zeringue, the Plaintiffs' claims are not grounded in activities mandated by government contracts but are based on Defendants' compliance with a federal war-time regulatory regime.

Third, as the Court noted in its original ruling. Defendants do not account for the significant role of the *state's* regulation of Defendants during this same time period. Defendants contend that World War II era federal regulations "sidelined" state regulators.[87] The facts in the record do not support this characterization. As Plaintiffs note in their Memoranda in Support of their Motions to Remand, World War II era federal regulation did not displace regulation by the State of Louisiana. Indeed, the record reflects that from 1941 through 1945, the Louisiana Office of Conservation issued 397 field orders directed toward specific fields, and 11 state-

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[85] Plaintiffs' Joint Reply Memorandum [ECF No. 101]

[86] *Id.*

[87] Defendants' Mem. at 16 [ECF No. 97].

wide directories.[88] Plaintiffs point to 101 regulatory hearings held by the Louisiana Department of Conservation in 1943 without any evidence of interference by PAW.[89] Moreover, individual oilfield "allowables"—i.e., the amount that a field could produce over a period of time—were set by the Louisiana Department of Conservation.[90] In light of the extensive, parallel state regulation of the oil and gas industry during this period, the federal government's World War II era regulation of the industry cannot be characterized as so pervasive that it resulted in "subjection, guidance, or control" by the federal government to the extent required to remove under section 1442(a)(1).

Finally, Defendants' new government subcontractor arguments fail for the same reasons that they failed in the *Plaquemines Parish* case. Here, Defendants have pointed to no evidence of any contract creating a subcontractor relationship between Defendants and downstream refiners with respect to refined products sold pursuant to government contracts. As noted by the Firth Circuit in *Plaquemines Parish*, a mere *supplier* relationship does not rise to the level of a government *subcontractor* for purposes of section 1442.[91] Moreover, as in *Plaquemines Parish*, Defendants have not demonstrated that they were "subject to the federal

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[88] Exhibit 1 at 3 [ECF No. 67-3].

[89] Exhibit 6 [ECF No. 67-3].

[90] Exhibits 27-31 [ECF No. 67-3]. PAW exercised its authority over statewide production by setting statewide allowables. *Id.*

[91] 2022 WL 9914869, at*3.

government's guidance and control" apart from the refiners who operated under government contracts during World War II.[92] As explained above, the examples of government guidance and control in the record establish nothing more than the fact that Defendants were subject to government regulation during World War II. This evidence is not a sufficient basis for removal under section 1442(a)(1).[93]

In sum, the record as a whole does not satisfy the "acting under" requirement for federal-officer removal under section 1442(a)(1) in light of the Fifth Circuit's decision in Plaquemines Parish. Defendants' failure to satisfy this requirement for removal requires that the case be remanded to state court.

F. Consideration of *Latiolais*.

Prior to the Fifth Circuit's recent decision in *Latiolais*, a party removing a case under Section 1442(a)(1) had to establish "that the defendants acted pursuant to a federal-officer's directions and that *causal nexus* exists between the defendants' actions under color of federal office and the plaintiffs claims."[94] The *Latiolais* court noted, however, that section 1442(a) was subsequently amended, "altering the requirement that a removable case be 'for' any act under color of federal office and permitting removability of a case 'for *or relating to*' such acts."[95] The Fifth Circuit ultimately concluded in Latiolais that the so-called "causal nexus" requirement adopted

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[92] *Id.*

[93] *Id.* at *3-4.

[94] *Winters*, 149 F.3d at 398 (emphasis added).

[95] *Latiolais*, 951 F.3d at 291 (emphasis added).

in *Winters*—and followed in *Bartel v. Alcoa Steamship Co., Inc.*[96] and its progeny even after the amendment of Section 1442(a)—was no longer viable. According to the court, a removing party need only establish that "the charged conduct is connected or associated with an act pursuant to a federal-officer's directions."[97]

Latiolais' rejection of the strict "causal nexus" test does not change the result in the present case. As the Fifth Circuit subsequently held in Plaquemines Parish, the record does not reflect any connection or association between Defendants and any acts taken at the direction of a federal officer. Rather, the record reflects, at most, compliance with federal regulations. To the extent that Defendants rely on federal directives to refineries during World War II, as explained in Plaquemines Parish, Defendants have come forward with no facts showing anything other than a supplier relationship between Defendants (or their predecessors) and downstream refineries. The Fifth Circuit has already held that a showing of a mere supplier relationship does not establish the necessary connection or association to support removal under section 1442(a)(1).[98]

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In sum, Defendants have not satisfied the "acting under" requirement for federal-officer removal under section 1442(a)(1). Nor have they satisfied the more lenient "connection or association" test articulated in Latiolais. Moreover, in its original decision on this

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[96] 805 F.3d 169 (5th Cir. 2015).

[97] *Id.* at 296.

[98] *Plaquemines Parish*, 2022 WL 9914869 at *4.

Court's ruling on the motions to remand, the Fifth Circuit affirmed this Court's conclusion that it lacked federal question jurisdiction under 28 U.S.C. § 1331. Because there is no jurisdictional basis for this case in federal court, this case must be remanded to state court.

III.

CONCLUSION

For the reasons explained above, the Court GRANTS the two Motions to Remand filed in this matter [ECF Nos. 67 and 71]. In order to permit Defendants an opportunity to seek an extended stay of this ruling, the Court will temporarily stay the effect of the remand for a period of twenty (20) days. If no further stay is entered by this Court or a higher court within twenty (20) days, the Clerk is directed to transmit the case back to the state court.

THUS DONE in Chambers on this 22nd day of December, 2022.

[handwritten: signature]

Robert R. Summerhays

United States District Judge

Appendix G

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

No. 18-cv-00688

PARISH OF CAMERON, et al.,
Plaintiff,

v.

APACHE CORP. (OF DELAWARE), et al.,
Defendants.

Filed: June 13, 2023

REASONS FOR DECISION

The present matter before the Court is Shell USA, Inc.'s Motion for Reconsideration Pursuant to F.R.C.P. 59 [ECF No. 113]. Shell seeks reconsideration of the Court's December 22, 2022, Judgment remanding this case to state court. For the reasons explained below, the Court DENIES the motion.

I.
BACKGROUND

Several Louisiana parishes filed forty-two lawsuits (the "Cameron Parish Cases") against

various oilfield-related defendants (the "Defendants")[1] in state court alleging violations of permits issued

[1] Alpine Exploration Companies, Inc., Anadarko E&P Onshore, LLC, Anderson Exploration Company, Incorporated, Apache Corporation (Of Delaware), Apache Oil Corporation, Atlantic Richfield Company, Auster Oil and Gas, Inc., Badger Oil Corporation, Ballard Exploration Company, Inc., Bay Coquille, Inc., Bepco, L.P., Bopco, L.P., BP America Production Company, Brammer Engineering, Inc., Burlington Resources Oil & Gas Company, LP, Cedyco Corporation, Central Resources, Inc., Centurion Exploration Company, Chevron Pipe Line Company, Chevron U.S.A. Holdings, Inc., Chevron U.S.A., Inc., Condor Petroleum Corporation, ConocoPhillips Company, Covey Energy, Inc., Crimson Exploration Operating, Inc., Cypress E&P Corporation, Darsey Operating Corporation, Davis Oil Company, Davis Petroleum Corporation, Denbury Onshore, LLC, Denovo Oil & Gas, Inc., Devon Energy Production Company, L.P., Diasu Oil & Gas Company, Dominion Oklahoma Texas Exploration & Production, Inc., Endeavor Energy Resources, L.P., Energen Resources Corporation, Energy Properties, Inc., Energyquest II, LLC, Enervest Operating, L.L.C., Estate of William G. Helis., Exchange Oil & Gas Corporation, Exco Resources, Inc., Exxon Mobil Corporation, Fieldwood Sd Offshore LLC, Freeport Sulphur Company, Freeport-Mcmoran Oil & Gas L.L.C., Gas Transportation Corporation, Graham Royalty, Ltd., Great Southern Oil & Gas Company, Inc., Gulfport Energy Corporation, Helis Oil & Gas Company, L.L.C., Henry Production Company, Inc., Hess Corporation, Hilcorp Energy Company, Hilliard Petroleum Inc., Linder Oil Company, A Partnership, Honeywell International, Inc., HRC Energy Holdings (La), Inc., Hunt Oil Company, Iberia Operating Corporation, Indian Exploration, Inc., Inexco Oil Company, Jones Co., Ltd., Kerr-Mcgee Oil And Gas Onshore LP, Kilroy Company Of Texas, Inc., La Mesa Production Inc., Latex-Star, Inc., Leads Resources L.L.C., Linder Oil Company, A Partnership, LLOG Exploration & Production Company, L.L.C., LLOG Exploration Company, L.L.C., Lopco, Inc., Louisiana Energy Production LLC, Lyons Petroleum, Inc,, Mar-Low Corporation, Marsh Engineering, Inc., Mccormick Operating Company, Merit Energy Company, LLC, Mobil Oil

under the State and Local Coastal Resources Management Act of 1978 ("SLCRMA")[2] and associated regulations, rules, and ordinances ("CZM laws") based on the Defendants' oil exploration and production activities in coastal parishes.[3] SLCRMA provides a cause of action against companies that either violate a state-issued coastal use permit or fail to properly obtain a coastal use permit when required. The act also contains certain exemptions from the coastal use permitting requirements, namely, uses which do not have a significant impact on coastal waters and

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Exploration & Producing, Mobil Oil Exploration & Producing Southeast Inc., Mosaic Global Holdings, Inc., Northwest Oil Company, Oleum Operating Company, L.C., Omni Operating Co., Oxy USA Inc., Palace Operating Company, Petroquest Energy, L.L.C., Resource Securities Corporation, Resources Investment Corporation, Rogers Oil Co., Sable Minerals, Inc., Samuel Gary Jr. & Associates, Inc., Shell Offshore, Inc., Shell Oil Company, Shocker Energy Of Louisiana, Inc., Shoreline Southeast LLC, SM Energy Company, Southeast Inc., Southport Exploration, Inc., Star Energy, Inc., Swepi LP, SWN Production Company, LLC, Taylor Energy Company, LLC, Texas Pacific Oil Company, Inc., Texas Petroleum Investment Company, The Louisiana Land And Exploration Company, LLC, The Meridian Resource & Exploration LLC, The Texas Company, Toce Energy, L.L.C., Total Petrochemicals & Refining USA, Inc., Transco Exploration Company, Transcontinental Oil Corporation, Union Oil Company of California, Vernon E. Faulconer, Inc., Vintage Petroleum, L.L.C., Wagner Oil Company, Walter Oil & Gas Corporation, WEC Onshore, LLC, White Oak Operating Company, LLC., Whiting Petroleum Corporation, Williams Exploration Company, Xplor Energy Operating Company, XTO Energy Inc., Zadeck Energy Group, Inc., Zenergy, Inc.

[2] This statute is also known as the Coastal Zone Management Act, La. Rev. Stat. § 49:214.21 *et seq*.

[3] *See, e.g.*, *ECF No.* I, att. 59, pp. 3-26.

activities which were "lawfully commenced" prior to the enactment of SLCRMA—the so-called "historical use" or "lawfully commenced" exemption.[4] Plaintiffs assert that Defendants' pre-SLCRMA activities were not lawfully commenced and therefore do not fall within the exemption.

The cases had been previously removed to this Court on the basis of admiralty jurisdiction, federal jurisdiction under the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1349(b)(1), and federal question jurisdiction under 28 U.S.C. § 1331. As for OCSLA, the Court concluded that the activities involved did not take place on the Outer Continental Shelf. The Court also found that admiralty claims brought at law in state court pursuant to the Saving to Suitors' Clause are not removable in the absence of an independent jurisdictional basis. Finally, the Court held that the Defendants could not establish federal question jurisdiction because the remedies sought were specifically limited to those arising under state law.[5] The Court, therefore, remanded the cases to state court.

Defendants then, for a second time, removed this case along with eleven other cases. The current Notice of Removal, filed on May 23, 2018, asserts federal officer jurisdiction under 28 U.S.C. § 1442(a)(1) and federal question jurisdiction under 28 U.S.C. § 1331.[6] Defendants contend that they first became aware of

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[4] La. R.S. § 49:214.34(C)(2); (A)(10).

[5] See *Cameron Parish v. Auster Oil & Gas, Inc.,* W.D. La. 2:16-cv-530, ECF No. 89, 101 and 102.

[6] ECF No. 1.

these removal grounds when they received an expert report in a related case on April 30, 2018, which addressed SLCRMA's "lawfully commenced" exemption.[7] Defendants argue that this expert report revealed for the first time that Plaintiffs' claims primarily attack activities undertaken before SLCRMA's effective date (1980), including activities that were subject to extensive and exclusive federal direction, control, and regulation during World War II.[8]

Plaintiffs filed motions to remand, arguing that (1) Defendants' claim of federal officer jurisdiction is without merit; (2) Defendants' federal question jurisdiction basis for removal has already been rejected; and (3) removal was untimely because the expert report cited as the basis for removal was received months, if not years, after the removing Defendants knew or should have known the factual underpinnings of Plaintiffs' claims. Defendants opposed the motions to remand.[9] On September 26, 2019, the Court granted the two motions to remand, holding that removal was timely but that Defendants had not established grounds to remove under Section 1442(a)(1) nor had they established a basis for federal question jurisdiction.[10] Defendants filed a Notice of Appeal and the Fifth Circuit consolidated the present case with a related action pending in the United

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[7] Expert report issued by Plaintiffs in the case of *Parish of Plaquemines v. Rozel Operating Co.* (the "*Rozel* Report").

[8] ECF No. 1.

[9] ECF Nos. 67, 71.

[10] ECF No. 147.

States District Court for the Eastern District of Louisiana, *Parish of Plaquemines v. Chevron USA, Inc., et al.,* for purposes of the appeal.[11]

On August 5, 2021, the Fifth Circuit issued an opinion affirming the Court's ruling on the motions to remand in part, reversing the Court's remand orders in part, and remanding both the present case and *Parish of Plaquemines* to the Western District of Louisiana and Eastern District of Louisiana, respectively.[12] The Fifth Circuit ruled that Defendants timely removed the cases from state court.[13] The Fifth Circuit panel also affirmed the rulings of the district courts in both cases that the Defendants had not established grounds for federal question jurisdiction under 28 U.S.C. § 1331. The Circuit, however, remanded the cases to determine federal officer removal jurisdiction in light of the circuit's intervening decision in *Latiolais v. Huntington Ingalls, Inc.*[14] In *Latiolais*, the circuit overruled its prior "causal nexus" requirement for federal officer removal jurisdiction. On remand, the parties filed supplemental briefs addressing the new test set forth by the Circuit in *Latiolais.*

On January 11, 2022, the district court in the Eastern District of Louisiana issued its second ruling on the motion to remand filed in *Parish of Plaquemines v. Chevron*.[15] The district court in *Parish*

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[11] ECF No. 156.

[12] ECF No. 147.

[13] *Id.* at 8-18.

[14] 951 F.3d 286,290 (5th Circuit 2020).

[15] No. 18-5217, 2022 WL 101401 (E.D. La. Jan. 11, 2022).

of Plaquemines applied the Fifth Circuit's new test under *Latiolais* and granted the motions to remand filed in that case.[16] The Defendants in that case then, once again, filed a Notice of Appeal to the Fifth Circuit. On October 17, 2022, the Fifth Circuit issued an opinion affirming the Eastern District's remand order in the *Plaquemines Parish* case.[17]

Applying the Fifth Circuit's *Plaquemines Parish* decision to the Cameron Parish Cases, the Court concluded that Defendants had not satisfied the requirements for removal under the federal officer removal statute, and therefore granted the motions to remand filed in each of the Cameron Parish Cases. The defendants in all of the Cameron Parish Cases except the present case filed Notices of Appeal. The defendants in those cases ultimately moved to dismiss their appeals when the Supreme Court denied writs of certiorari filed in the *Plaquemines Parish* case. In the present case, however, Shell requests that the Court reconsider its judgment remanding the present case to state court. Shell argues that its war-time refinery contracts set it apart from the other defendants in the Cameron Parish Cases and that its role as a war-time contractor supports federal officer jurisdiction even under the Fifth Circuit's *Plaquemines Parish* decision.

II.

RELEVANT LEGAL STANDARDS

A defendant may remove any action against "[t]he United States or any agency thereof or any officer (or

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[16] *Id.*

[17] *Plaquemines Parish v. Chevron USA, Inc.,* No. 22-30055, 2022 WL 9914869 (5th Cir. Oct. 17, 2022).

any person acting under that officer) of the United States or of any agency thereof, [sued in] an official or individual capacity for any act under color of such office."[18] "[F]ederal officer removal under § 1442 is unlike other removal doctrines: it is not narrow or limited."[19] The Supreme Court requires "a liberal interpretation of § 1442(a) in view of its chief purpose—to prevent federal officers who simply comply with a federal duty from being punished by a state court for doing so."[20] Section 1442 applies to any "private persons 'who lawfully assist' the federal officer 'in the performance of his official duty. '"[21] Section 1442(a) creates an exception to the "well-pleaded complaint" rule in that "the raising of federal question in the officer's removal petition . . . constitutes the federal law under which the action against the federal officer arises for Article III purposes."[22] A defendant may remove a case under section 1442(a) by showing "(1) that it is a person within the meaning of the statute, (2) that it has a colorable federal defense, (3) that it acted pursuant to a federal officer's directions, and (4) that a causal nexus exists between [its] actions under color of federal office and the plaintiff's claims."[23] There is no dispute that Defendants qualify as "persons" under

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[18] 28 U.S.C. § 1442(a).

[19] *Texas v. Kleinert*, 855 F.3d 305, 311 (5th Cir. 2017).

[20] *State of La. v. Sparks*, 978 F.2d 226, 232 (5th Cir. 1992).

[21] *Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 151 (2007).

[22] *Mesa v. California*, 489 U.S. 121, 136 (1989).

[23] *Legendre v. Huntington Ingalls, Inc.*, 885 F.3d 398, 400 (5th Cir. 2018).

the first requirement. The Court, however, concluded in its original remand ruling that Defendants could not satisfy the "acting under" or "causal nexus" requirement for federal officer removal jurisdiction under section 1442(a)(1). The "causal nexus" requirement was subsequently overruled in favor of the more lenient test in *Latiolais*.

To satisfy § 1442(a)'s "acting under" prong, a defendant must show "an effort to assist, or to help carry out, the duties or tasks of the federal superior."[24] The *Watson* Court distinguished a party's *compliance* with federal regulations from actions "helping the Government to produce an item that it needs."[25] Assistance that "goes beyond simple compliance with the law and helps officers fulfill other basic governmental tasks" meets § 1442(a)'s "acting under" requirement.[26] To establish that a person is "acting under" a federal official, a removing party must show a "substantial degree of direct and detailed federal control over the defendant's work . . . ."[27] This relationship between the defendant and the federal office or official must involve "subjection, guidance, or control."[28] It is not sufficient to merely show that "the

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[24] *Watson*, 551 U.S. at 152.

[25] *Id.* at 153.

[26] *Id.*

[27] *In re "Agent Orange" Prod. Liab. Litig.*, 304 F. Supp. 2d 442, 447 (E.D. N.Y. 2004).

[28] *Zeringue v. Crane Co.*, 846, F.3d 785, 793 (5th Cir. 2017) (citing *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142 (2007)). *Latiolais* overruled *Zeringue* with respect to the causal nexus test. 951 F.3d at 292. With respect to the other elements of federal officer removal jurisdiction, *Zeringue* is still good law.

relevant acts occurred under the general auspices of a federal office or officer."[29]

The cases applying this "acting under" requirement provide useful guidance as to how to draw the line between "direct control" and mere regulation. Many cases where courts have found sufficient control and direction to satisfy the "acting under" requirement involve government contractors who manufacture products according to detailed specifications and oversight by an agency or officer of the federal government.[30] For example, in *Winters,* the plaintiff sued for personal injuries received as a result of exposure to Agent Orange while working as a civilian nurse for the United States Agency for International Development in Vietnam.[31] Diamond Shamrock was a government contractor that supplied the mix of herbicides known as Agent Orange to the

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[29] *Ryan v. Dow Chem. Co.*, 781 F. Supp. 934, 947 (E.D.N.Y. 1992)

[30] *See, e.g.*, *Zeringue*, 846 F.3d at 795 (government directives to use asbestos); *Savoie v. Huntington Ingalls, Inc.*, 817 F.3d 457, 460, 465 (5th Cir. 2016) (government requirement that contractor use asbestos in the thermal installation of Navy ships); *In re Asbestos Products Liab. Litig. (No. VI)*, 770 F. Supp. 2d 736 (E.D. Pa. 2011) ("acting under" requirement satisfied where government contractor established that the government had approved reasonably precise specifications that called for the use of asbestos and that the contractor's products conformed to those specifications); *Winters v. Diamond Shamrock Chem. Co.,* 149 F.3d 387, 399 (5th Cir. 1998) (government contracted with the defendants for a specific mixture of herbicides known as Agent Orange); *Holdren v. Buffalo Pumps, Inc.,* 614 F. Supp. 2d 129 (D. Mass. 2009) (contractor complied with precise design specifications).

[31] 149 F.3d at 390.

United States Defense Department.[32] The Fifth Circuit affirmed the district court's conclusion that Diamond Shamrock was "acting under" a federal officer or office in supplying this mix of herbicides. The court observed that the Defense Department mandated a specific mixture of herbicides making up Agent Orange and that "the defendants were compelled to deliver Agent Orange to the government under threat of criminal sanctions."[33] The court concluded that the federal government exercised direct control over the composition and production of Agent Orange.[34] In other words, the plaintiffs injuries resulted from an aspect of the product that was mandated and controlled by the federal government under the terms of a contract with Diamond Shamrock.[35]

Similarly, in *Zeringue*, the plaintiff sued multiple defendants for damages caused by asbestos exposure.[36] The plaintiff alleged exposure while deployed with the U.S. Navy as well as exposure when he worked in the Avondale Shipyard near Navy vessels that contained asbestos.[37] The court found that the defendants had "acted under" a federal officer or office with respect to these asbestos exposure claims because the Navy had mandated the use of asbestos insulation in its contract specifications and the

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[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] 846 F.3d 785.

[37] *Id.* at 788.

defendants complied with those requirements.[38] According to the court, "equipment could not have been installed aboard Navy vessels unless it was first determined by the Navy to be in conformity with all applicable Navy specifications."[39] The court further noted that had the defendant not complied with the specifications and provided these products to the government, "the Navy would have had to build those parts instead."[40] In all of these cases, the plaintiffs' claims arose out of conduct *mandated* by the government.

On the other hand, two cases where the courts concluded that the "acting under" requirement was not satisfied illustrate the limits of federal officer removal: *Watson*,[41] and *In re Methyl Tertiary Butyl Ether ("MTBE") Prod. Liab. Litig*.[42] In *Watson,* the plaintiffs alleged that Phillip Morris manipulated the design of its "light" cigarettes so that they tested for lower levels of tar and nicotine.[43] The industry's testing process for measuring tar and nicotine was operated under the regulatory supervision of the Federal Trade Commission (FTC). The Supreme Court concluded that Phillip Morris was not "acting under" the FTC even though the testing process for tar and nicotine was heavily regulated.[44] The Court noted that

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[38] *Id.*

[39] *Id.* at 792.

[40] *Id.*

[41] 551 U.S. 142.

[42] 488 F.3d 112 (2d Cir. 2007).

[43] 551 U.S. 142.

[44] *Id.,* at 157.

a private party's compliance with federal law or acquiescence to a federal agency's order does not satisfy the "acting under" requirement of the federal officer removal statute, "even if the regulation is highly detailed and even if the private firm's activities are highly supervised and monitored."[45] In other words, differences in the degree of regulatory oversight alone cannot bring a regulated party within the contours of section 1442(a):

> As we have pointed out, however, differences in the degree of regulatory detail or supervision cannot by themselves transform Philip Morris' regulatory compliance into the kind of assistance that might bring the FTC within the scope of the statutory phrase "acting under" a federal "officer." And, though we find considerable regulatory detail and supervision, we can find nothing that warrants treating the FTC/Philip Morris relationship as distinct from the usual regulator/regulated relationship. This relationship, as we have explained, cannot be construed as bringing Philip Morris within the terms of the statute.[46]

The Court also distinguished the "government contractor" line of cases, such as the Agent Orange and asbestos cases, by reasoning that the defendants in those cases were assisting the federal government by producing an item that the government required

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[45] *Id.,* at 143.

[46] *Id.*

pursuant to a contract.[47] No such contractual relationship existed in the *Watson* case.

In *MJBE Prod. Liab. Litig.*, the plaintiffs brought claims against private companies that "manufactured, refined, marketed, or distributed gasoline containing MTBE" on the grounds that this additive contaminated water supplies.[48] The defendants attempted to remove the case under the federal officer removal statute on the grounds that the federal Clean Air Act and regulations promulgated by the Environmental Protection Agency (EPA) required them to reformulate their gas with additives such as MTBE to "oxygenate" the gas and therefore reduce emissions in certain metropolitan areas.[49] The district court concluded that the defendants had satisfied the "acting under" requirement for removal on the grounds that the defendants used MTBE because EPA regulations required them to oxygenate their product for certain metropolitan areas.[50] Even though other additives had been approved to oxygenate gasoline, the district court noted that "both Congress and the EPA were aware that the defendants would have to use MTBE in order to comply with the Clean Air Act's requirements."[51] The district court further noted that MTBE was the only approved additive available in a quantity sufficient to comply with the EPA's

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[47] *Id.*

[48] 488 F.3d at 114.

[49] *Id.*

[50] *Id.*

[51] *Id.* at 126.

regulations.[52] The Second Circuit reversed. According to the court, there was no evidence of "an explicit directive in either the Clean Air Act or its implementing regulations" that required the use of MTBE.[53] In other words, while the statute and implementing regulations required defendants to oxygenate their gas, the regulations did not *mandate* that this be done by the addition of a specific additive, namely MTBE.[54] Nor did the court find evidence that these regulations were implemented with the knowledge that the use of MTBE was the only way that the defendants could comply with the directives of the EPA's regulations.[55]

In the *Plaquemines Parish* case, the Fifth Circuit applied the "acting under" requirement for federal officer removal in a case involving the same alleged grounds for removal.[56] As in the present case, the defendants in *Plaquemines Parish* argued that the federal government's regulation of oil and gas production during World War II satisfied the "acting under" requirement for federal officer removal jurisdiction.[57] The defendants in *Plaquemines Parish* argued that oil and gas producers acted as "subcontractors" to refineries during World War II, that these refineries were government contractors

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[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Plaquemines Parish, et al v. Chevron USA, Inc., et al*, 2022 WL 9914869 (5th Cir. 2022)

[57] *Id.*

heavily regulated by the federal government during World War II, and that this subcontractor relationship satisfies *Latiolais*' requirement that the conduct at issue be "connected or associated" with the directives of a federal officer.[58] With respect to federal government regulation of oil and gas producers, the Fifth Circuit held that the evidence in the record showed nothing more than the fact that the producers were subject to government regulation.[59] According to the circuit, the removing party's actions "must involve an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior."[60] The Fifth Circuit concluded that merely complying with federal regulation or cooperating with federal agencies—as the evidence shows in the present case—does not amount to carrying out "the duties or tasks of the federal superior," and thus does not support removal under section 1442(a)(1).[61]

With respect to the defendants' subcontractor arguments, the Fifth Circuit held that there was no evidence in the record of any contract creating a subcontractor relationship with the defendant producers.[62] According to the Fifth Circuit, mere "supplier relationships" are insufficient to create a subcontractor relationship.[63] The circuit further

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[58] *Id.* at *2-3.

[59] *Id.* at 3.

[60] *Id.* (*quoting Watson,* 551 U.S. at 151-52) (emphasis in original).

[61] *Id.*

[62] *Id.*

[63] *Id.*

reasoned that, even if a subcontract existed, the presence of a subcontractor relationship is not sufficient to support federal officer removal jurisdiction unless the subcontractor can independently show how they, as opposed to the prime contractor, were "subject to the federal government's guidance and control."[64] The Circuit reiterated that the evidence in the record did not establish the level of control or guidance to support federal officer removal with respect to the defendant producers. Accordingly, the Fifth Circuit affirmed the Eastern District's order remanding that case to state court.

Finally, prior to the Fifth Circuit's recent decision in *Latiolais*, a party removing a case under Section 1442(a)(1) had to establish "that the defendants acted pursuant to a federal officer's directions and that *causal nexus* exists between the defendants' actions under color of federal office and the plaintiff's claims."[65] The *Latiolais* court noted, however, that section 1442(a) was subsequently amended, "altering the requirement that a removable case be 'for' any act under color of federal office and permitting removability of a case 'for *or relating to*' such acts."[66] The Fifth Circuit ultimately concluded in *Latiolais* that the so-called "causal nexus" requirement adopted in *Winters*—and followed in *Bartel v. Alcoa Steamship Co., Inc.*[67] and its progeny even after the amendment of Section 1442(a)—was no longer viable. According to

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[64] *Id.* at *4.

[65] *Winters*, 149 F.3d at 398 (emphasis added).

[66] *Latiolais*, 951 F.3dat291 (emphasis added).

[67] 805 F.3d 169 (5th Cir. 2015).

the court, a removing party need only establish that "the charged conduct is connected or associated with an act pursuant to a federal officer's directions."[68]

III.

ANALYSIS

Shell argues that its unique role as a war-time contractor for the federal government requires a different result under the federal officer removal statute. In rulings granting the motions to remand, the Court concluded that Defendants had not demonstrated the "subjection, guidance, or control" required to show that they were acting under a federal office or officer.[69] Moreover, as in the *Plaquemines Parish* case, the record did not reflect the government contractor relationship that existed in cases where courts have found that the defendants satisfied the requirements of the federal officer removal statue, such as in *Winters*[70] and *Zeringue*.[71] With respect to *Latiolais,* the Court concluded that the record did not reflect any connection or association between Defendants and any acts taken under the direction of a federal officer.[72] The court concluded that, with respect to oil and gas production activities, the record reflects, at most, that the Defendants complied with federal regulations.[73] Compliance with federal

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[68] *Latiolais,* 951 F.3d at 296.

[69] *Parish of Cameron,* 18-cv-677, 2022 WL 17852581 at *7.

[70] 149 F.3d at 390.

[71] 846 F.3d at 788.

[72] *Parish of Cameron,* 2022 WL 17852581 at *9.

[73] *Id.*

regulations, standing alone, does not support federal officer removal jurisdiction.[74]

The Motion for Reconsideration argues that the Court's reasoning and conclusion does not apply to Shell given its role as a government contractor during World War II. Specifically, Shell argues that it "was both a producer *and refiner* of oil produced for the government under its direction and control during [World War II]."[75] In this regard, Shell points to dicta from the Fifth Circuit's *Plaquemines Parish* case observing that "refineries who had federal contracts and acted pursuant to those contracts can likely remove under Section 1442."[76] Shell characterizes its contractor relationship during World War II as follows:

> Under its contract with DSC, Shell agreed to produce 9,000 barrels per day of 100-octane avgas for the federal government. The Shell-DSC contract was amended in July 1944 to increase Shell's avgas production from 9,000 to 12,000 barrels per day. The contract required Shell to produce avgas using detailed, government-set specifications. Shell's contract gave the federal government the right "to purchase all or any part of the aviation gasoline" that Shell produced at its Houston and Norco refineries. The contract also included an option for the federal government to take the alkylates and cumene

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[74] *Watson,* 551 U.S. at 151.

[75] ECF No. 113 at 3 (emphasis added).

[76] *Plaquemines Parish*, No. 22-30055, 2022 WL 9914869 at *4.

> directly from the Norco refinery before they were blended into avgas at the Houston refinery. Under its DSC contract, Shell refined huge quantities of crude oil into avgas and other critical war products for the federal government: Shell's Houston refinery blended more than 1.5 million barrels of 100-octane avgas, and Shell's Norco refinery was "plunged almost completely into war production" with "perhaps its greatest contributions . . . in the field of 100-octane aviation gasoline components." And, Shell obtained substantial quantities of crude for this production from its own field in Black Bayou and transported that crude to its Houston and Norco refineries.[77]

Shell argues that its oil and gas production activities are directly connected to (or associated with) the requirements of its government refining contracts, and that it was "acting under" a federal officer or federal office in fulfilling those war-time contracts.

Two decisions out of the Eastern District of Louisiana have addressed the precise question raised by Shell. In *Parish of Jefferson v. Destin Operating Company, Inc.*,[78] the defendants similarly argued that they refined petroleum products, such as "avgas," pursuant to a war-time contract with the federal government. Further, as in the present case, they argued that their exploration and production activities were dictated by the requirements of these

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[77] ECF No. 113 at 8 (footnotes omitted).

[78] 18-cv-5206, 2023 WL 2772023 (E.D. La. April 4, 2023).

contracts. Judge Fallon ultimately concluded that the defendants had not satisfied *Latiolais*' "connected or associated" test.[79] According to the court, any control asserted by the federal government with respect to the refinery contracts was too far removed and attenuated from the exploration and production activities that were the subject of the plaintiffs' claims.[80] The court noted that "there is no evidence that the federal government asserted any control over those refiner's oil production activities."[81] Accordingly, the court denied the defendants' motion to reconsider the remand order.[82]

In *Parish of Plaquemines v. Northcoast Oil Co.*,[83] the court addressed the same argument that the defendant was not only a producer but also a refiner operating under war-time contracts with the federal government. As in *Parish of Jefferson,* Judge Zainey rejected this argument on the grounds that the existence of a refining contract did not mean that the defendant "acted under" a federal officer with respect to the exploration and production activities challenged in the plaintiffs' lawsuit.[84] According to the court:

> This case lacks any connection between crude oil production activities and the directives of

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[79] *Id.* at *4.

[80] *Id.*

[81] *Id.* at *3.

[82] Judge Fallon entered a similar order in *Parish of Jefferson v. Equitable Petroleum Corporation,* 18-cv-5242, 2023 WL 2771705 (E.D. La. Apr. 4, 2023).

[83] No. 18-5228, 2023 WL 2986371 (E.D. La. Apr. 18, 2023).

[84] *Id.* at *8-10.

> a federal officer as dictated by the federal contract. The removing defendants have attempted to elide past that problem by defining the federal directive as broadly as possible, *i.e.*, produce military petroleum products at the refinery in Port Arthur, Texas and then creating a factual connection between oil production in Louisiana to federal activity at the refinery. But every case that the court has reviewed, including the post-*Latiolais* decisions, that grounds federal officer removal on relatedness to a federal contract, examines the directives of that contract when determining whether all of the requirements for a federal officer removal are met, and in particular whether the plaintiffs' claims relate to the directives of a federal officer.[85]

The court concluded that the refining contract cited by the defendants did not expressly address the exploration and production activities at issue in that case.[86] Accordingly, Judge Zainey concluded that the defendants had not satisfied the requirements for federal officer removal jurisdiction and granted the motion to remand.[87]

Here, the Court agrees with the reasoning of the courts in *Plaquemines Parish* and *Parish of Jefferson.* As the Court noted in its ruling in the Cameron Parish Cases granting the motions to remand, the

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[85] *Id.* at *9.

[86] *Id.*

[87] *Id.*

Defendants do not distinguish between exploration and production, on the one hand, and the process of refining petroleum products into avgas and other refined products required under their war-time refinery contracts, on the other hand. The conduct targeted in the Cameron Parish Cases is the Defendant's exploration and production activities in the field:

- How Defendants spaced wells;
- Defendants' use of dredged canals instead of roads;
- Defendants' use of vertically drilled wells;
- Defendant's use of earthen pits and centralized tank batteries;
- Defendants' practices involving water discharged from drilling sites and the failure to re-inject saltwater; and
- Defendants' use of inadequate tubing.

In contrast, Shells' refinery contracts pertain to the production of refined petroleum products. The evidence in the record does not support a link between the requirements of Shell's refining contracts and the conduct challenged in Plaintiffs' SLCRMA claims. This distinction removes the present case from the government contractor line of cases relied on by Shell. For example, in *Zeringue,* the plaintiff's claims were grounded on conduct arising out of the defendant's compliance with the specifications of a government contract—namely, the requirement that asbestos insulation be used in the defendant's products.[88] The

[88] *Zeringue,* 846 F.3d at 795.

record here reflects no such connection. In sum, even considering the evidence that Shell acted under government refining contracts with respect to manufacturing refined petroleum products, it has not shown that, with respect to the production of oil and gas in the field, it "acted under" a federal officer. Nor has Shell satisfied the "connected or associated" test of *Latiolais*.[89] The Court agrees with Judge Fallon's assessment in *Parish of Jefferson* that the connection between a refining contract and the production activities in the field is too attenuated to support federal officer removal jurisdiction based on the evidence in the record.[90] Accordingly, the Court DENIES the Motion for Reconsideration.

III.

CONCLUSION

For the foregoing reasons, the Court DENIES Shell's Motion for Reconsideration [ECF No. 113]. The Court, however, will stay its Judgment remanding this case for a period of thirty (30) days to allow Shell to file a Notice of Appeal if it decides to do so.

THUS DONE in Chambers on this 13th day of June, 2023.

[handwritten: signature]

Robert R. Summerhays

United States District Judge

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[89] *Latiolais,* 951 F.3d at 291

[90] 2023 WL 2772023 at *4.

Appendix H

Contract Between Defense Supplies Corp. and The Texas Company (Port Arthur Refinery – Second Contract), 100-Octane Aviation Gasoline (Mar. 10, 1942)

CONTRACT made as of March 10, 1942, between THE TEXAS COMPANY, a Delaware corporation, having its principal place of business at 135 E. 42nd St., New York, N.Y., hereinafter called Seller, and DEFENSE SUPPLIES CORPORATION, a corporation created by Reconstruction Finance Corporation, pursuant to Section 5 (d) of the Reconstruction Finance Corporation Act as amended, having its principal place of business at Washington, D.C., hereinafter called Buyer.

In consideration of mutual agreements herein contained the parties agree as follows:

A certain contract made as of January 17, 1942, between the parties entitled "Contract between Defense Supplies Corporation and The Texas Company (Port Arthur Refinery)" is hereby modified to the extent that it is inconsistent herewith and shall otherwise remain in full force and effect. Said certain contract will be referred to hereinafter as "the prior Port Arthur contract."

I. Expansion of Seller's Refining Facilities.

Seller has facilities for the production at Port Arthur, Texas of approximately two thousand nine hundred forty (2,940) barrels per calendar day of 100-Octane aviation gasoline and has contracted to expand its facilities, at an estimated cost of approximately Seven Million Five Hundred Thousand. Dollars

($7,500,000), to a degree which it is estimated will enable Seller to produce at Port Arthur, Texas approximately six thousand seven hundred and fifty (6,750) barrels per calendar day of 100-Octane aviation gasoline. Seller is willing to make an additional expansion of its facilities for the production of 100-Octane aviation gasoline at Port Arthur, Texas, at an estimated additional cost of approximately Twenty-one Million Five Hundred Thousand Dollars ($21,500,000.00), to a degree which it is estimated will enable Seller to produce at Port Arthur, Texas a total of approximately thirteen thousand six hundred and twenty-five (13,625) .barrels per calendar day of l00-Octane aviation gasoline. Seller shall use all reasonable efforts to expand said facilities and shall endeavor to maintain work on the expansion day and night in so far as the requisite labor and materials are available. Seller shall use its best efforts to complete such expansion as soon as possible and not later than July 1, 1943. The force majeure provisions set forth in Section X hereof shall apply in all respects to the expansion of facilities as well as the sale of gasoline and all other obligations of Seller.

II. Sale and Storage of Products.

(a) When the aforesaid additional expansion of Seller's facilities shall be completed and ready for operation, Seller shall promptly notify Buyer.

(b) Under the terms of the present contract end the prior Port Arthur contract, Seller shall sell and deliver and Buyer shall buy and receive the following aggregate quantities of 100-Octane aviation gasoline which shall be in accordance with the alternate specifications set forth in

Exhibit A, attached hereto and made a part hereof;

(1) From and after the effective date of the notification referred to in Section II (a) of the prior Port Arthur contract, until but not including the effective date of the notification referred to in Section II (a) hereof: five thousand nine hundred (5,900) barrels per day;

(2) From and after the effective date of the notification referred to in Section II (a) hereof until the end of the one year period commencing with the effective date of the notification referred to in Section II (a) of the prior Port Arthur contract: twelve thousand seven hundred seventy-five (12,775) barrels per day;

(3) From and after the end of the one year period referred to in the last preceding paragraph hereof until the end of the original term of the prior Port Arthur contract: six thousand eight hundred seventy-five (6,875) barrels per day plus that quantity which Buyer would have been obligated to purchase and receive and Seller would have been obligated to sell and deliver under Section II (b) of the prior Port Arthur contract had this contract not been entered into and had the additional expansion referred to in Section I hereof not been undertaken;

(4) From the end of the original term of the. prior Port Arthur contract until the end of the original term of this contract: such quantity

as, together with all other sales by Seller to the United States Government of said gasoline produced at Seller's Port Arthur Refinery, shall equal Seller's pro-rata share of the entire requirements of the United States Government, as hereinafter defined, but not less than six thousand eight hundred seventy-five (6,875) barrels per day; and

(5) During any extension of this contract, unless the parties shall otherwise agree: such quantity as, together with all other sales by Seller to the United States Government of said gasoline produced at Seller's Port Arthur Refinery, shall equal Seller's pro-rata share of the entire requirements of the United States Government, as hereinafter defined.

(c) Wherever in this contract provision is made for the sale and delivery to Buyer of a stated quantity of gasoline, such quantity is an aggregate quantity of the various kinds of gasoline specified in Exhibit A collectively considered. Buyer may apportion such aggregate quantity among the various kinds of gasoline. Buyer on giving reasonable notice to Seller may require the delivery hereunder of 100-Octane aviation gasoline of specifications other than those originally set forth in Exhibit A which are capable of being produced with the same refining facilities and the same materials as are used in producing 100-Octane aviation gasoline in accordance with the specifications originally set forth in Exhibit A. The prices, specifications and quantities of such products shall be determined by

negotiation between the parties, and Seller shall not be required to deliver such products unless and until an agreement has been reached. Such agreement shall be reduced to writing as an addendum to Exhibit A.

(d) The term "United States Government" shall include the War Department, the Navy Department, any other department, agency or instrumentality of the United States Government, and any corporation wholly owned by the United States.

(e) The term "pro-rata share of the entire requirements of aviation gasoline which the refining capacity for 100-Octane aviation gasoline of the facilities referred to in Section 1 hereof less the quantity of Seller's sales of 100-Octane aviation gasoline from said facilities to customers other than the United States Government, bears to the total refining capacity for 100-Octane aviation gasoline of all refiners in the United States and Lago Oil & Transport Company, Ltd. in Aruba, Netherlands West Indies, less the quantity of said refiners' sales to customers other than the United States Government. Buyer shall use its best efforts to furnish the data necessary for the calculation of such pro-rata share.

(f) The term "barrel" as used in this contract means a barrel of forty-two (42) gallons and a gallon is a United States gallon of two hundred and thirty-one (231) cubic inches.

(g) Seller shall maintain storage facilities at, or in the vicinity of, Port Arthur, Texas, to accommodate at least sixty (60) days full capacity

production of 100-Octane aviation gasoline. Whenever Seller's above-specified storage facilities for said aviation gasoline shall be filled, Seller shall not be obligated to produce any more of said gasoline for delivery to Buyer hereunder until Buyer shall have substantially reduced by purchase and removal the amount of gasoline in storage. If such full storage condition exists, Seller shall have the right to diminish the quantities otherwise to be delivered to Buyer by an amount equal to the amount of 100-Octane aviation gasoline which was produced during such full storage condition or which would have been produced except for such full storage condition. If, however, Seller shall produce during any such period of full storage any additional 100-Octane aviation gasoline of the kind covered by this contract, then such additional aviation gasoline shall be treated as covered by Section III hereof.

III. Optional Gasoline.

Buyer shall have the option from time to time and at any time to purchase from Seller all or any part of the 100-Octane aviation gasoline which Seller may produce in any of the facilities hereinabove mentioned between the execution of this contract and receipt of the notification referred to in Section II (a) hereof to, the extent that such gasoline is in excess of quantities which Seller has, prior to receipt by parties other than Buyer. Upon the exercise of such option Seller shall operate the facilities at full capacity or at such lesser capacity as will satisfy Buyer's indicated requirements.

Buyer shall also have the option from time to time and at any time to purchase all or any part of the 100-Octane aviation gasoline which Seller may produce in any of the facilities hereinabove mentioned between receipt by Buyer of the notification referred to in Section II (a) hereof and June 30, 1946 to the extent that such gasoline is in excess of the sum of (a) the quantity to be purchased by Buyer under Section II hereof and (b) the quantities which Seller has, prior to receipt of notification of exercise of such option, contracted to sell to parties other than Buyer. Upon the exercise of such option Seller shall operate the facilities at full capacity or at such lesser capacity as will satisfy Buyer's indicated requirements.

IV. Price and Payment.

(a) The base prices of all 100-Octane aviation gasoline purchased under the prior Port Arthur contract or under the present contract prior to the effective date of the notification referred to in Section II (a) hereof shall be as provided in the prior Port Arthur contract and shall be subject to escalation as provided in Section V thereof.

(b) The base prices of all 100-Octane aviation gasoline purchased under this contract or under the prior Port Arthur contract from and after the effective date of the notification referred to in Section II (a) hereof until the end of the original term of the prior Port Arthur contract shall be as follows, f.o.b. Seller's Port Arthur Refinery:

(1) For 100-Octane aviation gasoline specified as Item I of Exhibit A hereof: thirteen cents ($0.13) per gallon; and

(2) For 100-Octane aviation gasoline specified as Item 2 of Exhibit A hereof: twelve and three-quarters cents ($0.1275) per gallon.

(c) The base prices of all 100-Octane aviation gasoline purchased under this contract or under the prior Port Arthur contract from the end of the original term of the prior Port Arthur contract until the end of the original term of this contract shall be as follows, f.o.b.

(1) For 100-Octane aviation gasoline specified as Item 1 of Exhibit A hereof: twelve and eight-tenths cents ($0.12.8) per gallon; and

(2) For 100-Octane aviation gasoline specified as Item 2 of Exhibit A hereof: twelve and fifty-five hundredths cents ($0.12 55) per gallon.

(d) Seller represents that there has not been included in its computation of such prices any allowance for depreciation, amortization and obsolescence in excess of ten percent (10%) per annum of that portion of the original estimated cost of the refining facilities used in the manufacture of said 100-Octane aviation gasoline which is properly allocable to such manufacture. Nothing in the preceding sentence shall preclude Seller from using a different rate or rates for tax and accounting purposes.

V. Price Escalation.

The prices of 100-Octane aviation gasoline purchased under this contract or under the prior Port Arthur contract from and after the effective date of the

notification referred to in Section II (a) hereof shall be subject to adjustment as follows:

(a) The said prices are based on a price of One Dollar and Twenty-five Cents ($1.25) per barrel for East Texas crude deliverable to Seller in the East Texas field. These prices shall be increased or decreased five hundred twelve ten-thousandths of one cent ($0.000512) per gallon for each one cent ($0.01) advance or decrease in the average price paid for per barrel by the three (3) largest purchasers of such crude in the East Texas field. The price posted for such crude in the East Texas field by such purchasers shall constitute prima facie evidence of the prices paid by such purchasers.

(b) The said prices shall also be increased or decreased by six hundred eighty-three ten-thousandths of one cent ($0.000683) per gallon for each one point increase or decrease in the wholesale price Index Number for "All Commodities other than Farm Products and Foods", as now published by the Bureau of Labor Statistics, United States Department of Labor, over or under the December, 1941 index figure which is ninety-three and seven-tenths (93.7), on which basis Seller represents that it made its cost calculations. The effective date of a change in price due to a change in the index number shall be the date of publication by the Bureau of Labor Statistics of the latest final monthly index number, regardless of what Seller's crude inventory may be at the time of such change. If said index shall cease to be issued, the parties

shall use such other index as may closely approximate the discontinued one, and if they shall be unable to agree within ten (10) days after notice of such discontinuance as to the index to be substituted, the determination of the new index shall be made by arbitration under Section XI hereof.

(c) The prices hereinabove set forth are based upon present normal methods of transporting petroleum raw materials to Seller's refinery at Port Arthur, Texas, and upon a normal operation of that refinery, in which substantial quantities of motor fuel and other products must necessarily be produced and sold in connection with the production of 100-Octarie aviation gasoline. If it becomes necessary to transport petroleum raw materials to said refinery by other than present normal methods thereby incurring additional costs of transportation, or if through an abnormal reduction of available markets for motor fuel and petroleum products other than 100-Octane aviation gasoline, or if by reason of any cause or condition (whether or not of the same class or kind) resulting directly or indirectly from the existence of a state of war, the normal functioning of any refinery at which any portion of the 100-Octane aviation gasoline supplied hereunder is manufactured shall be interfered with to such an extent that in the opinion of Seller the cost than those corrected by adjustment of the base pricesunder the above paragraphs (a) and (b). Seller may give notice to Buyer that the delivery of 100-Octane aviation gasoline will be reduced in an amount sufficient in the judgment of Seller to

offset the added cost of refining unless Buyer shall agree with Seller to increase the price paid for 100-Octane aviation gasoline by an amount sufficient to offset such increased cost. If within ten (10) days after the date of mailing such notice Buyer advises Seller that it does not elect to take such reduced output and Buyer and Seller are unable to agree upon the amount of such increase in price within ten (10) days thereafter, Buyer may give notice to Seller that it desires to have the amount of such increase fixed by arbitration in accordance with Section XI hereof. The arbitrators to be chosen in this instance shall be persons who have had at least ten (10) years' experience in the petroleum business and who are not connected with either of the parties hereto. The arbitrators shall be directed to make their findings as to the amount and effective date of such price increase within fifteen (15) days after the appointment of the last-appointed arbitrator and if no decision is reached by the arbitrators within such period, the production of 100-Octane aviation gasoline by the refinery affected may be reduced as above provided.

(d) If at the request of Buyer or other agency of the United States Government, Seller acquires from other refiners some of the components of 100-Octane aviation gasoline and moves the same to its refineries for blending with other stocks for the production of 100-Octane aviation gasoline, it shall be entitled to compensation for any increase in costs thereby incurred by increasing the price of the 100-Octane aviation gasoline so produced by an amount which will equal the difference

between the purchase price of such components at the cost of manufacturing the same or similar components at its own refineries, plus transportation and other costs of any kind or character involved in the delivery of the components to the refinery where the blending occurs. If Seller and Buyer are unable, to agree upon the amount of such additional compensation, the question shall be submitted to arbitration in the manner provided in Section XI hereof. This paragraph (d) shall apply to the prior Port Arthur contract exactly as though incorporated therein.

(e) In making adjustments under this Section, the prices to be adjusted shall be those prices in effect immediately prior to the adjustment and such adjustment shall be made regardless of what Seller's crude inventory may be at the time of such adjustment.

VI. Duration of Contract.

The original term of this contract shall expire at midnight on June 30, 1946. Buyer shall have the option to extend this contract for two (2) successive yearly periods beyond the original term by giving notice in writing to Seller of the exercise of such option at least ninety (90) days prior to the end of the original term for the first yearly extension and at least ninety (90) days prior to the end of the first yearly extension for the second yearly extension. Upon such extension the obligations to purchase and receive shall be in accordance with Section II (b) (5) hereof and the price to be paid shall be fixed by agreement of the parties hereto during the ninety (90) day period prior to each

such extension. All of the other provisions of this contract except those not then applicable shall be in full force and effect. Section VI of the prior Fort Arthur contract is hereby superseded and cancelled, except for the first sentence thereof.

VII. Loan to Seller.

(a) Buyer shall loan to Seller, in addition to the loan provided for in the prior Port Arthur contract, Sixteen Million One Hundred Twenty-five Thousand Dollars ($16,125,000.00) which shall be disbursed by Buyer to Seller in approximately monthly installments as the construction of the facilities referred to in Section I hereof progresses. The first installment shall be disbursed immediately following the expiration of ninety (90) days from the date of this contract or immediately following receipt of notice by Buyer of Seller's waiver of its right to terminate this contract under Section XVII hereof, whichever event shall first occur. Each remaining installment shall be disbursed upon Seller's request and upon receipt by Buyer from Seller of satisfactory evidence that it has expended or firmly committed itself to expend within the succeeding thirty (30) days on account of the additional expansion of the facilities referred to in Section I hereof all of the funds theretofore advanced to it by Buyer plus the amount of the installment requested, and in addition has so expended or firmly committed itself to expend withing the succeeding thirty (30) days from its own funds not less than thirty-three and one-third

(33-1/3%) of the aggregate of such installments advanced …

(b) Such loan shall bear interest at the rate of two percent (2%) per annum on the outstanding balance thereof, until repaid.

(c) Seller shall repay the principal amount of the aforementioned loan to Buyer in equal monthly installments, as near as can be determined, plus interest accrued to the time of each such repayment, beginning the twentieth (20th) day of the month following the month in which Buyer receives the notification referred to in Section II (a) hereof and ending on the twentieth (20th) day of the month following the expiration of the original term of this contract provided, however, that if Buyer shall breach its obligation to disburse the installments of said loan in accordance with this Section VII, or shall breach its obligation to buy the quantities of 100-Octane aviation gasoline called for by paragraphs (2), (3) and (4) of Section II (a) hereof, then Seller may withhold such part of or all the unrepaid portion of said loan including interest thereon (other than repayments, if any, falling due prior to such breach), as shall not exceed the amount of damages claimed by Seller to result from such breach pending determination by agreement, arbitration or otherwise, of Buyer's liability, if any, for such breach. Upon such determination Seller shall be obligated to repay to Buyer only the unrepaid portion of said loan, plus interest accrued to date of breach, plus interest from date of breach on the amount, if any, by which said

unrepaid portion of said loan exceeds the amount of damages, if any sustained by Seller, less the amount of said damages.

VIII. Damages.

(a) In the event that Seller shall, fail to sell and deliver or Buyer shall fail to take and pay for 100-Octane aviation gasoline in accordance with Section II (b) hereof, the amount of damages, if any, to which Buyer or Seller, as the case may be, shall be entitled for such failure, shall be determined by agreement or, failing agreement, by arbitration in accordance with Section XI hereof; provided, however, that Seller shall not be entitled to damages for failure by Buyer to take and pay for 100-Octane aviation gasoline unless the storage facilities referred to in Section II (g) hereof are full of 100-Octane aviation gasoline, leaded or unleaded; provided further that Seller shall be entitled to damages for failure by Buyer to take and pay for 100-Octane aviation gasoline only to the extent that the amount taken and paid for is less than (1) the amount called for in Section II (b) hereof or (2) Seller's average productive capacity per calendar day for 100-Octane aviation gasoline (of current specifications) over the period in question, whichever quantity is the lesser; and provided further that Buyer's right to damages under this Section VIII shall be subject to Seller's rights under Sections (II) (g) and V (c) hereof. This paragraph (a) shall apply to the prior Port Arthur contract exactly as though incorporated therein.

(b) Damages under this contract shall be limited to those damages arising proximately from a breach of contract.

IX. Deliveries and Inspections.

(a) Seller warrants full and unencumbered title to all gasoline delivered under this contract. Title to said gasoline, and risk of loss in respect thereof, shall pass from Seller to Buyer upon delivery of the gasoline at the point of manufacture.

(b) Buyer shall take delivery of said gasoline in tank cars, barges, tank vessels, or tank trucks (tank truck deliveries to be not in excess of available tank truck loading facilities for 100-Octane aviation gasoline) to be supplied by Buyer (except as otherwise provided in paragraph (1) of this Section) at its own cost and expense, at Seller's refinery in quantities approximating the current rate of production.

(c) Each vessel delivery shall be made and title and risk of loss shall pass at the intake pipe of the vessel. Buyer shall give notice to Seller as far in advance as practicable, and in no case less than forty-eight (48) hours, of the arrival of each barge or tank vessel and of the quantity of and specifications of the gasoline to be loaded. Seller shall furnish without cost to Buyer berth at which each vessel may safely lie afloat together with all connections and facilities for loading, and shall load the product on board. Deliveries shall be made in accordance with the delivery conditions at each loading point which currently are in effect with respect to deliveries made at such point to other customers.

(d) Each tank car delivery shall be made and title and risk of loss shall pass at the time the loaded tank car is turned over to the railroad.

(e) Each tank truck delivery shall be made and title and risk of loss shall pass at the time the loading of the truck is completed.

(f) On shipments made from refineries and any other points where licensed inspectors are regularly available, Seller shall furnish certificates of inspection by a licensed inspector satisfactory to Buyer which shall set forth the quantity and quality of each shipment of gasoline. The inspection procedure and the form of the certificate shall conform with usual industry practice. The certificates of inspection shall be issued in quadruplicate, one set of which shall accompany the relative shipment, one of which shall be forwarded forthwith to Buyer, and a third submitted to Buyer with the monthly statement required by Section IV hereof. Buyer may, at its option, waive the requirements of inspection by a licensed inspector, and in such event, and in case of shipments made from points (other than refineries) where no licensed inspector is available, Seller shall furnish its own certificates of inspection, which certificates shall be controlling.

(g) Inspection as to quantity of delivery into vessels shall be made by taking the temperature and measuring and gauging the product in shore tanks from which delivery is made immediately before and immediately after loading. Inspection as to quantity of delivery into tank cars and tank

trucks shall be made in accordance with the accepted practices of the trade. Adjustment in volume to a sixty degree Fahrenheit (60°F.) basis shall be made in accordance with the correction tables of the United States Bureau of Standards prevailing at the time of delivery, except in case of deliveries into tank trucks in which case no adjustment shall be made.

(h) Inspection as to quality shall be made according to the latest standard or tentative standard methods of the American society for Testing Materials wherever applicable and the product shall conform as to quality with the specifications set forth in Exhibit A hereof.

(i) The cost of product inspection shall be paid by Seller and billed separately to Buyer, which shall pay such cost, except when Seller's inspection is accepted in which case Seller shall assume …

(j) The certificates of inspection of quantity and quality shall be accepted by Buyer and Seller as conclusive for invoice, payment, and all other purposes of this contract.

(k) Should any such certificate indicate a failure of the product shipped to conform, completely, to the specifications of quality, Buyer may accept delivery of the product and claim an adjustment for such deficiency, provided, that in the event that such a claim is made Seller shall be notified and given an opportunity to inspect said shipment within five (5) days after arrival at destination but in any event before unloading.

(l) Notwithstanding the preceding provisions of this Section and at the request of Buyer, Seller

shall utilize its existing and available facilities (other than tankers) for handling, metering and delivering the gasoline purchased by Buyer to points (other than Seller's refinery at which the gasoline was manufactured) designated by Buyer within the marketing area in the continental United States served by Seller, where such gasoline is to be used, such service to be at the expense of Buyer and at Buyer's risk. In the event of loss Seller shall make its records available to Buyer to prove the extent and value of such loss.

X. Force Majeure.

Seller shall not be liable for delays or defaults in performance under this contract due to causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts or requests of the Government or of any governmental officer or agent purporting to act under authority, floods, fires, epidemics, quarantine restrictions, strikes, picketing, freight embargoes and failures, exhaustion or unavailability, or delays in delivery, of any product, service or material necessary in the construction of the facilities contemplated by Section I hereof or in the manufacture and delivery of aviation gasoline deliverable hereunder, including crude oil, supplies, raw materials, ingredients and lead tetraethyl. Section X of the prior Port Arthur contract is hereby modified to correspond with the foregoing.

XI. Arbitration.

In case of any disagreement between Buyer and Seller as to any right, obligation, term, or provision of this contract, including any disagreement as to the

price to be paid for gasoline to be delivered hereunder, the parties shall make an earnest effort to settle such disagreement to their mutual satisfaction. If such effort be unsuccessful, then either party may cause such disagreement to be submitted for determination by arbitrators (none of whom shall be connected with either party hereto) by giving to the other party a notice in writing or by telegraph to that effect and giving the name of the arbitrator chosen by the party giving the notice. Within five (5) days of receipt of such notice of arbitration, the other party shall, in writing or by telegraph, name the arbitrator chosen by such party, and within five (5) days after the appointment of the second arbitrator, an additional arbitrator shall be selected by the two (2) arbitrators theretofore appointed, provided, however, if one of the parties shall have failed to appoint an arbitrator as hereinbefore provided, the sole arbitrator shall arbitrate the disagreement alone. If two (2) arbitrators shall have been appointed as aforesaid and shall have failed to select an additional arbitrator within the above stated time, the additional arbitrator shall be appointed by the -Senior Judge of the United States Circuit Court of Appeals for the Second Circuit acting in his individual capacity, upon application therefore by either of the parties. The decision of a majority of the arbitrators so appointed, or if either party shall have failed to appoint its arbitrator as aforesaid, the decision of the sole arbitrator shall be final and binding on the parties for all purposes. Each party shall pay the cost and expenses of the arbitrator appointed by such party, and the other costs and expenses of the arbitration, including the cost and expense of the additional arbitrator, shall be paid by

the party to the arbitration whose claim is not sustained or if partially sustained the costs shall be divided. Pending such determination of every disagreement as to the price to be paid for gasoline delivered hereunder, Buyer shall, upon contesting any price claimed by Seller to be due, pay the price which Buyer alleges to be due and shall immediately upon such determination pay any balance found by mutual agreement or by said arbitrators to be due.

XII. Taxes.

(a) Buyer shall pay in addition to the price as established in Sections IV and V hereof, any new or additional taxes, fees, or charges, other than income, excess profits, or corporate franchise taxes, which Seller or its Suppliers may be required by any municipal, state, or federal law in the United States or any foreign country to collect or pay by reason of the production, manufacture, sale or delivery of the commodities delivered hereunder. Buyer shall also pay any such taxes on crude petroleum, or the transportation thereof, to the extent such taxes result in increased cost of the commodities delivered hereunder not compensated for by Section V hereof.

(b) It is understood that Buyer's obligation under this Section shall include all presently existing taxes not now deemed applicable but which may later be held to apply to the commodities delivered hereunder. It is understood that Buyer does not deem sales taxes or excise taxes in the nature of sales taxes to be applicable.

(c) If in any case the parties cannot agree on the question as to whether or not Buyer or Seller is

entitled to exemption from a given tax by virtue of Buyer's governmental status, the burden shall be upon Buyer to obtain a ruling in writing from a duly constituted and authorized governmental tax authority as to such exemption. Until such ruling is obtained Buyer shall pay the amount of the tax to Seller or to the appropriate tax collecting agency or make satisfactory arrangements with such tax collecting agency.

XIII. Notices.

Any notice to be given hereunder shall be in writing and may be personally delivered or sent by cable, telegram or mail to the party for whom intended at the address of such party as specified above. A notice personally delivered to either party must be personally delivered to an officer or manager thereof. Notice by registered mail shall be deemed to have been given at the expiration of that time after mailing which is normally required by the postal authorities to make delivery. Cabled or telegraphed notice shall be deemed given the day after sending the cable or telegram. Each party shall immediately send to the other by regular mail confirming copies of any notices sent by cable, telegraph or air mail. Either party may by notice given as aforesaid change its address for …

XIV. Entirety of Contract.

This instrument contains the entire agreement between the parties in respect of the subject matter and there are no oral conditions, warranties, representations or stipulations relating thereto which are not merged herein. The right of either party to require strict performance shall not be affected by any previous waiver or course of dealing, unless such

waiver be in writing signed by an officer of other duly authorized person and specify a duration sufficient in time to embrace the matter in question.

XV. Assignability.

This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the respective parties hereto, provided, however, neither party shall have the right to assign this contract without the written consent of the other party, except that Buyer may assign to any other Governmental Agency, department, instrumentality or wholly Government-owned corporation in which event Buyer shall remain liable.

XVI. Statutory Compliance.

(a) In carrying out this contract Seller agrees to comply with, and give all stipulations and representations required by applicable Federal laws and further agrees to require such compliances, representations, and stipulations with respect to any contract entered into by it with others incidental to or in connection with this contract as may be required by applicable Federal laws; and notwithstanding the generality of the foregoing, Seller further agrees that in the performance of this contract it will not discriminate against any worker because of race, creed, color or national origin.

(b) No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(c) If any statute now in existence or hereafter enacted, or any present or future governmental ruling or order, or the action of any governmental department, agency or instrumentality shall reduce any for in this contract, then Seller and Buyer agree that this shall, for the purpose of this contract, be deemed to be and shall constitute a breach by Buyer of its obligation to accept and pay for aviation gasoline at the prices provided for in this contract, and thereupon the Seller shall have the option upon thirty (30) days' written notice to Buyer to elect to continue to make the deliveries provided for in this contract at the maximum price fixed by any such ruling, order or action, or to consider this contract terminated, unless within said thirty (30) days said ruling or order shall be rescinded, or changed so as not to reduce the price payable to Seller or otherwise changed in a manner satisfactory to Seller. The third paragraph of Section XVI of the prior Port Arthur contract is hereby modified to correspond with this paragraph (c).

XVII. Right to Terminate.

Seller shall have the right to terminate this contract within ninety (90) days of the date thereof, unless within said ninety (90) days it shall receive all Governmental assistance which is available or necessary for performing this contract and for the prompt completion of the expanded facilities which Seller will erect and install hereunder, including, without limitation, priorities and allocations necessary for obtaining materials, equipment, supplies and crude petroleum, and (1) such certificates

or other evidence as may be necessary to permit them to invoke the provisions of Section 124, Internal Revenue Code; (2) assurances from the Treasury Department, in the form of closing agreements, that the advance payment of Sixteen Million One Hundred Twenty-five Thousand Dollars ($l6,125,000.00) herein provided for, or any part thereof, will not be treated as taxable income upon receipt by Seller, but that the ratable portions thereof will be treated as amounts received for products supplied, when and as such ratable portions are credited for that purpose hereunder.

XVIII. War Risk Insurance.

In the event War Risk Insurance hereafter becomes available through or is underwritten by the United States Government, Buyer shall pay in addition to the price as established in Sections IV and V hereof, an amount sufficient to reimburse Seller for any premium allocable to the period of this contract paid on such War Risk Insurance covering the facilities referred to in Section I hereof.

IN WITNESS WHEREOF the parties hereto have executed this contract as of the date and year first above written.

ATTEST:	DEFENSE SUPPLIES CORPORATION
Dudley H. Digges Acting Secretary	By H. A. Mulligan President
(SEAL)	
ATTEST:	THE TEXAS COMPANY
Reinhold Hekeler Assistant Secretary	By M. Halpern Vice-President
(SEAL)	

GUARANTEE BY RECONSTRUCTION FINANCE CORPORATION

In consideration of the execution of the within contract and as an inducement to The Texas Company to enter into said contract, RECONSTRUCTION FINANCE CORPORATION does hereby guarantee the full and complete performance of all of the terms and conditions of said contract on the part of Defense Supplies Corporation (a subsidiary of Reconstruction Finance Corporation) to be performed at the time and in the manner therein provided.

IN WITNESS WHEREOF, Reconstruction Finance Corporation has caused this Guarantee to be executed by its officers thereunto duly authorized as of March 10, 1942.

RESCONSTRUCTION
FINANCE CORPORATION

By Charles B. Henderson
Chairman

ATTEST:

A. T. Hobson
Acting Secretary

(SEAL)

EXHIBIT "A"

Item 1.

U.S. ARMY – NAVY SUPPLY

AN-VV-F-781 Sept. 26, 1940

Amendment No. 3 June 6, 1941

Knock Test Method AN-VV-F-746

100-Octane Number by Method AN-VV-F-746

Lead Limit 3.0 cc/Gal.

Item 2.

U.S. ARMY – NAVY SUPPLY

Same as above with Amendment No. 4 Nov. 24, 1941

Lead Limit 4.0 cc/Gal.

ADDENDUM #1 The Texas Company
New York, N.Y.

All material ordered hereunder is for Defense Supplies Corporation, a corporation created by Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, and in accepting, this contract. The Texas Company, a Delaware corporation, (hereinafter designated as "Contractor") agrees:

I. (a) The Contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

(b) All persons employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract; PROVIDED, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(c) No person employed by the Contractor in the manufacture of furnishing of the materials, supplies, articles, or equipment used in the

performance of the contract shall be permitted to work in excess of eight (8) hours in any one day or in excess of forty (40) hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

(d) No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

(e) No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(f) Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of ten dollars ($10.00) per day for each male person under 16 years of age or each female person under 18 years of age, or each

convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel sane and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original Contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered; PROVIDED, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the United States of America.

(g) The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in

the Regulations under the Act available for inspection by authorized representatives of the Secretary of Labor.

(h) The foregoing stipulation shall be deemed inoperative if this contract is for a definite amount not in excess of $10,000.00.

This Addendum #1 is hereby made a part of the contract between Defense Supplies Corporation and the undersigned dated as of March 10, 1942.

THE TEXAS COMPANY

By: M. Halpern
Vice-President

Appendix I

RELEVANT STATUTORY PROVISION
28 U.S.C. §1442

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

> **(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, in an official or individual capacity, 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.
>
> **(2)** A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.
>
> **(3)** Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;
>
> **(4)** Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such

State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(c) Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer--

(1) protected an individual in the presence of the officer from a crime of violence;

(2) provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or

(3) prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

(d) In this section, the following definitions apply:

(1) The terms "civil action" and "criminal prosecution" 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. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.

(2) The term "crime of violence" has the meaning given that term in section 16 of title 18.

(3) The term "law enforcement officer" means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5 and any special agent in the Diplomatic Security Service of the Department of State.

(4) The term "serious bodily injury" has the meaning given that term in section 1365 of title 18.

(5) The term "State" includes the District of Columbia, United States territories and insular possessions, and Indian country (as defined in section 1151 of title 18).

(6) The term "State court" includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and a tribal court.