

No. 24-813

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

**BRIEF OF THE AMERICAN PETROLEUM
INSTITUTE AND THE AMERICAN
FUEL & PETROCHEMICAL
MANUFACTURERS AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

JASON T. MORGAN
Counsel of Record
RYAN P. STEEN
TIFFANY M. WANG
STOEL RIVES LLP
600 University Street
Suite 3600
Seattle, WA 98101
(206) 624-0900
jason.morgan@stoel.com
Counsel for Amici Curiae

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INTERESTS OF *AMICI CURIAE*

The American Petroleum Institute (“API”) and American Fuel & Petrochemical Manufacturers (“AFPM”) hereby submit this *amicus curiae* brief in support of the petition for certiorari filed by Chevron USA, Inc. et al.¹

Formed in 1919, API is a national trade association that represents nearly 600 member companies supporting all segments of the oil and natural gas industry. API and its members are committed to ensuring the industry remains strong, viable, and capable of meeting the energy needs of our nation in a safe and environmentally responsible manner.

AFPM is a national trade association representing most American refining and petrochemical companies. These industries provide jobs, directly and indirectly, to more than three million Americans, contribute to our economic and national security, and enable the production of thousands of vital products used by families and businesses throughout the United States. AFPM is committed to the development of sound policies that enable its members to supply the fuel and petrochemicals that growing populations need to thrive in an environmentally sustainable way.

¹ Pursuant to Supreme Court Rule 37(2), all parties received notice of the intent to file this *amicus curiae* brief 10 days prior to its due date. Pursuant to Supreme Court Rule 37(6), undersigned counsel certifies that (A) no party’s counsel authored this brief, in whole or in part; (B) no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and (C) no person, other than the *amici curiae* or their members, contributed money that was intended to fund preparing or submitting this brief.

API and AFPM's interest in these cases stems from the historical relationship between the oil and gas industry and the federal government during World War II ("WWII"). As discussed below, during that time of national emergency, the federal government called upon private oil and gas companies to meet unprecedented demands for refined petroleum products necessary to fuel American war machines. Specifically, the federal government contracted with oil and gas companies to produce massive quantities of refined products, particularly aviation grade fuel ("avgas"), while at the same time exercising pervasive control over the crude oil production necessary to create those refined products.

Respondents now seek to impose liability on those same oil and gas companies for actions they took to carry out those federal contracts more than 70 years ago during a time of war. The federal officer removal statute at 28 U.S.C. § 1442(a)(1) exists to ensure that those accused of wrongdoing while acting under federal direction, like Petitioners here, can have their case heard in federal court. The Fifth Circuit's decision in *Plaquemines Parish v. BP America Production Co.*, 103 F.4th 324 (2024), reproduced in Petitioners' Appendix at App. 1-63, improperly denies that promised federal forum.

API and AFPM agree with Petitioners that Supreme Court review is necessary to ensure that § 1442(a)(1) secures Congress' promise of a federal forum for private parties who rise to the government's call for assistance in times of national emergency. Federal officer removal should ensure that parties who contract with and act under government direction to accomplish the government's ends are not later subject to suits in state court for their actions. API and AFPM

also agree that the Fifth Circuit correctly concluded Petitioners were “acting under” a federal officer during the course of their federal contracts to supply unprecedented wartime amounts of avgas, App. 16 but that the Fifth Circuit erred in concluding Petitioners’ crude oil production, as conducted in cooperation with the Petroleum Administration for War (“PAW”), was not “connected or associated with” the same federal contracts, App. 26, 29.

In this brief, API and AFPM highlight the historical background of PAW and show that the depth and breadth of federal control of the crude oil production and its subsequent refinement during WWII facilitated every action and decision made by Petitioners to fulfill their government contracts. The Fifth Circuit erroneously concluded that PAW’s pervasive control over crude oil production and distribution, for the purposes of meeting wartime demand, somehow severed the causal connection between crude oil production and government contracts to refine that crude oil into avgas. App. 35-36. It does not. Ultimately, the historical record shows that the oil industry was recruited into service of the federal government’s objectives and acted within a tightly controlled regulatory framework focused entirely on maximizing and controlling crude oil production to support avgas refining activities for wartime use. Under those circumstances, Petitioners’ wartime crude oil production efforts are plainly “related to” their wartime avgas production contracts with the federal government, and warrant a federal forum under § 1442(a)(1).

SUMMARY OF ARGUMENT

WWII, “from beginning to end, was a war of oil.” See Petroleum Administration for War, *A History of the Petroleum Administration for War, 1941–1945*, at 1 (John W. Frey & H. Chandler Ide eds., 1946) https://www.google.com/books/edition/A_History_of_the_Petroleum_Administratio/oNfNAAAAMAAJ?hl=en&gbpv=0 (hereinafter, “PAW History”). To fight such a war, and win it, required extraordinary coordination of America’s oil industry—an industry that until that point had been the target of such energetic antitrust enforcement that “[o]il men hesitate[d] to lunch with a competitor, for fear of an anti-trust investigation.” Max W. Ball, *Fueling a Global War – An Adventure in Statecraft*, 45 Ohio J. Sci. 29, 33 (1945).

Indeed, the oil industry was called to actions “that in war are called cooperation but in peace are called collusion[.]” *Id.* The federal government accomplished this coordination through the formation of a new, independent agency, the PAW. PAW worked hand in glove with the oil industry at every level to maximize and control crude oil production to support avgas refining activities for wartime use. This special contractual and practical relationship between PAW and the oil industry ensured that production, refining, transport, and distribution of oil proceeded apace with the needs of the war.

These wartime contracts to produce avgas fall squarely within the ambit of the federal officer removal statute. That statute 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.” 28 U.S.C. §1442(a)(1). The Fifth Circuit correctly concluded that Petitioners were “acting under” federal direction in producing

avgas because they had contracts with the federal government to produce that avgas to meet the federal government's unparalleled needs for fuel during WWII. App. 16-17. However, the Fifth Circuit erred in concluding that the same avgas contracts were not *related to* the production of crude oil used to produce that avgas because PAW's involvement and control over crude oil production allegedly "severed any connection between [Petitioners'] production and refinement activities." App. 36.

This was in error. PAW's involvement did not "sever" any such connection. On the contrary, PAW's pervasive involvement in both the avgas contracts and the crude oil production necessary to satisfy those contracts only confirms that crude oil production is "for or relat[ed] to" the avgas contracts as required to invoke federal officer jurisdiction under 28 U.S.C. §1442(a)(1).

ARGUMENT

I. PAW's Entire Purpose Was to Control and Direct the Oil and Gas Industry to Satisfy Wartime Needs

The historical record makes clear that PAW directed and controlled producers and refiners. PAW formed industry committees and provided antitrust immunity for oil company executives so they could work together, under PAW's direction and control, to ensure that refineries had the crude oil needed to produce aviation gasoline and hundreds of other petroleum products the government needed to fight the war. *See Ball, supra*, at 37; PAW History at 3, 40.

A. Creation and authority of PAW.

The government acted to strengthen its petroleum position even before WWII began. Since the 1920s, the American oil industry had operated with excess capacity to produce, refine, and distribute petroleum. PAW History at 15. But government leaders had “grave misgivings” as to the adequacy of U.S. production capabilities. *Id.* at 16. They recognized that mere coordination of existing governmental functions was not enough if the nation became involved in war, especially in the face of great developments in war machines. *Id.* The government foresaw that the oil industry would need to expand its domestic oil production and refinement activities, drastically rearrange normal movements of oil to offset the loss of tankers from domestic service, and maintain operations in the face of wartime shortages of labor and materials. *Id.*

Surviving and winning a war powered by avgas required “[c]entralized planning and direction” to maximize the nation’s petroleum resources. *Id.* Industry could not continue to operate as usual. “If allowed free rein . . . undirected competition would inevitably give rise to an unbalanced production and flow of supplies resulting in failure to meet essential war requirements[.]” *Id.* Thus, the government stepped in to direct the oil industry’s efforts towards the common goal by creating a new agency with authority to “coordinate and centralize the war policies and actions of the Government relating to petroleum.” Exec. Order No. 9276, 7 Fed. Reg. 10091, 10091 (Dec. 2, 1942).

In May 1941, the Office of Petroleum Coordinator for National Defense was established by presidential letter. PAW History at 1. On December 2, 1942, it became PAW—an independent, centralized agency

with war powers. *See* Exec. Order No. 9276, 7 Fed. Reg. 10091. “PAW was the central source of authority in matters of oil supply,” PAW History at 3, that existed for the sole purpose of manifesting the government’s vision to “ensur[e] ‘adequate supplies of petroleum for military, or other essential uses’ and ‘[effect] the proper distribution of such amounts of materials,’” *Shell Oil Co. v. United States*, 751 F.3d 1282, 1286 (Fed. Cir. 2014) (quoting Exec. Order No. 9276, 7 Fed. Reg. at 10092); *see also* PAW History at 49, 219.

By putting PAW at the head of the oil and gas supply chain process, the government could effectively mobilize and oversee all stages of oil production, refinement, transportation, and distribution of petroleum products, all of which served as the backbone of the nation’s military efforts. *See* PAW History at 15. Indeed, even civilian use of oil and oil-based products was curtailed to ensure that there was an adequate supply of crude oil available to fuel WWII. *Id.* at 142.

In short, crude oil was produced, prioritized, and refined for the federal government’s wartime needs. To do so, “the Government exercised substantial wartime regulatory control over almost every aspect of the petroleum industry.” *Shell Oil*, 751 F.3d at 1285. It could impose obligatory product orders on private companies under threat of criminal sanctions or government takeover. *Id.* Facilities had to prioritize government military contracts above all other contracts. *Id.* And if raw materials were scarce, the government could regulate supply chains to ensure continuing production. *Id.*

B. The integration between PAW and the oil industry ensured federal participation and supervision.

Backed by its sweeping war power authorization, PAW primarily carried out its mandate through recommendations and directives, which “cleared the way . . . for the comprehensive mobilization of all branches of the petroleum industry . . . while, at the same time, providing for appropriate Government participation or supervision at all stages.” PAW History at 42-43.

Over the course of the war, PAW or its predecessor agencies issued 80 directives and recommendations. *Id.* at 42. Of those, “56 [were addressed] to the petroleum industry as a whole or to branches thereof, 9 to specifically enumerated oil companies, and 30 to some one or more of the petroleum industry Committees that had been created by PAW.” *Id.* at 41. The directives covered diverse subjects. Some “were for the purpose of bringing about some alteration or adjustment in industry operations in order to conserve materials or manpower, to expedite production and equitable distribution of petroleum products, and to assure most efficient utilization of petroleum facilities.” *Id.*

Given the magnitude and complexity of the need, the government realized that “the fullest possible utilization would have to be made of the resourcefulness, ingenuity, and initiative of the industry itself.” *Id.* at 15. Thus, PAW was organized “along functional lines paralleling the principal functions of the petroleum industry itself.” *Id.* PAW was structured like a vertically integrated oil company, with divisions for production, refining, supply, transportation, and distribution. *Id.* at 308-10. And critically, PAW used

the aforementioned industry committees to “advise and assist Government,” so that “the full resources of the industry would thus be enlisted on a cooperative basis; at the same time, orders and regulations [were] kept to a minimum, and the greatest possible reliance placed upon voluntary compliance and support.” *Id.* at 15.

PAW’s relationship with industry committees was formalized with Recommendation 7 (issued in August 1941). *Id.* at 59. Under Recommendation 7, industry committees operated as extensions of PAW itself, relieving the agency from the need to create an elaborate organization and ensuring speed and efficiency. *Id.* at 61. Industry committees were not simply informative or advisory bodies. *Id.* They “shouldered a tremendous burden of arduous and time-consuming work in carrying out under Governmental supervision or direction, the terms of plans and programs that had been approved by PAW.” *Id.*

Doing so, the industry committees “operated, under the various recommendations, directives and orders, and subject to the clearance procedure and supervision [of PAW] . . . , in a very real sense as extensions of the Government agency.” *Id.* PAW used the committee mechanism to direct and control the oil industry, including production. And critically, while industry committees provided the government with “plans or proposals,” “[n]o action beyond advice and suggestions was to be taken until formal clearance and approval by Government was given.” *Id.* at 59.

C. PAW exercised its authority to negotiate contracts and control performance of those contracts.

The government's massive oil needs required refineries to invest millions of dollars to expand productive capacity. *Id.* at 361. Refiners needed assurance—through firm, multi-year government contracts—that there would be continued demand for the increased refining capacity. *Id.* But the Army and the Navy lacked authority to contract for a period longer than the current fiscal year. *Id.* After a few years of workarounds through other agencies, by 1942 “it became obvious that it would be necessary to integrate more closely the purchasing arrangements with the extraordinary operations required to provide the necessary quantities of product.” *Id.* In other words, the government understood that it could not simply contract for its oil requirements and trust that the industry would rise to meet those contracts without further involvement. Rather, extraordinary coordination to increase production was necessary.

To that end, the government engineered the so-called “Four Party Purchase Agreement.” *Id.* Under these agreements, PAW negotiated contracts, the Defense Supplies Corporation (“DSC”) signed them, and the DSC then resold the fuel to the Army and Navy at a uniform price established by PAW. *Id.*

DSC's aviation gas procurement policy resulted in three-year firm contracts under which unprecedented amounts of avgas would be purchased from privately owned facilities, like Petitioners' refineries. *Id.* at 361, 365. DSC helped fund the immense costs associated with expanding a refinery's productive capacity, which was a necessary step to meet a company's contractual obligation. *Id.* at 365-66. Because all parties involved

were sophisticated actors who understood the domestic oil industry landscape, resources, and refining capacities, it went without saying that the government's demand for an increased amount of avgas would require an increase in crude oil production.

Simply put, “[f]rom the very beginning until the last gun was fired in the Pacific, there was never a time when crude supply was not a problem somewhere in the country[.]” *Id.* at 214. PAW and its committees “maintained constant studies as to where crude could be had” and “analyzed various crudes to determine which could be used by which plants.” *Id.* at 215. And “[w]henever they came across some idle refining capacity and some surplus crude, [the committees] would work with the Government to bring the two together.” *Id.*

In short, PAW knew where its government contractors were sourcing their crude oil and relied on their expertise to produce massive amounts of avgas. And it proactively intervened and contracted with private parties to redirect or reallocate crude as necessary to maximize refinery output.

II. The Fifth Circuit Improperly Narrowed the Scope of § 1442(a)(1)

Against the above historical context, the Fifth Circuit has too rigidly applied the “related to” requirements of § 1442(a)(1). The federal “government needed to fight in [WWII]” and it needed avgas for that fight. App. 16. It is undisputed that “crude oil is a necessary component of avgas,” and that Petitioners were contractually obligated to produce avgas for the federal government. App. 28. Under wartime circumstances, the federal government through PAW pervasively controlled the crude oil supply, rendering the pro-

duction of petroleum to be directly related to the production of avgas. As correctly stated by the dissent, “[Petitioners] satisfied their contractual avgas obligations by increasing their own exploration and production of crude,” thereby making “[t]he exploration/production of crude . . . undeniably ‘related to’ the avgas refining contracts.” App. 45.

PAW’s pervasive control over crude oil production during the war only confirms that crude oil production was related to the contracts for avgas. The Fifth Circuit’s holding that PAW’s involvement “severed any connection between . . . production and refinement activities,” App. 36, ignores the essential historical context of what spurred the federal government to contract with the oil industry. The whole point of the well-orchestrated supply chain by the federal government during wartime was to “maximize the output of war products.” App. 35.

Congress enacted 28 U.S.C. § 1442(a)(1) to ensure that private parties operating at the direction of federal officials will have access to a federal forum. But that federal forum has become inaccessible to Petitioners because the Fifth Circuit here misconstrued the extent to which the challenged conduct is “related to” a federal officer’s directive.

In this case, Petitioners “fulfilled the terms of a contractual agreement by providing the Government with a product that it used to help conduct a war.” *See Watson v. Philip Morris Cos.*, 551 U.S. 142, 153-54 (2007). To do so, Petitioners had to increase production of crude oil. The crude oil production is plainly related to the avgas production, and Petitioners are entitled to a federal forum to address concerns about these wartime activities.

CONCLUSION

For all these reasons, API and AFPM respectfully urge the Court to grant the petition for writ of certiorari. Federal officer removal assures access to a neutral federal forum for private persons who respond to the government's call for assistance and act under its direction—especially during times of national crisis. Without such assurance, a private party might hesitate to respond to the government's needs. Accordingly, this case presents an exceptional issue that warrants Supreme Court review.

Respectfully submitted,

JASON T. MORGAN

Counsel of Record

RYAN P. STEEN

TIFFANY M. WANG

STOEL RIVES LLP

600 University Street

Suite 3600

Seattle, WA 98101

(206) 624-0900

jason.morgan@stoel.com

Counsel for Amici Curiae

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