

No. \_\_\_\_\_

---

---

IN THE  
**Supreme Court of the United States**

CHEVRON CORP., ET AL.,

*Petitioners,*

v.

COUNTY OF SAN MATEO, ET AL.,

*Respondents.*

---

**On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

---

**PETITION FOR A WRIT OF CERTIORARI**

---

THOMAS G. HUNGAR  
JOSHUA S. LIPSHUTZ  
LOCHLAN F. SHELFER  
GIBSON, DUNN  
& CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036

ANDREA NEUMAN  
GIBSON, DUNN  
& CRUTCHER LLP  
200 Park Ave.  
New York, NY 10166-0193

THEODORE J. BOUTROUS, JR.  
*Counsel of Record*  
WILLIAM E. THOMSON  
SAMUEL ECKMAN  
GIBSON, DUNN  
& CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
(213) 229-7000  
tboutrous@gibsondunn.com

*Counsel for Petitioners*  
*[Additional counsel listed on signature page]*

---

---

### **QUESTION PRESENTED**

Whether 28 U.S.C. § 1447(d) authorizes appellate review of any issue encompassed in a remand order when removal was premised in part on the federal-officer removal statute, 28 U.S.C. § 1442, or the civil-rights removal statute, 28 U.S.C. § 1443.

**PARTIES TO THE PROCEEDING AND  
RULE 29.6 STATEMENT**

Petitioners are Anadarko Petroleum Corporation; Apache Corporation; BP P.L.C.; BP America Inc.; Chevron Corporation; Chevron U.S.A. Inc.; CITGO Petroleum Corporation; ConocoPhillips; ConocoPhillips Company; Devon Energy Corporation; Devon Energy Production Company, L.P.; Eni Oil & Gas Inc.; Exxon Mobil Corporation; Hess Corporation; Marathon Oil Company; Marathon Oil Corporation; Marathon Petroleum Corporation; Occidental Chemical Corporation; Occidental Petroleum Corporation; Ovintiv Canada ULC (fka “Encana Corporation”); Phillips 66 Company; Repsol Energy North America Corporation; Repsol Trading USA Corporation; Rio Tinto Energy America Inc.; Rio Tinto Minerals Inc.; Rio Tinto Services Inc.; Royal Dutch Shell PLC; Shell Oil Products Company LLC; Total E&P USA, Inc.; and Total Specialties USA, Inc.

Petitioner Anadarko Petroleum Corporation is wholly owned by petitioner Occidental Petroleum Corporation, a publicly traded corporation.

Petitioner Apache Corporation has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner BP PLC has no parent corporation, and no publicly held company holds 10% or more of its stock.

Petitioner BP America Inc. is a wholly owned indirect subsidiary of petitioner BP PLC.

Petitioner Chevron Corporation has no parent corporation, and no publicly held company holds 10% or more of its stock.

Petitioner Chevron U.S.A. Inc., is a wholly owned subsidiary of petitioner Chevron Corporation.

Petitioner CITGO Petroleum Corporation is a wholly owned indirect subsidiary of Petróleos de Venezuela S.A., which is the national oil company of the Bolivarian Republic of Venezuela. No publicly held company owns 10% or more of its stock.

Petitioner ConocoPhillips has no parent corporation, and no publicly held company holds 10% or more of its stock.

Petitioner ConocoPhillips Company is a wholly owned subsidiary of petitioner ConocoPhillips.

Petitioner Devon Energy Corporation has no parent corporation, and no publicly held company holds 10% or more of its stock.

Petitioner Devon Energy Production Company, L.P. is a wholly owned subsidiary of Devon Energy Corporation.

Petitioner Eni Oil & Gas Inc. is a wholly owned subsidiary of Eni S.p.A. No publicly held corporation holds 10% or more of Eni S.p.A.'s stock.

Petitioner Exxon Mobil Corporation has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner Hess Corporation has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner Marathon Oil Corporation has no parent corporation. BlackRock, Inc. disclosed through a Schedule 13G/A filed with the SEC that, through itself and as the parent holding company or control person

over certain subsidiaries, it beneficially owns 10% or more of Marathon Oil Corporation's stock.

Petitioner Marathon Oil Company is a wholly owned subsidiary of Marathon Oil Corporation.

Petitioner Marathon Petroleum Corporation has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner Occidental Petroleum Corporation has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner Occidental Chemical Corporation is a wholly owned subsidiary of Occidental Chemical Holding Corporation, which is a wholly owned subsidiary of OXY USA Inc. OXY USA Inc. is a wholly owned subsidiary of Occidental Petroleum Corporation, a publicly traded corporation.

Petitioner Ovintiv Canada ULC (fka Encana Corporation) is a wholly owned indirect subsidiary of Ovintiv Inc.

Petitioner Phillips 66 Company has no parent corporation, and no publicly held corporation holds 10% or more of its stock.

Petitioner Repsol Energy North America Corporation is a subsidiary whose ultimate parent corporation is Repsol, S.A. Petitioner Repsol Trading USA Corporation is a subsidiary whose ultimate parent corporation is also Repsol, S.A. Repsol, S.A. has no parent corporation, and no publicly held company owns 10% or more of Repsol, S.A.'s stock.

Petitioners Rio Tinto Minerals Inc., Rio Tinto Energy America Inc., and Rio Tinto Services Inc. are wholly owned indirect subsidiaries of Rio Tinto plc. Rio Tinto plc is a publicly held corporation. Shining

Prospect Pte. Ltd, a subsidiary of Aluminum Corporation of China, owns more than 10% of Rio Tinto plc's stock.

Petitioner Royal Dutch Shell PLC has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner Shell Oil Products Company LLC is a wholly owned indirect subsidiary of Petitioner Royal Dutch Shell plc.

Petitioner Total E&P USA, Inc. states that TOTAL Delaware, Inc. owns 76.39% of the stock of TEPUSA, and Elf Aquitaine, Inc. owns the remaining 23.61% of the stock of TEPUSA. TOTAL Delaware, Inc. owns 100% of the stock of Elf Aquitaine, Inc. TOTAL Holdings USA, Inc. owns 100% of the stock of TOTAL Delaware, Inc. TOTAL GESTION USA owns 100% of the stock of TOTAL Holdings USA, Inc. TOTAL, S.A. owns 100% of the stock of TOTAL GESTION USA. TOTAL, S.A. is a publicly held corporation that indirectly holds more than 10% of TOTAL E&P USA's stock.

Petitioner Total Specialties USA, Inc. states that TOTAL MARKETING SERVICES S.A. owns 100% of the stock of Total Specialties USA Inc. TOTAL S.A. owns 100% of the stock of TOTAL MARKETING SERVICES S.A. TOTAL, S.A. is a publicly held corporation that indirectly holds more than 10% of Total Specialties USA. Inc.'s stock.

Respondents are the County of San Mateo; the City of Imperial Beach; the County of Marin; the County of Santa Cruz; the City of Santa Cruz; and the City of Richmond.

**RULE 14.1(b)(iii) STATEMENT**

United States District Court (N.D. Cal.):

*County of San Mateo v. Chevron Corp., et al.*,  
No. 17-cv-04929 (Mar. 16, 2018).

*City of Imperial Beach v. Chevron Corp., et al.*,  
No. 17-cv-04934 (Mar. 16, 2018).

*County of Marin v. Chevron Corp., et al.*,  
No. 17-cv-04935 (Mar. 16, 2018).

*County of Santa Cruz v. Chevron Corp., et al.*,  
No. 18-cv-00450 (July 10, 2018).

*City of Santa Cruz v. Chevron Corp., et al.*,  
No. 18-cv-00458 (July 10, 2018).

*City of Richmond v. Chevron Corp., et al.*,  
No. 18-cv-00732 (July 10, 2018).

United States Court of Appeals (9th Cir.):

*County of San Mateo v. Chevron Corp., et al.*,  
No. 18-15499 (May 26, 2020).

*City of Imperial Beach v. Chevron Corp., et al.*,  
No. 18-15502 (May 26, 2020).

*County of Marin v. Chevron Corp., et al.*,  
No. 18-15503 (May 26, 2020).

*County of Santa Cruz, et al. v. Chevron Corp.,  
et al.*, No. 18-16376 (May 26, 2020).

## TABLE OF CONTENTS

	<b>Page</b>
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT.....	ii
RULE 14.1(b)(iii) STATEMENT.....	vi
TABLE OF APPENDICES .....	viii
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE .....	3
A. Proceedings In The District Court .....	4
B. Proceedings In The Ninth Circuit.....	5
REASONS FOR GRANTING THE PETITION .....	6
I. The Ninth Circuit’s Holding That Section 1447(d) Confers Jurisdiction Over Only Two Specified Grounds For Removal Conflicts With This Court’s Precedent And Further Entrenches A Circuit Conflict .....	7
A. The Decision Below Conflicts With This Court’s Decision In <i>Yamaha</i> And Is Wrong As A Textual Matter .....	8
B. The Decision Below Further Entrenches A Mature Circuit Split .....	9
II. The Court Should Hold This Petition Pending Resolution Of <i>Baltimore</i> .....	11
CONCLUSION .....	13



**TABLE OF APPENDICES**

	<b>Page</b>
APPENDIX A: Opinion of the United States Court of Appeals for the Ninth Circuit (May 26, 2020).....	1a
APPENDIX B: Order of the United States District Court for the Northern District of California Granting Motions to Remand (Mar. 16, 2018).....	35a
APPENDIX C: Order of the United States District Court for the Northern District of California Granting Motions to Remand (July 10, 2018).....	42a
APPENDIX D: Order of the United States Court of Appeals for the Ninth Circuit Denying Rehearing En Banc (Aug. 4, 2020) .....	44a

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Alabama v. Conley</i> , 245 F.3d 1292 (11th Cir. 2001).....	10
<i>Appalachian Volunteers, Inc. v. Clark</i> , 432 F.2d 530 (6th Cir. 1970).....	10
<i>Bd. of Cty. Comm’rs of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.</i> , 965 F.3d 792 (10th Cir. 2020).....	11
<i>City of Walker v. Louisiana</i> , 877 F.3d 563 (5th Cir. 2017).....	10
<i>Davis v. Glanton</i> , 107 F.3d 1044 (3d Cir. 1997) .....	11
<i>Decatur Hosp. Auth. v. Aetna Health, Inc.</i> , 854 F.3d 292 (5th Cir. 2017).....	9
<i>Detroit Police Lieutenants &amp; Sergeants Ass’n v. City of Detroit</i> , 597 F.2d 566 (6th Cir. 1979).....	10
<i>Direct Mktg. Ass’n v. Brohl</i> , 575 U.S. 1 (2015).....	12
<i>Grable &amp; Sons Metal Prods., Inc. v. Darue Eng’g &amp; Mfg.</i> , 545 U.S. 308 (2005).....	4
<i>Hertz Corp. v. Friend</i> , 559 U.S. 77 (2010).....	12
<i>Jacks v. Meridian Res. Co.</i> , 701 F.3d 1224 (8th Cir. 2012).....	10
<i>Lawrence ex rel. Lawrence v. Chater</i> , 516 U.S. 163 (1996).....	12

<i>Lu Junhong v. Boeing Co.</i> , 792 F.3d 805 (7th Cir. 2015).....	5, 9, 10
<i>Mayor &amp; City Council of Baltimore v. BP P.L.C.</i> , 952 F.3d 452 (4th Cir. 2020).....	6, 10
<i>Mays v. City of Flint</i> , 871 F.3d 437 (6th Cir. 2017).....	10
<i>Patel v. Del Taco, Inc.</i> , 446 F.3d 996 (9th Cir. 2006).....	5
<i>Rhode Island v. Shell Oil Prods. Co.</i> , 979 F.3d 50 (1st Cir. 2020) .....	11
<i>Robertson v. Ball</i> , 534 F.2d 63 (5th Cir. 1976).....	10
<i>State Farm Mut. Auto. Ins. Co. v. Baasch</i> , 644 F.2d 94 (2d Cir. 1981) .....	11
<i>United States v. Sisson</i> , 399 U.S. 267 (1970).....	12
<i>Yamaha Motor Corp., U.S.A. v. Calhoun</i> , 516 U.S. 199 (1996).....	3, 7, 8
<b>Statutes</b>	
28 U.S.C. § 1292(b).....	3, 7, 8
28 U.S.C. § 1441 .....	2, 10, 11
28 U.S.C. § 1442 .....	2, 3, 5, 7, 8, 9, 10
28 U.S.C. § 1443 .....	3, 7, 9, 11
28 U.S.C. § 1447(d).....	2, 3, 4, 5, 6, 7, 8, 9, 10, 11
43 U.S.C. § 1349 .....	5

## PETITION FOR A WRIT OF CERTIORARI

---

Petitioners Chevron Corporation, Chevron U.S.A., Inc., BP p.l.c., BP America Inc., ConocoPhillips, ConocoPhillips Company, Exxon Mobil Corporation, Royal Dutch Shell plc, Shell Oil Products Company LLC, Anadarko Petroleum Corporation, Phillips 66, Apache Corporation, Eni Oil & Gas Inc., Rio Tinto Energy America Inc., Rio Tinto Minerals Inc., Rio Tinto Services Inc., Devon Energy Corporation, Devon Energy Production Company, L.P., Total E&P USA, Inc., Total Specialties USA, Inc., Ovintiv Canada ULC, CITGO Petroleum Corporation, Hess Corporation, Repsol Energy North America Corporation, Repsol Trading USA Corporation, Marathon Oil Company, Marathon Oil Corporation, Marathon Petroleum Corporation, Occidental Petroleum Corporation, and Occidental Chemical Corporation respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

### OPINIONS BELOW

The opinion of the Ninth Circuit is reported at 960 F.3d 586. App. 1a–34a. The order denying petitioners’ timely petition for rehearing en banc is not reported. App. 44a–46a. The district court’s order in *County of San Mateo v. Chevron Corp.* is reported at 294 F. Supp. 3d 934. App. 35a–41a. The district court’s order in *County of Santa Cruz v. Chevron Corp.* is not reported. App. 42a–43a.

### JURISDICTION

The Ninth Circuit issued its opinion on May 26, 2020, and denied rehearing en banc on August 4,

2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **STATUTORY PROVISIONS INVOLVED**

28 U.S.C. § 1331 provides: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

28 U.S.C. § 1441(a) provides: “[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

28 U.S.C. § 1442(a) provides: “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. . . .”

28 U.S.C. § 1447(d) provides: “An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.”

### STATEMENT OF THE CASE

This petition presents the same question already pending before this Court in *BP p.l.c. v. Mayor and City Council of Baltimore*, No. 19-1189 (cert. granted Oct. 2, 2020): Whether 28 U.S.C. § 1447(d) empowers a court of appeals to review any issue contained in a district court’s order remanding a removed case to state court when the defendant premised removal in part on 28 U.S.C. § 1442 (the federal-officer removal statute), or 28 U.S.C. § 1443 (the civil-rights removal statute).

Section 1447(d) provides that “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal . . . except that an order remanding a case to the State court from which it was removed pursuant to section 1442 [federal-officer removal] or 1443 [civil-rights removal] of this title shall be reviewable by appeal.” Some circuit courts have held that when a case has been remanded following removal on one of the enumerated grounds, appellate jurisdiction extends to the entire “order.” In so holding, these courts have drawn on *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), in which this Court interpreted 28 U.S.C. § 1292(b)’s grant of appellate jurisdiction over an interlocutory “order” containing a certified question to extend to the entire order. But the court below and multiple other circuit courts have disagreed. Those courts have held that a court of appeals may review only the precise grounds specified in Section 1447(d), and may not consider any other bases for removal.

Accordingly, petitioners respectfully request that the Court hold this petition pending its forthcoming decision in *Baltimore*. And for the reasons set forth in the petitioners’ merits brief in *Baltimore*, the Court

should hold in *Baltimore* that Section 1447(d) authorizes a court of appeals to review the district court's entire remand order, including all asserted grounds for removal, in a case removed in part on federal-officer or civil-rights grounds. *See* Pet. Br. at 16–37, *Baltimore, supra*. The Court should then grant the petition in this case and dispose of it in a manner consistent with its ruling in *Baltimore*.

### **A. Proceedings In The District Court**

Respondents filed six separate actions against more than 30 energy companies in California state court, alleging that “the dominant cause of global warming and sea level rise” is worldwide “greenhouse gas pollution,” C.A. E.R. 216, and that petitioners, “through their extraction, promotion, marketing, and sale of their fossil fuel products, caused approximately 20% of global fossil fuel product-related CO<sub>2</sub> between 1965 and 2015, with contributions currently continuing unabated,” C.A. E.R. 247. Asserting numerous causes of action under California state tort law, including for public and private nuisance, respondents demanded compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. C.A. E.R. 312.

Petitioners removed the actions to the U.S. District Court for the Northern District of California. App. 15a. The notices of removal asserted numerous bases for removal, including that respondents' claims are necessarily governed by and thus arise under federal common law, raise disputed and substantial federal questions under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 314 (2005), are completely preempted by federal statutes such as the Clean Air Act, as well as by the

United States Constitution, arise out of or in connection to oil and gas operations on the Outer Continental Shelf and therefore fall under the broad grant of federal jurisdiction under the Outer Continental Shelf Leasing Act, 43 U.S.C. § 1349, and involve conduct undertaken at the direction of federal officers under 28 U.S.C. § 1442(a)(1). App. 36a–39a.

The district court rejected all of petitioners’ bases for removal and remanded the cases to state court. App. 41a, 43a.

### **B. Proceedings In The Ninth Circuit**

The Ninth Circuit affirmed the district court’s remand order. But before reaching the merits of that order, it considered whether and to what extent it had jurisdiction over the appeal. Citing 28 U.S.C. § 1447(d), the Ninth Circuit concluded that it “ha[d] jurisdiction to review [petitioners’] appeal to the extent the remand order addresses § 1442(a)(1) [which governs federal-officer removal], but [it] lack[ed] jurisdiction to review their appeal from the portions of the remand order considering the seven other bases for subject-matter jurisdiction.” App. 19a. The court acknowledged that the Seventh Circuit had reached the opposite conclusion in *Lu Junhong v. Boeing Co.*, 792 F.3d 805 (7th Cir. 2015)—and even stated that, “[w]ere [it] writing on a clean slate, [it] might conclude that *Lu Junhong* provides a more persuasive interpretation of § 1447(d)” —but deemed itself “bound by” prior Ninth Circuit precedent “until abrogated by intervening higher authority.” App. 22a–23a (citing *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006)). Citing the Fourth Circuit’s decision that is now pending before this Court, the Ninth Circuit then affirmed the district court’s conclusion that petitioners had not “carried their burden of proving by a preponderance of



the evidence that they were ‘acting under’ a federal officer.” App. 33a–34a (citing *Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452, 461 (4th Cir. 2020)).

Petitioners filed a timely petition for rehearing en banc on July 9, 2020. App. 46a. On August 4, 2020, the Ninth Circuit denied the petition. *Ibid.*

### **REASONS FOR GRANTING THE PETITION**

This Court has already granted certiorari in *BP p.l.c. v. Mayor and City Council of Baltimore*, No. 19-1189 (cert. granted Oct. 2, 2020), to decide whether appellate review of an order remanding a case removed in part on federal-officer or civil-rights grounds extends to the entire order or only those particular grounds. This petition, which also involves climate-change cases removed on federal-officer and other similar grounds, raises the exact same question—one that has divided the courts of appeals. The Ninth Circuit below refused to examine any part of the district court’s remand order other than the federal-officer removal ground, concluding that its hands were tied by a prior Ninth Circuit case that had simply assumed without analysis that 28 U.S.C. § 1447(d) extended not to the entire “order” on review but only to certain parts of that order. This Court should therefore hold this petition pending its decision in *Baltimore*, and then dispose of this case in a manner consistent with its ruling in that case.

**I. The Ninth Circuit’s Holding That Section 1447(d) Confers Jurisdiction Over Only Two Specified Grounds For Removal Conflicts With This Court’s Precedent And Further Entrenches A Circuit Conflict.**

Section 1447(d) prohibits appellate courts from reviewing most remand orders, but contains an express exception for “an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title.” 28 U.S.C. § 1447(d). This case was removed pursuant to Section 1442, the federal-officer removal statute. Yet the Ninth Circuit held that it lacked jurisdiction to review the remand *order*, and instead had jurisdiction to review only the *issue* of federal-officer removal. App. 23a.

As explained in greater detail in *Baltimore*, *see, e.g.*, Pet. Br. 16–37, No. 19-1189, the Ninth Circuit’s holding conflicts with the plain text of the statute, as confirmed by this Court’s interpretation of a closely analogous jurisdictional statute, 28 U.S.C. § 1292(b), *see Yamaha*, 516 U.S. at 205. It also further deepens a conflict among the federal courts of appeals—a conflict that the Ninth Circuit acknowledged. *See* App. 19a–20a.

The Ninth Circuit’s error led the court to disregard substantial grounds for removal, resulting in a remand of six cases that address issues of national—and international—energy and environmental policy. If the Ninth Circuit’s decision is not reversed, petitioners will be deprived of their right to have these inherently federal issues heard in federal court.

**A. The Decision Below Conflicts With This Court’s Decision In *Yamaha* And Is Wrong As A Textual Matter.**

In *Yamaha*, this Court confronted a question remarkably similar to the one here: Whether, “[u]nder 28 U.S.C. § 1292(b), . . . the courts of appeals [may] exercise jurisdiction over any question that is included within the order that contains the controlling question of law identified by the district court,” or whether they may address only the precise *issue* certified by the district court. 516 U.S. at 204. Applying a straightforward textual analysis, the Court adopted the former interpretation: “As the text of § 1292(b) indicates, appellate jurisdiction applies to the *order* certified to the court of appeals, and is not tied to the particular question formulated by the district court.” *Id.* at 205. Thus, the court of appeals “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.” *Ibid.* (internal quotation marks omitted).

This Court’s textual analysis of Section 1292(b) applies equally to Section 1447(d). Section 1292(b) provides that “[w]hen a district judge, in making in a civil action an order not otherwise appealable under this section,” certifies a question for interlocutory review, “[t]he Court of Appeals . . . may thereupon, in its discretion, permit an appeal to be taken *from such order*.” 28 U.S.C. § 1292(b) (emphasis added). Section 1447(d), meanwhile, provides that “[a]n *order* remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an *order* remanding a case to the State court from which it was removed pursuant to section 1442

or 1443 of this title *shall be reviewable* by appeal or otherwise.” 28 U.S.C. § 1447(d) (emphases added).

The Ninth Circuit’s decision is thus incorrect and irreconcilable with *Yamaha* and the plain text of Section 1447(d).

### **B. The Decision Below Further Entrenches A Mature Circuit Split.**

The Ninth Circuit’s decision reaffirms a circuit conflict on which nearly every circuit has taken a position. Some courts of appeals have issued decisions interpreting Section 1447(d) to confer appellate jurisdiction over the entire remand order so long as removal was based in part on one of the enumerated grounds, while others agree with the Ninth Circuit that a court of appeals may not review the order but must instead consider only the Section 1442 or 1443 ground for removal.

1. Several Circuits have issued decisions holding that appellate jurisdiction under Section 1447(d) extends to the entire remand “order,” provided that the case was removed in part on one of the enumerated grounds. The Seventh Circuit in *Lu Junhong v. Boeing Co.*, 792 F.3d 805 (7th Cir. 2015), “appli[ed] . . . *Yamaha* . . . to the word ‘order’ in § 1447(d)” to conclude that “if appellate review of an ‘order’ has been authorized, that means review of the ‘order.’ Not particular reasons *for* the order, but the order itself.” *Id.* at 812. Other courts have followed the Seventh Circuit’s lead. *See Decatur Hosp. Auth. v. Aetna Health, Inc.*, 854 F.3d 292, 296 (5th Cir. 2017) (noting that the court’s appellate jurisdiction includes not only “‘particular reasons *for* [the] order, but the order itself’”)

(quoting *Lu Junhong*, 792 F.3d at 812);<sup>1</sup> *Mays v. City of Flint*, 871 F.3d 437, 442 (6th Cir. 2017) (“Our jurisdiction to review the remand order also encompasses review of the district court’s decision on the alternative ground for removal under 28 U.S.C. § 1441.” (citing *Lu Junhong*, 792 F.3d at 811–13)).<sup>2</sup>

2. Other courts, meanwhile, have held that Section 1447(d) does *not* confer appellate jurisdiction over the remand “order,” but only over the particular civil-rights or federal-officer ground for removal. The majority of these courts have done so without providing any analysis to support their atextual reading. See *Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452, 459–61 (4th Cir. 2020) (construing circuit precedent to compel the conclusion that its appellate jurisdiction “does not extend to the non-§ 1442 grounds that were considered and rejected by the district court”); *Jacks v. Meridian Res. Co.*, 701 F.3d 1224, 1229 (8th Cir. 2012) (“[The court] lack[s] jurisdiction to review the district court’s determination concerning the availability of federal common law to resolve this suit[.]”); *Alabama v. Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001) (per curiam) (“[T]he only question presently before us is whether the district court properly remanded Conley’s action based

---

<sup>1</sup> *But cf.* *City of Walker v. Louisiana*, 877 F.3d 563, 566 n.2 (5th Cir. 2017) (suggesting that it had “rejected . . . in the past” the argument that Section 1447(d) permits review of the entire remand order); *Robertson v. Ball*, 534 F.2d 63, 65 (5th Cir. 1976) (per curiam) (limiting appellate review to federal-officer removal issue).

<sup>2</sup> *But cf.* *Detroit Police Lieutenants & Sergeants Ass’n v. City of Detroit*, 597 F.2d 566, 567 (6th Cir. 1979) (limiting review to enumerated statutory grounds for removal); *Appalachian Volunteers, Inc. v. Clark*, 432 F.2d 530, 534 (6th Cir. 1970) (same).

on a finding that removal jurisdiction under § 1443 did not exist.”); *Davis v. Glanton*, 107 F.3d 1044, 1047 (3d Cir. 1997) (“[I]nsofar as the [defendants] appeal challenges the district court’s rulings under 28 U.S.C. § 1441, we must dismiss the appeal for want of appellate jurisdiction.”); *State Farm Mut. Auto. Ins. Co. v. Baasch*, 644 F.2d 94, 97 (2d Cir. 1981) (per curiam) (“Insofar as the appeal challenges denial of removal under 28 U.S.C. § 1441, it is dismissed for want of appellate jurisdiction.”).

Thus, until the Tenth Circuit’s recent decision in *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, 965 F.3d 792 (10th Cir. 2020), *cert. pet. filed*, No. 20-783 (Dec. 4, 2020), the cases “refusing to extend the review granted by the § 1447(d) exceptions to” the entire remand order had “employed mostly summary analysis,” in stark contrast with the Seventh Circuit’s thorough reasoning. *Id.* at 802–03. The Tenth Circuit ultimately disagreed with the Seventh Circuit, finding what it deemed a latent “ambiguity” in the statutory text and then resolving that alleged ambiguity based on extratextual considerations such as purported statutory purpose. *See id.* at 813–19. Most recently, the First Circuit followed the Tenth Circuit’s decision. *Rhode Island v. Shell Oil Prods. Co.*, 979 F.3d 50, 57 (1st Cir. 2020). Rejecting the Seventh Circuit’s “textual” analysis and concluding that Section 1447(d)’s use of the term “order” was “ambiguous,” the court relied on what it viewed as the “overall purpose of the statute” to adopt the narrow reading of Section 1447(d). *Ibid.*

## **II. The Court Should Hold This Petition Pending Resolution Of *Baltimore*.**

The Court should hold this petition pending this Court’s decision in *Baltimore*. To ensure similar

treatment of similar cases, the Court routinely holds petitions that implicate the same issue as other cases pending before it and, once the related case is decided, resolves the held petitions in a consistent manner. *See, e.g., Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (per curiam) (noting that the Court has “GVR’d in light of a wide range of developments, including [its] own decisions”); *id.* at 181 (Scalia, J., dissenting) (“We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be ‘GVR’d’ when the case is decided.”) (emphasis omitted).

That procedure is particularly apt here, given that the cases involve a jurisdictional question that must be answered in the same way throughout the Nation. As this Court has frequently emphasized, “jurisdictional rules should be clear.” *Direct Mktg. Ass’n v. Brohl*, 575 U.S. 1, 14 (2015) (brackets omitted). “Clarity is to be desired in any statute, but in matters of jurisdiction it is especially important. Otherwise the courts and the parties must expend great energy, not on the merits of dispute settlement, but on simply deciding whether a court has the power to hear a case.” *United States v. Sisson*, 399 U.S. 267, 307 (1970). Indeed, conflicting and uncertain jurisdictional rules “produce appeals and reversals, encourage gamesmanship, and, again, diminish the likelihood that results and settlements will reflect a claim’s legal and factual merits.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

Because this petition raises the same recurring question of appellate jurisdiction at issue in *Baltimore*, the Court should follow its usual practice here

to ensure that this petition is resolved in a consistent manner.

**CONCLUSION**

The Court should hold this petition pending its disposition of *Baltimore*, and then dispose of this petition in a manner consistent with its decision in that case.



Respectfully submitted.

JONATHAN W. HUGHES  
ARNOLD & PORTER KAYE  
SCHOLER LLP  
Three Embarcadero Center,  
10th Floor  
San Francisco, CA 94111-  
4024

MATTHEW T. HEARTNEY  
JOHN D. LOMBARDO  
ARNOLD & PORTER KAYE  
SCHOLER LLP  
777 South Figueroa Street,  
44th Floor  
Los Angeles, CA 90017-5844

PHILIP H. CURTIS  
NANCY MILBURN  
ARNOLD & PORTER KAYE  
SCHOLER LLP  
250 West 55th Street  
New York, NY 10019-9710

*Counsel for Petitioners BP  
P.L.C. and BP America Inc.*

DAVID C. FREDERICK  
BRENDAN J. CRIMMINS  
DANIEL S. SEVERSON  
KELLOGG, HANSEN, TODD,  
FIGEL & FREDERICK,  
P.L.L.C.  
1615 M Street, N.W.  
Suite 400  
Washington, D.C. 20036

*Counsel for Petitioners Shell  
Oil Products Company LLC  
and Royal Dutch Shell plc*

THEODORE J. BOUTROUS, JR.  
*Counsel of Record*  
WILLIAM E. THOMSON  
SAMUEL ECKMAN  
GIBSON, DUNN  
& CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
(213) 229-7000  
tboutrous@gibsondunn.com

THOMAS G. HUNGAR  
JOSHUA S. LIPSHUTZ  
LOCHLAN F. SHELFER  
GIBSON, DUNN  
& CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, D.C. 20036

ANDREA NEUMAN  
GIBSON, DUNN  
& CRUTCHER LLP  
200 Park Ave.  
New York, NY 10166-0193

HERBERT J. STERN  
STERN & KILCULLEN, LLC  
325 Columbia Turnpike, Ste. 110  
Florham Park, NJ 07932-0992

NEAL S. MANNE  
SUSMAN GODFREY LLP  
1000 Louisiana, Suite 5100  
Houston, TX 77002

*Counsel for Petitioners  
Chevron Corporation and  
Chevron U.S.A., Inc.*

KEVIN ORSINI  
 VANESSA A. LAVELY  
 CRAVATH, SWAINE  
 & MOORE LLP  
 825 Eighth Avenue  
 New York, NY 10019

STEPHEN C. LEWIS  
 R. MORGAN GILHULY  
 BARG COFFIN LEWIS  
 & TRAPP, LLP  
 350 California St., 22nd Fl.  
 San Francisco, CA 94104-  
 1435

*Counsel for Petitioner  
 Anadarko Petroleum  
 Corporation*

STEVEN M. BAUER  
 MARGARET A. TOUGH  
 LATHAM & WATKINS LLP  
 505 Montgomery Street,  
 Suite 2000  
 San Francisco, CA 94111-  
 6538

*Counsel for Petitioner  
 Phillips 66*

MORTIMER HARTWELL  
 VINSON & ELKINS LLP  
 555 Mission St., Suite 2000  
 San Francisco, CA 94105

PATRICK W. MIZELL  
 VINSON & ELKINS LLP  
 1001 Fannin, Suite 2300  
 Houston, TX 77002

*Counsel for Petitioner  
 Apache Corporation*

DAWN SESTITO  
 O'MELVENY & MYERS LLP  
 400 South Hope Street  
 Los Angeles, CA 90071-2899

KANNON K. SHANMUGAM  
 WILLIAM T. MARKS  
 PAUL, WEISS, RIFKIND,  
 WHARTON & GARRISON LLP  
 2001 K Street, N.W.  
 Washington, DC 20005

THEODORE V. WELLS, JR.  
 DANIEL J. TOAL  
 PAUL, WEISS, RIFKIND,  
 WHARTON & GARRISON LLP  
 1285 Avenue of the Americas  
 New York, NY 10019-6064

*Counsel for Petitioner  
 Exxon Mobil Corporation*

SEAN C. GRIMSLEY  
 JAMESON R. JONES  
 DANIEL R. BRODY  
 BARTLIT BECK LLP  
 1801 Wewatta Street,  
 Suite 1200  
 Denver, CO 80202

*Counsel for Petitioners  
 ConocoPhillips and  
 ConocoPhillips Company*

BRYAN A. MERRYMAN  
 CATHERINE S. SIMONSEN  
 WHITE & CASE LLP  
 555 South Flower Street,  
 Suite 2700  
 Los Angeles, CA 90071-2433

*Counsel for Petitioner  
 Eni Oil & Gas Inc.*

GREGORY EVANS  
 MCGUIREWOODS LLP  
 Wells Fargo Center  
 South Tower  
 355 S. Grand Avenue  
 Suite 4200  
 Los Angeles, CA 90071-3103

JOY C. FUHR  
 BRIAN D. SCHMALZBACH  
 MCGUIREWOODS LLP  
 800 East Canal Street  
 Richmond, VA 23219-3916

*Counsel for Petitioners  
 Devon Energy Corporation  
 and Devon Energy Produc-  
 tion Company, L.P.*

DONALD W. CARLSON  
 A. DAVID BONA  
 CARLSON, CALLADINE  
 & PETERSON LLP  
 353 Sacramento Street,  
 16th Fl.  
 San Francisco, CA 94111

*Counsel for Petitioners  
 Marathon Oil Corporation  
 and Marathon Oil Company*

STEVEN M. BAUER  
 MARGARET A. TOUGH  
 LATHAM & WATKINS LLP  
 505 Montgomery Street,  
 Suite 2000  
 San Francisco, CA 94111

*Counsel for Petitioners  
 ConocoPhillips, ConocoPhillips  
 Company, and Phillips 66*

MARK MCKANE, P.C.  
 KIRKLAND & ELLIS LLP  
 555 California Street  
 San Francisco, CA 94104

ANDREW A. KASSOF, P.C.  
 BRENTON ROGERS  
 KIRKLAND & ELLIS LLP  
 300 North LaSalle  
 Chicago, IL 60654

*Counsel for Petitioners  
 Rio Tinto Energy America Inc.,  
 Rio Tinto Minerals Inc., and Rio  
 Tinto Services Inc.*

MICHAEL F. HEALY  
SHOOK HARDY & BACON LLP  
One Montgomery St.  
Suite 2700  
San Francisco, CA 94104

MICHAEL L. FOX  
DUANE MORRIS LLP  
Spear Tower  
One Market Plaza  
Suite 2200  
San Francisco, CA 94105-  
1127

*Counsel for Petitioner  
Ovintiv Canada ULC  
(fka "Encana Corporation")*

KEVIN ORSINI  
VANESSA A. LAVELY  
CRAVATH, SWAINE  
& MOORE LLP  
825 Eighth Avenue  
New York, NY 10019

STEPHEN C. LEWIS  
R. MORGAN GILHULY  
BARG COFFIN LEWIS  
& TRAPP, LLP  
350 California St., 22nd Fl.  
San Francisco, CA 94104-  
1435

*Counsel for Petitioners  
Occidental Petroleum Cor-  
poration and Occidental  
Chemical Corporation*

CHRISTOPHER W. KEEGAN  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, CA 94104

ANDREW R. MCGAAN, P.C.  
KIRKLAND & ELLIS LLP  
300 North LaSalle  
Chicago, IL 60654

ANNA G. ROTMAN, P.C.  
KIRKLAND & ELLIS LLP  
609 Main Street  
Houston, TX 77002

BRYAN D. ROHM  
TOTAL E&P USA, INC.  
1201 Louisiana Street,  
Suite 1800  
Houston, TX 77002

*Counsel for Petitioners  
Total E&P USA, Inc. and Total  
Specialties USA, Inc.*

JONATHAN A. SHAPIRO  
BAKER BOTTS L.L.P.  
101 California Street  
Suite 3600  
San Francisco, CA 94111

SCOTT JANOE  
BAKER BOTTS L.L.P.  
910 Louisiana Street  
Houston, TX 77002

MEGAN BERGE  
BAKER BOTTS L.L.P.  
701 K Street, NW  
Washington, DC 20004

*Counsel for Petitioners  
Hess Corporation, Repsol  
Energy North America Cor-  
poration, and Repsol Trad-  
ing USA Corporation*

SHANNON S. BROOME  
ANN MARIE MORTIMER  
HUNTON ANDREWS KURTH  
LLP  
50 California Street, Suite  
1700  
San Francisco, CA 94111

SHAWN PATRICK REGAN  
HUNTON ANDREWS KURTH  
LLP  
200 Park Avenue  
New York, NY 10166-0136

*Counsel for Petitioner Mara-  
thon Petroleum Corporation*

December 30, 2020

CRAIG A. MOYER  
PETER DUCHESNEAU  
MANATT, PHELPS & PHILLIPS, LLP  
11355 West Olympic Boulevard  
Los Angeles, CA 90064-1614

STEPHANIE A. ROESER  
MANATT, PHELPS & PHILLIPS, LLP  
One Embarcadero Center,  
30th Floor  
San Francisco, CA 94111

NATHAN P. EIMER  
LISA S. MEYER  
PAMELA R. HANE BUTT  
EIMER STAHL LLP  
224 South Michigan Avenue  
Ste. 1100  
Chicago, IL 60604

ROBERT E. DUNN  
EIMER STAHL LLP  
99 S. Almaden Blvd., Suite 662  
San Jose, CA 95113

*Counsel for Petitioner CITGO  
Petroleum Corporation*