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VIA ECF

Maria R. Hamilton
Clerk of Court
U.S. Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Prods. Co., et al.*, No. 19-1818

Dear Ms. Hamilton:

Pursuant to the Court's direction, Plaintiff has submitted a Rule 28(j) letter regarding the Naval Petroleum Reserves Production Act of 1976. Defendants submit this response, also pursuant to Rule 28(j).

Plaintiff contends that the Act demonstrates only that Defendants “b[ought] and extract[ed] oil from federal land.” That is incorrect. The Act, which addressed the national crisis stemming from the OPEC oil embargo, ordered that the Navy Secretary “directly or *by contract, lease, or otherwise*, shall explore, prospect, conserve, develop, use, and operate the naval petroleum reserves ... at the maximum efficient rate” for “six years.” Ex. A, § 201(3) (emphasis added). Like the OCSLA leases cited by Plaintiff, the Act exemplifies the government's use of private parties to further the national goal of independence from foreign oil. And for decades before the Act, the Navy had “complete control over the development of the entire Reserve and the production of oil therefrom.” JA228, 231-32; *see also* Reply 4-5. Had the Government not engaged Defendants to produce oil from federal lands, “the Government itself would have had to” do so (as state-run oil companies do in other countries). *Watson v. Philip Morris Cos.*, 551 U.S. 142, 154 (2007); *see also* Opening Br. 39-40. At the very least, Defendants' basis for removal is “facially plausible,” which is all that is required. *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 941 (7th Cir. 2020); *see also id.* at 945, 947 (Court “is to credit only [Defendants'] theory” and give them “the benefit of all reasonable inferences.”).

Plaintiff's closing analogy fundamentally misunderstands Defendants' argument. Producing oil and gas from federal lands at the federal government's direction in order to protect the national economy and bolster national defense goes far beyond simply “buying and extracting oil from federal land.” Similarly, a “logger[.]” sued for causing climate change as a result of logging activities conducted on federal land at the government's direction in order to fulfill a national policy (*e.g.*, wildfire management) *could* remove the case and have its federal defenses heard in federal court. That is the very point of federal-officer removal.

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Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.

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cc: All counsel of record (via ECF)