

January 21, 2020

VIA ECF

Molly C. Dwyer  
Clerk of Court  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *County of San Mateo v. Chevron Corp., et al.*, No. 18-15499, consolidated with *City of Imperial Beach v. Chevron Corp., et al.*, No. 18-15502; *County of Marin v. Chevron Corp., et al.*, No. 18-15503; *County of Santa Cruz, et al. v. Chevron Corp., et al.*, No. 18-16376; Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer:

Pursuant to FRAP 28(j), Chevron submits this response to Plaintiffs' letter regarding *Pivo Corp., LLC v. Maglione*, 2019 U.S. App. LEXIS 32171 (11th Cir. Oct. 25, 2019). Contrary to Plaintiffs' assertion, this decision does not "support[] Plaintiffs-Appellees' argument that this Court lacks appellate jurisdiction except as to Defendants-Appellants' assertion of federal officer removal." Dkt. 177 at 2.

As an initial matter, *Pivo* is an unpublished, three-page decision dismissing a *pro se* appeal from the Eleventh Circuit that merely applies a prior published decision of that court holding that review under Section 1447 is limited to the civil rights ground for removal (*Alabama v. Conley*, 245 F.3d 1291, 1293 n.1 (11th Cir. 2001)), a ground that is not implicated here. The parties have already cited that prior decision in their briefing, and a decision by one panel following a binding decision from a prior panel is not a noteworthy occurrence.

In any event, the Eleventh Circuit did not address the Supreme Court's decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), in *Pivo* or the prior opinion. In that case, the Court held that an appellate court reviewing an interlocutory order under 28 U.S.C. § 1292(b) "may address any issue fairly included within the certified order because 'it is the order that is appealable, and not the controlling question identified by the district court.'" *Id.*

Molly C. Dwyer  
January 21, 2020  
Page 2

at 205. The failure to consider *Yamaha Motor Corp.* is especially noteworthy considering that § 1447(d) allows for review of “[a]n *order* remanding [a] case” (emphasis added).

In addition, in neither *Pivo* nor the prior opinion did the Eleventh Circuit address the impact of the Removal Clarification Act of 2011. It was only in the Removal Clarification Act that Congress expanded the grounds for interlocutory review under § 1447(d) to include orders denying federal officer removal—the precise basis for interlocutory review here.

Accordingly, the Court should disregard the Eleventh Circuit opinions and, consistent with the plain language of § 1447(d) and the Supreme Court’s decision in *Yamaha Motor Corp.*, consider all of the grounds for removal raised in the remand order.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.  
GIBSON, DUNN & CRUTCHER LLP  
Counsel for Defendants-Appellants  
Chevron Corporation and Chevron U.S.A.

cc: All counsel of record (via ECF)