

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

BOARD OF COUNTY  
COMMISSIONERS OF BOULDER  
COUNTY; BOARD OF COUNTY  
COMMISSIONERS OF SAN MIGUEL  
COUNTY; and CITY OF BOULDER,

Plaintiff,

v.

SUNCOR ENERGY (U.S.A.) INC.;  
SUNCOR ENERGY SALES INC.;  
SUNCOR ENERGY INC.; and  
EXXON MOBIL CORPORATION,

Defendants.

Case No. 1:18-cv-1672-WJM-SKC

**EMERGENCY MOTION FOR A TEMPORARY STAY  
OF EXECUTION OF THE REMAND ORDER**

Pursuant to Federal Rule of Civil Procedure 62, defendants respectfully request a temporary stay of execution of the Court's order remanding this case to state court to allow defendants to file, and the Court to consider, a motion for a stay pending appeal. Because defendants removed this action in part under the federal-officer-removal statute, 28 U.S.C. § 1442, they have a statutory right to appeal the remand order. *See* 28 U.S.C. §§ 1447(d), 1291. Absent a stay of the execution of that order, defendants' appellate rights could be curtailed. Defendants will file the motion for a stay pending appeal by Friday, September 13, 2019. In accordance with Local Rule 7.1(a), defendants notified plaintiffs of this motion but were unable to confer with them before filing due to the motion's emergency nature.<sup>1</sup>

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<sup>1</sup> Defendants submit this motion subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, or insufficient service of process.

1. Plaintiffs in this action are three local governments in Colorado: the Board of County Commissioners of Boulder County, the Board of County Commissioners of San Miguel County, and the City of Boulder. Defendants are four oil-and-gas companies: Suncor Energy (U.S.A.) Inc., Suncor Energy Sales Inc., Suncor Energy Inc., and Exxon Mobil Corporation. In April 2018, plaintiffs filed the underlying complaint in Boulder County District Court, alleging that defendants have contributed to global climate change, which in turn has caused harm in Colorado. ECF No. 1-7. The complaint pleads a variety of legal claims under state law. *See id.* Plaintiffs amended their complaint in June 2018, ECF No. 1-18, and defendants filed a timely notice of removal. ECF No. 1. Defendants contended that federal jurisdiction over plaintiffs' climate-change claims is present on several grounds, including that claims asserting harm from global climate change necessarily arise under federal common law, and that the allegations in the complaint pertain to actions that defendants took under the direction of federal officers. *See ibid.* Plaintiffs moved to remand the case to state court. ECF No. 34.

2. Yesterday evening, the Court granted plaintiffs' motion to remand. In so doing, the Court recognized that "United States District Court cases throughout the country are divided on whether federal courts have jurisdiction over state law claims related to climate change, such as raised in this case." ECF No. 69, at 3. In particular, the Court recognized that two district courts have concluded that tort claims related to global climate change necessarily arise under federal common law. *See id.* at 7 (citing *California v. BP p.l.c.*, Civ. Nos. 17-6011 & 17-6012, 2018 WL 1064293 (N.D. Cal. Feb. 27, 2018); *City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017 (N.D. Cal. 2018); *City of New York v. BP p.l.c.*, 325 F. Supp. 3d 466 (S.D.N.Y. 2018)). While disagreeing with those rulings, the Court found that one of the decisions in particular "has a certain logic." *Id.* at 14. The Court also disagreed with defendants that plaintiffs' claims have a causal connection

with action the defendants took under the direction of federal officers. *See id.* at 45. After rejecting defendants’ remaining grounds for removal, the Court ordered that “[t]he Clerk shall REMAND this case to Boulder County District Court, and shall terminate this action.” *Id.* at 55.

3. Defendants request that the Court enter a temporary stay of execution of the remand order to allow for the filing of a motion for a stay pending appeal. While parties generally cannot appeal orders remanding a case to state court, Congress has expressly exempted from that bar cases removed under the federal-officer-removal statute, 28 U.S.C. § 1442. 28 U.S.C. § 1447(d); *see Hill v. Vanderbilt Capital Advisors, LLC*, 702 F.3d 1220, 1223 & n.2 (10th Cir. 2012). Defendants intend to file a notice of appeal to the United States Court of Appeals for the Tenth Circuit later today. If the Clerk of Court were to execute the remand order in this case before the appeal is resolved, defendants’ appellate rights could be compromised. Defendants therefore intend to file a motion for a stay pending appeal. Defendants now request only a temporary stay of execution of the remand order until the Court can rule on defendants’ forthcoming stay motion, which defendants will file by Friday, September 13—one week from today.

The temporary relief that defendants are requesting is not unusual. Every federal district court to have remanded to state court one of the climate-change cases involving claims similar to those at issue here has temporarily stayed its remand order pending further briefing on a stay pending appeal. *See Rhode Island v. Chevron Corp.*, Civ. No. 18-395, 2019 WL 3282007, at \*6 (D.R.I. July 22, 2019); *Mayor & City Council of Baltimore v. BP p.l.c.*, 388 F. Supp. 3d 538, 574 (D. Md. 2019); *County of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934, 939 (N.D. Cal. 2018). In addition, district courts within this circuit have concluded that they have authority to “reopen [a] case and stay [a] remand order” when “appellate review of the Court’s remand order is not barred.” *Lafalier v. Cinnabar Service Co.*, Civ. No. 10-5, 2010 WL 1816377, at \*1 (N.D.

Okla. Apr. 30, 2010); *see Bank of America, N.A. v. El Paso Natural Gas Co.*, Civ. No. 16-743, 2017 WL 9478457, at \*3 (W.D. Okla. Jan. 12, 2017). Defendants here seek only a temporary stay of execution of the remand order so that the parties can brief the question of whether a longer stay pending appeal is warranted.

For the foregoing reasons, Defendants respectfully request that this Court stay execution of its remand order until it can set a briefing schedule and rule on defendants' motion for a stay pending appeal, to be filed on Friday, September 13.

Respectfully submitted,

September 6, 2019

By: /s/ Kannon K. Shanmugam

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of September 2019, the foregoing document was filed through the ECF system and was therefore served on all registered participants identified on the Notice of Electronic Filing.

/s/ Kannon K. Shanmugam

Kannon K. Shanmugam