No. 24-813

In the Supreme Court of the United States

CHEVRON USA INCORPORATED, ET AL.,
Petitioners,

v.

PLAQUEMINES PARISH, LOUISIANA, ET AL.,
Respondents.

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

AMICI CURIAE BRIEF OF GENERAL (RETIRED) RICHARD B. MYERS and ADMIRAL (RETIRED) MICHAEL G. MULLEN, IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE* [1]

Air Force General (Retired) Richard Myers served as Vice Chairman of the Joint Chiefs of Staff under President Clinton and as the 15th Chairman of the Joint Chiefs of Staff under President George W. Bush. He joined the Air Force in 1965 and served in the Vietnam War, flying over 600 combat hours in the F4 fighter jet, which used a specialized jet fuel produced by the private sector. General Myers held several commands and received numerous awards and decorations. After retiring from active duty, he served as President of Kansas State University from 2016 to 2021.

Navy Admiral (Retired) Michael Mullen served as the 17th Chairman of the Joint Chiefs of Staff under Presidents George W. Bush and Barack Obama. After graduating from the Naval Academy, Admiral Mullen served in the Vietnam War. After earning a Master's Degree in Operations Research, Admiral Mullen served in numerous distinguished positions, including heading Naval Forces in Europe and NATO's Joint Force Command and serving as Chief of Naval Operations, before his appointment as Chairman of the Joint Chiefs of Staff. Admiral Mullen is one of only four naval officers who has received four, 4-Star assignments. Admiral Mullen retired from his position in 2011 after serving for four years under both a Republican and Democratic President.

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* affirm that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amici curiae*, or its counsel, made a monetary contribution to the preparation or submission of the brief. Counsel of record for all parties received timely notice of the intention to file this brief.

This brief does not focus on the merits of the litigation, upon which *amici* take no position, but, instead, on the appropriate venue. To assist the Court in understanding why a federal, not state, forum is appropriate, this brief provides a history of the federal government's—particularly, the military's—control and direction of Petitioners' production of petroleum products in the Louisiana coastal lands. Federally-directed petroleum production by private parties has been crucial for our armed forces, including during World War II ("WWII"). As Admiral Mullen once said, "[e]nergy security needs to be one of the first things we think about, before we deploy another soldier, before we build another ship or plane, and before we buy or fill another rucksack."[2] We submit this *amicus brief* to emphasize the practical concerns we have with both the Fifth Circuit's decision and the split among the circuits on the correct interpretation of the "relating to" prong of the federal officer removal statute.

It is striking to us that the court below is fraught with disagreement, resulting in an initial 2-1 panel decision and a subsequent 7-6 denial of rehearing en banc. The decision to send the case back to state court included a strong dissent that the "very real consequences" of that ruling would deter federal contractors from helping their country in a time of need. Op. at 42 (Oldham, J., dissenting). Not only do we share this concern, but it is precisely the concern

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[2] Office of the Secretary of Defense Public Affairs, *Mullen: Military Has 'Strategic Imperative' to Save Resources*, Energy Security Forum, Washington, D.C., Oct. 13, 2010, https://www.dvidshub.net/news/58040/mullen-military-has-strategic-imperative-save-resources.

that prompted Congress to pass the statute in the first place and amend it multiple times to *expand* its scope and require judges to interpret the statute liberally in favor of—not in opposition to—a federal forum. Yet, that seems to be the opposite of what occurred here.

We agree with Judge Oldham, who telegraphed that something is seriously amiss when, in a case like this, involving critical real-time, war-time decisions, the case is sent back to state court, rather than staying in federal court. Op. at 42 (Oldham, J., dissenting) (discussing the "very real consequences, especially for federal contractors," from failing to interpret the federal officer removal statute liberally, as the standard of review requires); *see also Maryland v. 3M Co.*, -- F.4th --, 2025 WL 727831 at *4 (4th Cir. Mar. 7, 2025) (explaining that the federal officer removal statute "must be 'liberally construed'"); *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147, 127 S.Ct. 2301, 168 L.Ed.2d 42 (2007) (same); *Willingham v. Morgan*, 395 U.S. 402, 406, 89 S.Ct. 1813, 23 L.Ed.2d 396 (1969) ("[T]he right of removal under § 1442(a)(1) is made absolute whenever a suit in a state court is for any act 'under color' of federal office, regardless of whether the suit could originally have been brought in a federal court."); *Cnty. Bd. of Arlington Cnty. v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 251 (4th Cir. 2021) ("[T]he ordinary 'presumption against removal' does not apply.").

From our perspective garnered through decades of service and leadership throughout all levels of our military, this single-vote majority, against the backdrop of the split among other circuit courts, cries out for this Court to resolve the circuit-split regarding

the proper venue for these federal-officer related disputes. This is especially true at this time when our nation can ill afford such division, confusion and uncertainty in the context of disputes arising from wartime decision-making.

INTRODUCTION AND SUMMARY OF ARGUMENT

Based on over 80 years of combined military service, serving as Chairmen of the Joint Chiefs of Staff under both Democratic and Republican administrations, we strongly believe that petroleum products produced by private parties, like Petitioners, including those produced from activities in the Louisiana coastal zone, have been critical to our national security, military preparedness, and combat missions. To ensure the military has the energy indispensable to our warfighting capacity, the federal government directed Petitioners to obtain oil and gas products, including specialized aviation fuels. We are concerned the Fifth Circuit's affirmance of remand sets a dangerous precedent that could adversely impact our national security by allowing Louisiana state courts to second-guess decisions made by federal officers almost 80 years ago to maximize use of our natural resources to win WWII.

When the military calls upon private parties to help protect our Nation, it is imperative that those parties readily answer that call. One way the federal government incentivizes the support it needs from private industry is by ensuring that claims regarding those activities are not litigated in potentially biased local venues, where localized—not national—interests may predominate. *See Watson v. Philip Morris Cos.,* 551 U.S. 142, 147-48 (2007) (explaining

the federal officer removal statute was enacted to "protect federal officers" and those aiding or assisting them "from interference by hostile state courts") (quoting *Willingham v. Morgan*, 395 U.S. 402, 405 (1969); 9 Cong. Deb. 461 (1833)); *Maryland v. 3M Co.*, -- F.4th --, 2025 WL 727831, at *3 ("[T]hose acting at the federal government's direction should be able to defend themselves in federal—not state—court, lest states be able to stymy the federal government's operations."); *Puerto Rico v. Express Scripts, Inc.,* 119 F.4th 174, 185 (1st Cir. 2024) (explaining that the Statute exists "to ensure a federal forum in any case" involving private actors acting on behalf of a federal officer.").

Here, the Fifth Circuit took an unduly narrow approach to applying the federal officer removal statute, 28 U.S.C. § 1442(a)(1), ignoring the wartime context in which the contracts were created and requiring an unnecessarily high level of specificity regarding what was being asked of the federal contractors. This will only impair our military's ability to react rapidly to emerging and evolving international threats. Essential contracts will become needlessly complicated and delayed because contractors will justifiably insist that the contract painstakingly detail every single step, less some (or many) state attorneys general or municipal district attorneys decide to second-guess national priorities by filing a lawsuit in state court years down the road. The decision affixes blinders to wartime demands and the regulatory context in which government and industry joined in this war effort.

The Fifth Circuit's opinion, therefore, seems to entirely miss the mark when it holds that production

of crude oil is separate from production of refined high-octane aviation gasoline ("avgas") such that while a federal officer required the production of avgas, production of crude oil fell outside that direction. App. 34-38. But, specialized fuel like avgas, cannot be produced without crude oil. Accordingly, a contract requiring a supplier to deliver avgas necessarily requires the supplier to produce or acquire the crude oil indispensable to creating the avgas. Increasing crude production was essential to meeting the federal government's demand for vast quantities of avgas. The vertical integration of the industry during the war, and Petitioners' resulting activities in Louisiana, would not have occurred without federal officials' direction and control to increase crude production. After all, if it were not for Petitioners' production of these petroleum products according to the military's particular requirements, the federal government would have had to manufacture them itself to fight the war. Petitioners simply could not have met their federally required avgas production targets without substantially increasing their crude production. Op. at 44-47 (Oldham, J., dissenting).

The Fifth Circuit's divided decision presents a dangerous chilling effect. It dis-incentivizes private parties from taking direction from federal officers in service of our country for fear of becoming liable after-the-fact based upon subsequently-devised state-law rules. That has ominous implications for our national defense. It severely inhibits our military's deployment and warfighting capabilities, which maintain their superiority, in large part, through activities taken by private parties at the direction of federal officers—e.g., making planes, tanks, and specialized avgas. Remanding to state court creates a seri-

ous risk that, in the future, private industry will not readily answer the federal government's call when the nation needs it most.

Respondents' position, however, fundamentally is that the war should have been managed differently: federal officers should have prioritized local environmental interests more and national-security interests less, and the Petitioners should have struck a different balance than the one directed by federal officers. That is the precise scenario that may not fairly get resolved in state court where local interests may prevail over the national common good.

We urge the Court to grant the petition for certiorari.

ARGUMENT

It appears the Fifth Circuit did not fully appreciate the depths to which federal officers have directed aspects of U.S. oil production for the Nation's defense, particularly during WWII. It also did not appreciate the inextricable relationship of oil production to the creation and delivery of specialized fuel for the military. As Navy Captain Matthew Holman recently explained:

> Fuel is truly the lifeblood of the full range of Department of Defense (DoD) capabilities, and, as such, must be available on specification, on demand, on time, every time. In meeting this highest of standards, we work hand-in-hand with a dedicated team of Sailors, civil servants, and contractors [*i.e.*, companies like

> Defendants-Petitioners] to deliver fuel to every corner of the world, ashore and afloat.[3]

This federal direction and control has necessarily included inextricable involvement in developing our domestic oil resources, especially where necessary to address spiking wartime demands.

Hence, claims arising from that historic oil production, especially in the Louisiana coastal zone, necessarily implicate federal officials' role in the industry. Directives from federal agencies created to administer petroleum production during WWII, coupled with the contracts here, dictating Petitioners' actions, all worked together for federal officers to control significant portions of our domestic fuel supply for the Nation's defense.

The divided Fifth Circuit decision failed to recognize this special relationship between the industry and the federal government. We respectfully suggest that this Court consider the Petitioners' petition for certiorari with this historical context and wartime realities in mind.

I. During WWII, the Federal Government Directed and Controlled Oil Production to Maximize Delivery of Fuel to Win the War and Best Protect National Security.

WWII confirmed petroleum's role as a key American resource and the government's interest in man-

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[3] Navy Supply Corps Newsletter, *NAVSUP Fuels: What the Fleet Runs On*, Spring 2020, https://ufdcimages.uflib.ufl.edu/AA/00/04/80/19/00052/Spring-2020.pdf.

aging its production.[4] The Nation's need for large quantities of oil to produce high-octane aviation fuel ("avgas"), oil for ships, lubricants, and synthetic rubber far outstripped its capacity. Avgas, in particular, was viewed as "the most critically needed refinery product during World War II." *Shell Oil Co. v. United States*, 751 F.3d 1282, 1285 (Fed. Cir. 2014).

The federal government accordingly created agencies to control petroleum production and distribution, direct the production of certain products, and manage resources. This included the War Production Board ("WPB") and Petroleum Administration for War ("PAW"). PAW centralized the government's wartime petroleum-related activities in a way never possible by industry action alone, strictly directing and controlling every phase of the industry, including crude oil production, refining, manufacturing, transporting, and distribution.

"PAW was further expected to designate for the military forces the companies in a given area from which the product could be secured, as well as the amount to be produced by each company and the time when the product would be available."[5] PAW's predecessor required that production levels be "fixed" in order to "efficiently," and to "the full[est] extent"

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[4] *See* Statement of Ralph K. Davies, Deputy Petroleum Administrator of War, Special Committee Investigating Petroleum Resources, S. Res. 36, at 4 (Nov. 28, 1945); National Petroleum Council, *A National Oil Policy for the United States* at 1 (1949).

[5] Statement of George A. Wilson, Director of Supply and Transportation Division, Wartime Petroleum Supply and Transportation, Petroleum Administration for War, Special Committee Investigating Petroleum Resources, S. Res. 36 at 212 (Nov. 28, 1945).

possible, provide the crude needed for avgas production.[6] "No one who knows even the slightest bit about what the petroleum industry contributed . . . can fail to understand that it was, without the slightest doubt, *one of the most effective arms of this Government*" in fulfilling its core functions to defend the Nation.[7]

Federal officers' direction of Petitioners' petroleum exploration and production activities during WWII was particularly true in Louisiana's coastal zone. The specialized avgas that federal officers directed these refineries to produce exclusively for it was perhaps the most critical product to fuel the war efforts and the Allies' aerial supremacy. The military needed the crude oil out of the ground and the avgas in the planes as quickly and efficiently as Petitioners could produce it.

The Fifth Circuit's approach to interpreting the federal officer removal statute, however, fails to consider the full wartime context in which the federal Defense Supplies Corporation and energy producers entered into contracts with Petitioners during WWII to supply extraordinary amounts of avgas. Instead, the Fifth Circuit's fractured decision narrowly focused on the absence of an express contractual term specifying precisely how energy producers would acquire the enormous amounts of crude needed to fulfill their federal avgas obligations. In contrast, they should have focused on the fact that the crude oil al-

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[6] ROA.30653.

[7] Statement of Senator O'Mahoney, Chairman, Special Committee Investigating Petroleum Resources, S. Res. 36, at 1 (Nov. 28, 1945) (emphasis added).

ready "related to" the avgas contract because crude oil is essential to the creation of avgas. Without the crude oil supply, avgas production is not possible.[8] Because they are linked, they 'relate to' one another, and the 'relate to' prong of the federal officer removal statute should be easily satisfied. Op. at 25-26.

What is most troubling, therefore, is that the below judges seemed to miss this obvious practical reality. In missing it, they imposed a higher bar on federal officers when negotiating contracts with federal contractors in the future. Requiring this level of contractual specificity, especially in wartime, for such obvious aspects of delivering an end-product to the military unnecessarily burdens the military and federal contractors alike. The Fifth Circuit's requirement for laborious and unnecessary contractual details is a classic case of missing the forest for the trees, all of which will make wartime preparation more time-consuming, expensive and less deployment-ready.

The divided Fifth Circuit ignored the circumstances in which the parties entered and fulfilled these contracts, including federal regulations, PAW and WPB demands, and the end-product contracts themselves, all of which formed the background guidelines for the means and methods by which the federal contracts were to be fulfilled. Together, this context demonstrated an understanding that for energy producers to supply the vast amounts of avgas that the federal government required for the war effort, they would need to substantially increase their

[8] App. 45 (Oldham, C.J. dissenting) ("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.").

own crude exploration and production—the conduct at issue in this suit. As Judge Oldham observed, "defendants had to get the crude oil from *somewhere.*" *Id.* at 39 (Oldham, J., dissenting).

Judge Oldham's dissent also recognizes that the Fifth Circuit's approach subjects contractors to the very "Catch-22," with which we are concerned. Forcing contractors to "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," *id.* at 42, is not a choice that the federal officer removal statute demands. Nor is it in our national security interest. In other words, what we envision is likely to occur as a result of this decision, and related decisions in other circuits also departing from the better interpretation of the statute, is that federal contractors may fail to take initiative to fulfill military contracts because they'll be too caught up in analysis paralysis. There will be too much handwringing over whether a contract does or doesn't have sufficient specificity on every detail to fulfill the contract. As a consequence, our military risks being less prepared than it otherwise would be.

From our perspective, it is imperative to appreciate these are not just any contracts; these are military contracts made during wartime. That is not the time or place to force additional procedural hurdles and extra clauses to make crystal clear that the materials needed for the end-product do indeed "relate to" the federal directive. The military is under extreme time pressures during wartime; we are concerned, therefore, by the delays the new Fifth Circuit

approach seems to contemplate, when time is of the essence. Federal law does not require such bureaucratic dithering, especially in wartime, to secure the statutory promise of a federal forum.

To be sure, we do not believe anything and everything touching the military is a national security issue requiring a federal forum. We value federalism principles and striking the right balance between federal and state interests. But military contracts for products needed to defend the nation during wartime seems like an obvious candidate for a federal forum. From our real-time, wartime, perspective, this case squarely falls within the purview of federal courts.

II. Depriving Petitioners of a Federal Forum Weakens Our National Defense and May Deter Private Parties from Answering the Call to Help When Needed Most.

Our Nation needs private parties to answer the call when asked to use their expertise to assist our national defense. One of the important ways to incentivize private parties to take direction from the federal government is ensuring that, if someone attempts to hold them liable for such actions, the federal officer removal statute gives them the right to have those actions judged in "a federal forum rather than face possibly prejudicial resolution of disputes in state courts." *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 290 (5th Cir. 2021) (*en banc*). The "statute's 'basic' purpose is to protect the Federal Government from the interference with its 'operations' that would ensue were a State able, for example, to" impose its laws and judgment on "'officers and agents' of the Federal Government 'acting . . .

within the scope of their authority.'" *Watson*, 551 U.S. at 150 (quoting *Willingham*, 395 U.S. at 406).

Remanding this case undermines the purposes of the removal statute, allowing a state court to second-guess decisions made by federal officers and, in the process, discouraging private parties from taking direction from those federal officers for fear of future liability. That weakens our armed forces while strengthening our enemies, which have appropriately incentivized and been supported by their private sector. The devastating implications for our national defense are not hypothetical. After 9-11, for example, our Nation needed specialized protective equipment, which the military did not have. If private-sector parties producing the equipment had said "no," fearing future liability from the government not spelling out every detail in the contracts, that would have left our troops at great risk.

Our constitutional oath as military officers includes a commitment to ensure that we have sufficient capabilities to accomplish our missions. It is therefore our duty to enable a cooperative private sector and ensure plentiful supplies critical to our national defense, like specialized fuels, particularly during wartime. To protect our Nation, decisions about such matters are delegated to the federal officers tasked with our foreign policy and national security. Congress, in turn, requires that such decisions be judged in a federal forum. That is where this case belongs. Therefore, to us, this is an ideal case for this Court to address the conflict within the circuits regarding the correct interpretation of the "relating to" prong of the federal officer removal statute.

CONCLUSION

For these reasons, *amici curiae* respectfully request that this Court grant the Petition.

Respectfully submitted,

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