

No. 19-1189

IN THE SUPREME COURT OF THE UNITED STATES

BP P.L.C., ET AL., *Petitioners,*

v.

MAYOR AND CITY COUNCIL OF BALTIMORE,
Respondent.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

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

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TABLE OF CONTENTS

INTEREST OF AMICI CURIAE 1

INTRODUCTION AND SUMMARY OF THE
ARGUMENT..... 3

ARGUMENT 4

I. Beginning in the early 20th century, the
Federal Government developed and
controlled significant oil production
from domestic oil and gas companies to
support national defense efforts. 5

II. During the second half of the 20th
Century, the Federal Government
continued to exercise substantial
control and direction over the
production of oil and gas. 11

III. The Federal Government’s efforts to
ensure a dependable, abundant supply
of oil and gas have continued over
recent decades. 18

CONCLUSION..... 22

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>California ex rel. Brown v. Watt</i> , 668 F.2d 1290 (D.C. Cir. 1981).....	14
<i>Chevron U.S.A., Inc. v. United States</i> , 116 Fed. Cl. 202 (Fed. Cl. 2014).....	10
<i>Exxon Mobil Corp. v. United States</i> , 2020 WL 5573048 (S.D. Tex. Sept. 16, 2020).....	4, 11
<i>Laredo Offshore Constructors, Inc. v.</i> <i>Hunt Oil Co.</i> , 754 F.2d 1223 (5th Cir. 1985).....	14
<i>Shell Oil Co. v. United States</i> , 751 F.3d 1282 (Fed. Cir. 2014).....	8, 9, 11
<i>United States v. Standard Oil Co. of</i> <i>Cal.</i> , 545 F.2d 624 (9th Cir. 1976).....	6
Statutes	
30 U.S.C. § 192.....	21
43 U.S.C. §1332(3).....	11
43 U.S.C. § 1341(b).....	18
43 U.S.C. § 1353(a)(2)	20

43 U.S.C. § 1353(a)(3)	20
43 U.S.C. § 1802	14
Defense Production Act of 1950.....	11
Defense Production Act of 1950, Pub. L. No. 81-774	11
Naval Petroleum Reserves Production Act of 1976, Pub. L. No. 94-258 (1976), 90 Stat. 303, 307-308 (1976)	16
Outer Continental Shelf Lands Act.....	11, 14, 16, 18
Pub. L. No. 94-163, 89 Stat. 871.....	15
Supplemental Appropriation Act of 1974, Pub. L. No. 93-245 (1974)	15
Trans-Alaska Pipeline Authorization Act of 1973.....	13
Other Authorities	
30 C.F.R. 250.1150	17
121 Cong. Rec. S903-11 (1975)	17
Adam Vann, Congressional Research Service, RL33404, Offshore Oil and Gas Development: Legal Framework (2018), https://fas.org/sgp/crs/misc/RL33404. pdf	18

Annual Message to the Congress on the State of the Union, 1 Pub. Papers 59 (Jan. 23, 1974), at https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/99?view=image&size=100	13
Bureau of Safety and Environmental Enforcement, Outer Continental Shelf Oil and Gas Production (Nov. 4, 2020), https://www.data.bsee.gov/Production/OCSProduction/OCSProduction/Default.aspx	19
Cong. Rsch. Serv., R42432, U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas 3, 5 (updated Oct. 23, 2018).....	20
Daniel Yergin, THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER (1991).....	7
Def. Logistics Agency Energy, Fiscal Year 2019 Fact Book (2019)	20
H.R. Rep. No. 94-1084 (1976)	16
H.R. Rep. No. 95-590 (1977)	17
H.R. Rep. No. 115-965 (2017)	15

Hearings Before Committee on Naval Affairs of the House of Representatives on Estimates Submitted by the Secretary of the Navy, 64th Cong. 761 (1915)	5
http://www.gao.gov/assets/90/87497.pdf	6
https://books.google.com/books?id=o2ei8yOphboC&printsec=frontcover#v=onepage&q&f=false	19
https://obamawhitehouse.archives.gov/the-press-office/remarks-president-energy-security-andrews-air-force-base-3312010	19
https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001?rgn=main;view=fulltext	14
https://www.energy.gov/fe/services/petroleum-reserves/strategic-petroleum-reserve/releasing-oil-spr	19
https://www.nytimes.com/1973/04/19/archives/excerpts-from-nixon-message-developing-our-domestic-energy.html	13
Ian O. Lessor, <i>Resources and Strategy: Vital Materials in International Conflict 1600 – The Present</i> (1989)	6, 7

Jay Hakes, A Declaration of Energy Independence at 17 (2008)	12
John W. Frey & H. Chandler Ide, <i>A History of the Petroleum Administration for War, 1941-1945</i> (1946).....	8
Letter from J.R. Grey, Standard Oil, to Jack L. Bowers, Acting Secretary of the Navy (Jan. 7, 1975).....	15
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Nixon Message, N.Y. Times, Apr. 19, 1973	13
OCS EIS/EA BOEM 2012-030, 1-4 (2012).....	21
President Barack Obama, Remarks on Energy at Andrews Air Force Base, Maryland, (Mar. 31, 2010).....	19
Press Secretary, White House Office of Communications, Statement on North Slope Oil Bill Signing (Nov. 28, 1995), 1995 WL 699656, at *1	18
Report of the Activities of the Joint Committee on Defense Production, S. Rep. No. 94-1, Pt. 1 (Jan. 17, 1975, 1st Sess.).....	14

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Statement of Abigail Ross Hopper, Director, Bureau of Ocean Energy Management, Before the House Committee on Natural Resources (Mar. 2, 2016), <https://www.boem.gov/FY2017-Budget-Testimony-03-01-2016>21

Statement By President George W. Bush Upon Signing [H.R. 6111], 219

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 (Nov. 28, 1945)9

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Statement on the Strategic Petroleum Reserve, 2 Pub. Papers 1406 (Nov. 13, 2001).....	21
Statement of Ralph K. Davies, Deputy Petroleum Administrator of War, Special Committee Investigating Petroleum Resources, S. Res. 36 (Nov. 28, 1945)	7
Statement of Senator O’Mahoney, Chairman, Special Committee Investigating Petroleum Resources, S. Res. 36 (Nov. 28, 1945)	11

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U.S. Dep’t of Energy, Strategic Petroleum Reserve Annual Report for Calendar Year 2010, at 18 (2011) (“SPR 2010 Report”).....	21
U.S. Dep’t of Interior, Bureau of Ocean Energy Management, OCS Oil and Gas Leasing Program: 2012-2017 Final Programmatic Environmental Impact Statement (“2012-2017 EIS”).....	20

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 Facts Explained (Apr. 27, 2020),
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 exports.php](https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php).....20
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 GAO/RCED-87-75FS, Naval
 Petroleum Reserves: Oil Sales
 Procedures and Prices at Elk Hills,
 April Through December 1986, at 3
 (1987) ("GAO Fact Sheet").....6, 10
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 Sell the Reserve*, GAO/RCED-88-198
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 37.pdf](https://www.gao.gov/assets/220/210337.pdf) ("GAO Report")9, 10

INTEREST OF AMICI CURIAE¹

United States Air Force General (Retired) Richard B. Myers was appointed Vice Chairman of the Joint Chiefs of Staff by President Clinton in 2000 and was appointed by President George W. Bush in 2001 to become the 15th Chairman of the Joint Chiefs of Staff. In that capacity, he served as the principal military advisor to the United States President, Secretary of Defense, and the National Security Council. He served in that role until 2005. General Myers joined the Air Force in 1965 through the ROTC program at Kansas State University. He served in the Vietnam War and had over 600 combat flying hours in Vietnam. He has held numerous commands and served in significant staff positions in the Air Force. General Myers has received numerous awards and decorations for his service, including, the Legion of Merit, the French Legion of Honor, and the Presidential Medal of Freedom. He received his fourth-star in 1997 and retired from active duty in 2005, after more than forty years of active service. General Myers began serving as the Interim President of Kansas State University in late April 2016, and was announced as the permanent President on November 15, 2016.

United States Navy Admiral (Retired) Michael G. Mullen, served as the 17th Chairman of the Joint

¹ Pursuant to Rule 37.6, counsel for *amici curiae* certify that, no counsel for a party authored this brief in whole or in part, and no party or party's counsel contributed money that was intended to fund preparing or submitting the brief. All parties were timely notified of the *amici's* interest in filing this brief. Petitioners filed a blanket consent to the filing of *amicus* briefs and Respondent provided written consent to the filing of this brief.

Chiefs of Staff from 2007-2011 under both President George W. Bush and President Obama. A graduate of the United States Naval Academy in 1968, Admiral Mullen served in the Vietnam War and commanded his first ship, the USS Noxubee, from 1973-1975. He earned a Master's Degree in Operations Research in 1985 and, later that year, took command of the guided-missile destroyer USS Goldsborough. Admiral Mullen participated in Harvard University's Advanced Executive Management graduate program in 1991. He was promoted to Rear Admiral in 1997 and, in 1998, was named Director of Surface Warfare in the office of the Chief of Naval Operations (CNO). Admiral Mullen is one of only four naval officers who has the distinction of receiving four, 4-Star assignments. In 2003, Admiral Mullen was named Vice Chief of Naval Operations and was tapped to head the United States Naval Forces in Europe and NATO's Joint Force Command in Naples. He then was appointed Chief of Naval Operations in 2005, and, in 2007, he was nominated by George W. Bush to be the 17th Chairman of the Joint Chiefs of Staff. Admiral Mullen retired from this position in 2011 after serving for four years under both a Republican and a Democratic president.

The focus of this brief is not on the underlying merits of the litigation. *Amici* express no view, and take no position, on climate change policy questions. They strongly believe these important national and international policy issues should be addressed to Congress and the Executive Branch, not adjudicated piecemeal across the country in a multitude of state courts. Instead, this brief provides a history of the Federal Government's control and direction of the

production and sale of gasoline and diesel to ensure that the military is “deployment-ready”. For more than a century, petroleum products have been essential for fueling the United States military around the world. In *amici’s* view, the use of fossil fuels was crucial to the success of the armed forces when *amici* served as Chairmen of the Joint Chiefs of Staff, and it remains crucial today to advance the Nation’s paramount interest in national defense. In light of that concern, *amici* believe this history and their experience demonstrate that removal of this case to federal court is proper.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case centers on the global production, sale and consumption of oil and gas products that are used by virtually every person on the planet every single day. Respondent seeks to impose ruinous liability on Petitioners’ production and sale of these essential products through claims brought in state courts around the country. Due to the extensive Federal Government involvement in the development and growth of the domestic oil and gas industry, Respondent’s claims should be governed by federal law and adjudicated in federal courts.

Oil and gas products are critical to national security, economic stability and the military preparedness of the United States. For more than 100 years, the Federal Government has actively encouraged domestic exploration and production of oil and gas. As federal courts have recognized, petroleum products have been “*crucial* to the national defense,” including but

by no means limited to “fuel and diesel oil used in the Navy’s ships; and lubricating oils used for various military machines.” *Exxon Mobil Corp. v. United States*, 2020 WL 5573048, at *31 (S.D. Tex. Sept. 16, 2020) (emphasis added); *see also id.* at *47 (noting the “value of [the] petroleum industry’s contribution to the nation’s military success”). The Federal Government has both incentivized and contracted with Petitioners to obtain oil and gas products for use by the Federal Government in the national interest and to ensure a dependable, abundant supply of oil and gas for the nation’s economic and military security.

Respondent’s Complaint relates to and seeks substantial relief from Petitioners regarding their past and present production of oil and gas on federal lands and under the direction of the Federal Government. Their claims necessarily implicate and are subject to federal law which places jurisdiction of these matters in federal courts. This *amicus* brief provides an historical background of the Federal Government’s oversight and control of the oil and gas industry, which underscores why federal jurisdiction is warranted here.

ARGUMENT

For more than a century, and to this day, the Federal Government has incentivized and controlled aspects of United States oil production and has reserved rights to take additional control of such operations for the benefit of the nation’s defense, security and economy.

The Federal Government has required and otherwise been inextricably involved in oil and gas com-

panies' development of the nation's domestic oil resources both for governmental use and the use of billions of consumers. Any claims arising from the historic production and sale of domestic oil and gas necessarily implicate the Federal Government's historical and current role in this industry, including the extensive history of federal laws, contracts and leases that supported and controlled significant portions of our nation's fuel supply. Petitioners' exploration and production of oil and gas, including production on the Outer Continental Shelf ("OCS") and on federal lands, has been conducted substantially under the direction of the Federal Government. Accordingly, removal of Respondent's claims from state to federal court is proper.

I. Beginning in the early 20th century, the Federal Government developed and controlled significant oil production from domestic oil and gas companies to support national defense efforts.

More than a century ago, in 1910, President Taft implored Congress to develop domestic oil sources: "As not only the largest owner of oil lands, but as a prospective large consumer of oil by reason of the increasing use of fuel oil by the Navy, the Federal Government is directly concerned both in encouraging rational development and at the same time insuring the longest possible life to the oil supply." *Hearings Before Committee on Naval Affairs of the House of Representatives on Estimates Submitted by the Secretary of the Navy*, 64th Cong. 761 (1915).

Within two years, on September 2, 1912, President Taft established by Executive Order the first "Naval Petroleum Reserve" at Elk Hills, California, taking the extraordinary step of withdrawing large portions of land from eligibility for private ownership and designating them instead to be used for the development of fuel resources to ensure the United States Navy was "deployment-ready" in the event of war. *United States v. Standard Oil Co. of Cal.*, 545 F.2d 624, 626-628 (9th Cir. 1976); *see also* U.S. Gov't Accountability Off., GAO/RCED-87-75FS, *Naval Petroleum Reserves: Oil Sales Procedures and Prices at Elk Hills, April Through December 1986*, at 3 (1987) ("GAO Fact Sheet") ("The Elk Hills Naval Petroleum Reserve (NPR-1) . . . was originally established in 1912 to provide a source of liquid fuels for the armed forces during national emergencies.")²

Indeed, the defining characteristic of World War I was "the mechanization of armies" (*i.e.*, the prominence of tanks, aircraft, and submarines), as a result of which "oil and its products began to rank as among the principal agents by which the Allies would conduct war and by which they could win it." Ian O. Lessor, *Resources and Strategy: Vital Materials in International Conflict 1600 – The Present* (1989) at 42. The necessity was echoed among the Allies, as British Cabinet Minister Walter Long expressed in an address to the House of Commons in 1917:

² <http://www.gao.gov/assets/90/87497.pdf>

Oil is probably more important at this moment than anything else. You may have men, munitions, and money, but if you do not have oil, which is today the greatest motive of power that you use, all your other advantages would be of comparatively little value.

Yergin, *THE PRIZE: THE EPIC QUEST FOR OIL, MONEY & POWER* (1991) at 177.

By 1917, American oil became vital for war efforts. As the Admiralty Director of Stores stated, “[W]ithout the aid of oil from America our modern oil-burning fleet cannot keep the sea.” Lessor, *Resources and Strategy* at 43. In response to the Allies’ cry for help, the United States provided over 80 percent of the Allied requirements for petroleum products and greatly influenced the outcome of the war. *Id.* (“A failure in the supply of petrol would compel the immediate paralysis of our armies, and might compel us to a peace unfavorable to the Allies.... The safety of the Allied nations is in the balance. If the Allies do not wish to lose the war, then, at the moment of the great German offensive, they must not let France lack the petrol which is as necessary as blood in the battles of tomorrow” (quoting Clemenceau’s letter to President Wilson)). *Id.*

Two decades later, World War II confirmed petroleum’s role as a key American resource and underscored the government’s interest in maintaining and managing it. Statement of Ralph K. Davies, Deputy Petroleum Administrator of War, Special Committee Investigating Petroleum Resources, S. Res. 36, at 4 (Nov. 28, 1945) (“Our overseas forces required nearly twice as many tons of oil as arms and armament,

ammunition, transportation and construction equipment, food, clothing, shelter, medical supplies, and all other materials together. In both essentiality and quantity, oil has become the greatest of all munitions.”); National Petroleum Council, *A National Oil Policy for the United States* at 1 (1949) (“A prime weapon of victory in two world wars, [oil] is a bulwark of our national security.”).

In 1941, as the United States prepared to enter World War II, its need for large quantities of oil and gas to produce high-octane fuel for planes (“avgas”), oil for ships, lubricants, and synthetic rubber far outstripped the nation’s capacity at the time. Avgas was viewed as “the most critically needed refinery product during World War II and was essential to the United States’ war effort[.]” *Shell Oil Co. v. United States*, 751 F.3d 1282, 1285 (Fed. Cir. 2014) (“*Shell II*”). The Federal Government created agencies to control petroleum production and distribution; it directed the production of certain petroleum products; and it managed resources.

In 1942, President Roosevelt established several agencies to oversee wartime petroleum production, including the War Production Board (“WPB”) and the Petroleum Administration for War (“PAW”). The PAW centralized the government’s petroleum-related activities. The “PAW told the refiners what to make, how much of it to make, and what quality.” *Shell II*, 751 F.3d at 1286 (quoting John W. Frey & H. Chandler Ide, *A History of the Petroleum Administration for War, 1941-1945*, at 219 (1946)). “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.” 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). The Office of the Petroleum Coordinator for National Defense stated that “[i]t is *essential*, in the national interest that the supplies of all grades of aviation gasoline for military, defense and essential civilian uses *be increased immediately to the maximum*.” *Shell II*, 751 F.3d at 1286 (quoting Office of Petroleum Coordinator for National Defense Recommendation No. 16). (emphasis added).

To maintain and preserve a sufficient fuel supply, the Navy sought complete control over development of the entire Elk Hills Reserve and production of oil therefrom. On March 21, 1942, President Roosevelt “stated that if satisfactory arrangements could not be promptly concluded with [Standard Oil of California], the Secretary of the Navy was authorized to start condemnation proceedings through the Department of Justice to acquire the property” for the Federal Government. *See* U.S. Gov’t Accountability Off., *Naval Petroleum Reserve No. I: Efforts to Sell the Reserve*, GAO/RCED-88-198 at 14 (July 1988), <https://www.gao.gov/assets/220/210337.pdf> (“GAO Report”).

The Navy and Standard Oil entered into the Elk Hills Unit Plan Contract that President Roosevelt approved on June 28, 1944, “to govern the joint op-

eration and production of the oil and gas deposits . . . of the Elk Hills Reserve.” *Chevron U.S.A., Inc. v. United States*, 116 Fed. Cl. 202, 205 (Fed. Cl. 2014); *see also* Statements of Commodore W.G. Greenman, U.S. Navy, Director, Naval Petroleum Reserves, Hearing Records at 3693–94. (“[T]he agreement between the Navy and Standard . . . placed the control of production from both Standard [Oil] and Navy lands under the absolute control of the Secretary of the Navy.”). Although the Navy could have developed the resources on the Reserve itself, it chose to hire Standard Oil to operate the Reserve to maximize production as quickly as possibly because “[a] substantial increase in production . . . was urgently requested by the Joint Chiefs of Staff to meet the critical need for petroleum on the West Coast to supply the armed forces in the Pacific theatre,” and Standard Oil was more qualified than the Federal Government itself to do so. Elk Hills Historical Documents at 1.³

“Shortly after the unit plan contract was signed, the Congress, according to DOE, authorized the production at [the Elk Hills Reserve] at a level of 65,000 B/D [barrels per day] to address fuel shortages on the West Coast and World War II military needs.” GAO Report at 15. Production reached this “peak of 65,000 barrels per day in 1945.” GAO Fact Sheet at 3. At the direction of the Federal Government, the oil companies increased avgas production “over twelve-fold from approximately 40,000 barrels per day in December 1941

³ Available at Delaware District Court, Case no. 1:20-cv-01429, ECF no. 1-1, pp. 279-281, <https://ecf.ded.uscourts.gov/doc1/04314990968>

to 514,000 barrels per day in 1945, [which] was crucial to Allied success in the war.” *Shell II*, 751 F.3d at 1285. “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 the government’s core defense functions. Statement of Senator O’Mahoney, Chairman, Special Committee Investigating Petroleum Resources, S. Res. 36, at 1 (Nov. 28, 1945) (emphasis added).

II. During the second half of the 20th Century, the Federal Government continued to exercise substantial control and direction over the production of oil and gas.

In 1950, President Roosevelt’s successor, President Truman, established the Petroleum Administration for Defense (“PAD”) under authority of the Defense Production Act of 1950, Pub. L. No. 81–774 (“DPA”). The PAD ordered production of oil and gas to ensure adequate quantities of avgas for military use. *Exxon*, 2020 WL 5573048, at *28; *see also id.* at *15 (detailing the government’s use of the Defense Production Act of 1950 to “force” the petroleum industry to “increase [its] production of wartime . . . petroleum products”).

To further promote domestic oil and gas production in 1953, Congress passed the Outer Continental Shelf Lands Act (“OCSLA”), directing the U.S. Department of the Interior to make nearly 27 million acres of the OCS available for “expeditious and orderly development” of fossil fuel production. 43 U.S.C. §1332(3).

During the Cold War era, the U.S. military commanded the development of more innovative military fuels and continued its role as the major consumer and driving force behind domestic production. During the 1960s, U.S. energy consumption increased 51%, compared to only 36% during the previous decade. Jay Hakes, *A Declaration of Energy Independence at 17* (2008). As demand continued to climb into the early 1970s, domestic supply failed to keep pace and the Nation faced a precarious shortage of oil.

To avert a national energy crisis, in 1973, President Nixon ordered a dramatic increase in development for ready-production from the OCS:

Approximately half of the oil and gas resources in this country are located on public lands, primarily on the Outer Continental Shelf [OCS]. The speed at which we can increase our domestic energy production will depend in large measure on how rapidly these resources can be developed. I am therefore directing the Secretary of the Interior to take steps which would triple the annual acreage leased on the Outer Continental Shelf by 1979, beginning with expanded sales in 1974 in the Gulf of Mexico and including areas beyond 200 meters in depth under conditions consistent with my oceans policy statement of May, 1970.

Nixon Message, *N.Y. Times*, Apr. 19, 1973.⁴

Also in 1973, President Nixon announced a goal of energy independence for the U.S. by 1980. Annual Message to the Congress on the State of the Union, 1 Pub. Papers 59 (Jan. 23, 1974).⁵ “Project Independence 1980” ordered, among other things, that the Secretary of the Interior “increase the acreage leased on the [OCS] to 10 million acres beginning in 1975, more than tripling what had originally been planned.” Special Message to the Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).⁶

Congress passed the Trans-Alaska Pipeline Authorization Act of 1973, determining that it was in the “national interest” to deliver oil and gas from Alaska’s North Slope “to domestic markets ... because of growing domestic shortages and increasing dependence upon insecure foreign sources.” Trans-Alaska Pipeline Authorization Act, Pub. L. No. 93-153, § 202(a), 87 Stat. 576, 584 (1973), Pub. L. No. 93-153, at <https://www.govinfo.gov/content/pkg/STATUTE-87/pdf/STATUTE-87-Pg576.pdf>.

To address “immediate and critical” petroleum shortages in the military brought by the 1973 OPEC Oil Embargo, the Federal Government invoked the DPA to bolster its reserves with additional petroleum from domestic oil and gas com-

⁴ <https://www.nytimes.com/1973/04/19/archives/excerpts-from-nixon-message-developing-our-domestic-energy.html>.

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<https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/99?view=image&size=100>

⁶ <https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001/69>

panies. Twenty-Fourth Annual Report of the Activities of the Joint Committee on Defense Production, S. Rep. No. 94-1, Pt. 1, at 442 (Jan. 17, 1975, 1st Sess.). The Interior Department subsequently issued directives to 22 companies to supply a total of 19.7 million barrels of petroleum during the two-month period from November 1, 1973, through December 31, 1973, for use by the DOD.

In 1974, responding to President Nixon's direction to "increase the acreage leased on the Outer Continental Shelf", Congress amended OCSLA. This amendment increased federal control over lessees "to result in expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade." *California ex rel. Brown v. Watt*, 668 F.2d 1290, 1296 (D.C. Cir. 1981) (quoting 43 U.S.C. § 1802); see also Special Message to the Congress on the Energy Crisis, 1 Pub. Papers 29 (Jan. 23, 1974).⁷ Recognizing the substantial federal interests in the OCS leasing program, Congress granted federal courts original jurisdiction "to the entire range of legal disputes that it knew would arise relating to resource development on the Outer Continental Shelf." *Laredo Offshore Constructors*,

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<https://quod.lib.umich.edu/p/ppotpus/4731948.1974.001?rgn=main;view=fulltext>.

Inc. v. Hunt Oil Co., 754 F.2d 1223, 1228 (5th Cir. 1985) (emphasis added).

Congress also authorized preliminary activity to develop Elk Hills and other National Reserves to their full economic potential. *See* Supplemental Appropriation Act of 1974, Pub. L. No. 93-245 (1974), <https://uscode.house.gov/statutes/pl/93/245.pdf>. At this point, Standard Oil withdrew from operating Elk Hills to concentrate on other federal objectives:

[T]he current domestic energy situation is so serious that all oil companies are devoting their available resources to the discovery and production of new oil reserves. The President has requested that every effort be made to increase production of petroleum, and Standard is focusing its attention on this objective.

Letter from J.R. Grey, Standard Oil, to Jack L. Bowers, Acting Secretary of the Navy, requesting to terminate its position as Operator of the Elk Hills Reserve (Jan. 7, 1975).

In the 1975 Energy Policy Conservation Act, Congress created the Strategic Petroleum Reserve (“SPR”), a “stockpile of government-owned petroleum managed by the Department of Energy [created] as a response to gasoline supply shortages and price spikes. . . to reduce the impact of disruptions in supplies of petroleum products and to carry out U.S. obligations under the 1974 Agreement on an International Energy Program.” Pub. L. No. 94-163, 89 Stat. 871; *see* H.R. Rep. No. 115-965, at 3 (2017). The Act declared it national policy “to store up to 1 billion barrels of petroleum products, provides for an

early reserve, to contain at least 150 million barrels by December 1878 [sic], and for an eventual storage system of at least 500 million barrels by December 1982. It [was] estimated that a 500 million barrel reserve, combined with conservation measures, [could] essentially replace lost imports, for a period of 6 months for the most likely interruptions.” Statement of Hon. John F. O’Leary, Administrator, Federal Energy Administration, Hearing before the Committee on Interior and Insular Affairs, U.S. Senate, on FEA’s Strategic Petroleum Reserve Plan, at 30 (Feb. 4, 1977).

The following year, Congress enacted the Naval Petroleum Reserves Production Act of 1976, Pub. L. No. 94-258, 90 Stat. 303, 307-308 (1976), which reopened the Elk Hills Reserve and “directed that [the Reserve] be produced at the *maximum efficient rate for 6 years*.” See also Steven Rattner, *Long-Inactive Oilfield is Open—for Now*, N.Y. Times (Oct. 31, 1977). Then-Commander Roger Martin, the naval officer in charge of the facility explained: “We expect to reach a level of about 100,000 barrels daily in a few months, and 300,000 by the end of [the] 1970’s.” Robert Lindsey, *Elk Hills Reserve Oil Will Flow Again*, N.Y. Times (July 3, 1976).

In 1978, as part of amendments to OCSLA, the Congressional Ad Hoc Select Committee on the OCS concluded again that “alternative sources of energy will not be commercially practical for years to come,” H.R. Rep. No. 94-1084, at 254 (1976) and “[d]evelopment of our OCS resources will afford us needed time—as much as a generation—within which to develop alternative sources of energy.”

H.R. Rep. No. 95-590, at 53 (1977). Notably, Congress at that time considered but rejected creating a national oil company to develop oil and gas on the OCS:

The Federal Government can conduct this program by using the same drilling and exploration firms that are usually hired by oil companies. The taxpayers of the United States—rather than the oil companies—would be the clients for these drilling companies, and the information received would pass directly into the public domain.

121 Cong. Rec. S903-11 (1975). *See* 30 C.F.R. § 250.1150.

While Congress ultimately declined to nationalize these operations, to this day, the federal OCS leases with oil and gas companies include terms and conditions that provide for continued federal oversight and mandate that the lessees develop these lands to achieve national energy objectives. These terms require the lessees to produce oil and gas, control the methods of production, and direct how oil and gas are sold to benefit the national economy. For example, the leases require lessees to “maximize the ultimate recovery of the hydrocarbons from the leased area”; require that drilling take place “in accordance with an approved exploration plan (EP), development and production plan (DPP) or development operations coordination document (DOCD) [as well as] approval conditions”; and specify that the Federal Government retains the right to oversee the lessee’s

rate of production from its leases.⁸ To ensure military fuel supply deployment-readiness and other Federal Government policy objectives, the government conditions OCS leases with a right of first refusal to purchase all minerals in time of war or when the President orders. *See* 43 U.S.C. § 1341(b).

III. The Federal Government’s efforts to ensure a dependable, abundant supply of oil and gas have continued over recent decades.

In 1995, Congress amended OCSLA to permit the Secretary of the Interior to “unlock an estimated 15 billion barrels of oil in the central and western Gulf of Mexico” for energy companies’ exploration and production. Press Secretary, White House Office of Communications, Statement on North Slope Oil Bill Signing (Nov. 28, 1995), 1995 WL 699656, at *1.

Federal promotion and use of domestic oil continued to grow in the 2000s. In 2006, the Bush administration opened for exploration and production leases of approximately 8 million additional acres of OCS

⁸ *See generally* Mineral Lease of Submerged Lands Under the Outer Continental Shelf Lands Act, Form MMS-2004 (Jun. 1991); Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act, Form BOEM-2005 (Feb. 2017); Unit Plan Contract between the Navy and Standard (Jun. 19, 1944); and Oil and Gas Lease Under the Mineral Lands Leasing Act, Form 3100-aa (Oct. 2008); Adam Vann, Congressional Research Service, RL33404, Offshore Oil and Gas Development: Legal Framework (2018), <https://fas.org/sgp/crs/misc/RL33404.pdf> (describing the multi-step process for approval of development plans and BOEM oversight procedures).

lands in the Gulf of Mexico to “address high energy prices, protect American jobs, and reduce our dependence on foreign oil.” *Statement By President George W. Bush Upon Signing [H.R. 6111]*, 2 Pub. Papers 2217 (Dec. 20, 2006).⁹ President Bush issued an Executive Order to draw down the SPR in response to Hurricane Katrina in 2005.¹⁰

In 2010, President Obama “announc[ed] the expansion of offshore oil and gas exploration,” explaining “the bottom line is this: given our energy needs, in order to sustain economic growth, produce jobs, and keep our businesses competitive, we are going to need to harness traditional sources of fuel even as we ramp up production of new sources of renewable, homegrown energy.” President Barack Obama, Remarks on Energy at Andrews Air Force Base, Maryland (Mar. 31, 2010).¹¹

In 2019, OCS leases supplied 1.039 trillion cubic feet of natural gas. Bureau of Safety and Environmental Enforcement, Outer Continental Shelf Oil and Gas Production (Nov. 4, 2020), <https://www.data.bsee.gov/Production/OCSProduction/OCSProduction/Default.aspx>. Private companies produced nearly one billion barrels of oil from federal offshore and onshore leases managed by the Interior Department. Historically, annual oil and gas production from federal leases has accounted for as

⁹ <https://books.google.com/books?id=o2ei8yOphboC&printsec=frontcover#v=onepage&q&f=false>.

¹⁰ <https://www.energy.gov/fe/services/petroleum-reserves/strategic-petroleum-reserve/releasing-oil-spr>.

¹¹ <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-energy-security-andrews-air-force-base-3312010>

much as 36% of domestic oil production and 25% of domestic natural gas production. *See* Congressional Research Service, R42432, U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas 3, 5 (updated Oct. 23, 2018).¹²

In 2019, the United States became a net total energy exporter for the first time since 1952. U.S. Energy Info. Admin., U.S. energy facts explained (Apr. 27, 2020), <https://www.eia.gov/energyexplained/us-energy-facts/imports-and-exports.php>. The Department of Defense alone purchased 94.2 million barrels of military-spec compliant fuel products, totaling \$12.1 billion in procurement actions.¹³

The OCS leases are also a significant source of revenue for the Federal Government. OCS lease bonuses, rental payments, and royalties generate billions of dollars to the U.S. Treasury.¹⁴ U.S. Dep't of

¹² <https://crsreports.congress.gov/product/pdf/R/R42432>

¹³ Def. Logistics Agency Energy, Fiscal Year 2019 Fact Book (2019) at 4, 27, https://www.dla.mil/Portals/104/Documents/Energy/Publications/FactBookFiscalYear2019_highres.pdf?ver=2020-01-21-103755-473.

¹⁴ As one example of the ways in which the Federal Government directs and controls operations of petroleum production to ensure military readiness and national security, the government also reserves the right to purchase up to 16 $\frac{2}{3}$ percent of lease production, less any royalty share taken in-kind. 43 U.S.C. § 1353(a)(2). The Secretary of the Interior may direct a lessee to deliver any reserved production to the General Services Administration (government civilian operations), the Department of Defense (military operations), or the Department of Energy (e.g., Strategic Petroleum Reserve). 43 U.S.C. § 1353(a)(3). For onshore leases, administered by Interior's Bureau of Land Management ("BLM"), the Secretary may take any royalty owed on oil and gas production in-kind and "retain the same for

Interior, Bureau of Ocean Energy Management, OCS Oil and Gas Leasing Program: 2012-2017 Final Programmatic Environmental Impact Statement (“2012-2017 EIS”).¹⁵

When Respondent’s Complaint is viewed within the historical context of the Federal Government’s pervasive control and direction of oil and gas production, it is clear that Respondent’s claims arise under federal law. Respondent seeks to hold Petitioners liable for actions taken under the direction of federal officers in pursuit of Federal Government policies to secure the national defense by developing fossil fuel resources. This is more than sufficient to permit removal of this case from state to federal court.

the use of the United States.” 30 U.S.C. § 192. By way of example, after the September 11 attacks, President George W. Bush ordered that the SPR “be filled . . . principally through royalty-in-kind transfers to be implemented by the Department of Energy and the Department of the Interior.” Statement on the Strategic Petroleum Reserve, 2 Pub. Papers 1406 (Nov. 13, 2001), <https://www.govinfo.gov/content/pkg/PPP-2001-book2/pdf/PPP-2001-book2.pdf>. From 1999 to December 2009, “the Strategic Petroleum Reserve received 162 million barrels of crude oil through the RIK program” valued at over \$6 billion. U.S. Dep’t of Energy, Strategic Petroleum Reserve Annual Report for Calendar Year 2010, at 18, 37, and 39 (Table 13) (2011) (“SPR 2010 Report”), <https://www.energy.gov/sites/prod/files/2015/02/f20/2010%20SPR%20Annual%20Report.pdf>.

¹⁵See also OCS EIS/EA BOEM 2012-030, 1-4 (2012), https://www.boem.gov/sites/default/files/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/2012-2017_Five_Year_Program/2012-2017_Final_PEIS.pdf; see also Statement of Abigail Ross Hopper, Director, Bureau of Ocean Energy Management, Before the House Committee on Natural Resources (Mar. 2, 2016); <https://www.boem.gov/FY2017-Budget-Testimony-03-01-2016>.

CONCLUSION

The judgment of the court of appeals should be reversed. In the alternative, the judgment should be vacated and the case remanded for further proceedings.

Respectfully submitted,

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