

Nos. 21-2728, 22-1096

IN THE

United States Court of Appeals for the Third Circuit

CITY OF HOBOKEN,

Plaintiff-Appellee,

v.

CHEVRON CORPORATION, *et al.*,

Defendants-Appellants.

On Appeal from an Order
of the United States District Court
for the District of New Jersey (20-cv-14243)

STATE OF DELAWARE, *ex rel.* KATHLEEN JENNINGS,
ATTORNEY GENERAL OF THE STATE OF DELAWARE,

Plaintiff-Appellee,

v.

BP AMERICA INC., *et al.*,

Defendants-Appellants.

On Appeal from an Order
of the United States District Court
for the District of Delaware (20-cv-1429)

MOTION TO STAY THE MANDATES

THOMAS G. HUNGAR
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
(202) 955-8500
thungar@gibsondunn.com

THEODORE J. BOUTROUS, JR.
WILLIAM E. THOMSON
JOSHUA D. DICK
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000
tboutrous@gibsondunn.com
wthomson@gibsondunn.com
jdick@gibsondunn.com

*Counsel for Defendants-Appellants Chevron Corporation and Chevron U.S.A. Inc.
[Additional counsel listed on signature page]*

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
BACKGROUND	2
ARGUMENT	3
I. Defendants-Appellants’ Petition Will Present A Substantial Question	4
II. There Is Good Cause To Stay The Mandates	8
CONCLUSION	11

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Am. Elec. Power Co. v. Connecticut</i> , 564 U.S. 410 (2011).....	7
<i>Bd. of Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.</i> , 25 F.4th 1238 (10th Cir. 2022)	6
<i>Caterpillar Inc. v. Williams</i> , 482 U.S. 386 (1987).....	8
<i>City of Milwaukee v. Illinois</i> , 451 U.S. 304 (1981).....	7
<i>City of New York v. Chevron Corp.</i> , 993 F.3d 81 (2d Cir. 2021)	5, 6
<i>City of Oakland v. BP PLC</i> , 969 F.3d 895 (9th Cir. 2020).....	6, 10
<i>Illinois v. City of Milwaukee</i> , 406 U.S. 91 (1972).....	7, 8
<i>Mayor & City Council of Baltimore v. BP P.L.C.</i> , 31 F.4th 178 (4th Cir. 2022)	6
<i>Nara v. Frank</i> , 494 F.3d 1132 (3d Cir. 2007)	4
<i>Newton v. Capital Assurance Co.</i> , 245 F.3d 1306 (11th Cir. 2001).....	5
<i>In re Otter Tail Power Co.</i> , 116 F.3d 1207 (8th Cir. 1997).....	4

TABLE OF AUTHORITIES

(continued)

	<u>Page(s)</u>
<i>Republic of Philippines v. Marcos</i> , 806 F.2d 344 (2d Cir. 1986)	4
<i>Rhode Island v. Shell Oil Prods. Co.</i> , 35 F.4th 44 (1st Cir. 2022).....	6
<i>Sam L. Majors Jewelers v. ABX, Inc.</i> , 117 F.3d 922 (5th Cir. 1997).....	4, 6
<i>Tex. Indus., Inc. v. Radcliff Materials, Inc.</i> , 451 U.S. 630 (1981).....	7
<i>Torres v. S. Peru Copper Corp.</i> , 113 F.3d 540 (5th Cir. 1997).....	4
 Statutes	
28 U.S.C. § 1442	2
 Rules	
Fed. R. App. P. 41(b).....	3
Fed. R. App. P. 41(d)(1)	1, 3, 8
Sup. Ct. R. 10(a)	6
Sup. Ct. R. 10(c).....	7

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 41(d)(1), Defendants-Appellants respectfully move this Court to stay issuance of the mandates pending the filing and disposition of a timely petition for a writ of certiorari with the Supreme Court of the United States. A stay is warranted because there is good cause for a stay and Defendants-Appellants' petition for a writ of certiorari will raise a substantial question that has divided the circuits: whether defendants may remove nominally state-law claims that are necessarily and exclusively governed by federal law by virtue of our constitutional structure. The panel in this case answered in the negative and thereby deepened an entrenched circuit split and created significant tension with longstanding Supreme Court precedent.

Absent a stay, these two cases may be remanded to two different States' court systems, requiring Defendants-Appellants to litigate Plaintiffs-Appellees' claims simultaneously in separate jurisdictions and under two sets of state law. The potential harm to the parties and the interests of judicial efficiency constitute good cause that amply justifies a stay of the mandate. Plaintiffs-Appellees oppose this motion.

BACKGROUND

Plaintiffs-Appellees filed two separate actions against a total of 28 energy companies and a national trade association in New Jersey and Delaware state courts, seeking to use state law to impose tort liability for past and future harms allegedly attributable to global climate change. *See 2-Hoboken-JA-69–79*. Plaintiffs-Appellees allege that “Defendants['] actions were, at the very least, a substantial factor in the creation of the [alleged] nuisance” because “Defendants have produced more than 12% of the world’s fossil fuels since 1965, the combustion of which has been the driving force behind” climate change, and “[w]ithout Defendants’ actions, climate change effects” would be “much less severe.” *2-Hoboken-JA-164*. Asserting numerous putative claims under New Jersey and Delaware state law, including for public nuisance and trespass, Plaintiffs-Appellees demand compensatory and punitive damages, disgorgement of profits, abatement of the alleged nuisances, and other relief. *2-Hoboken-JA-184–85*.

Defendants-Appellants removed these actions to the District of New Jersey and the District of Delaware, asserting several grounds for federal jurisdiction, including the federal officer removal statute, 28

U.S.C. § 1442, and federal question jurisdiction based on federal common law, *3-Hoboken-JA-188*; *2-Delaware-JA-89*. The district courts issued orders remanding the cases to state court. *1-Hoboken-JA-15*; *1-Delaware-JA-59*.

On consolidated appeal, the panel affirmed the district courts' remand orders. Op.19–20. Defendants-Appellants filed a petition for rehearing en banc on September 14, 2022. *Hoboken* Dkt. 141. On September 30, 2022, the Court denied Defendants-Appellants' petition. *Hoboken* Dkt. 142. Absent a stay, the mandate will issue on October 7, 2022. Fed. R. App. P. 41(b).

ARGUMENT

This Court may stay the mandate when a petition for a writ of certiorari “would present a substantial question and . . . there is good cause for a stay.” Fed. R. App. P. 41(d)(1). Here, Defendants-Appellants' forthcoming petition for a writ of certiorari will raise a substantial question over which the courts of appeals are divided. And given the considerable harm that will befall Defendants-Appellants if they are mistakenly forced to litigate these cases in separate state-court systems, as well as

the burden and inefficiencies that the litigation would unnecessarily impose on the New Jersey and Delaware state courts, good cause exists for a stay. *See Nara v. Frank*, 494 F.3d 1132, 1133 (3d Cir. 2007) (“In a close case, the movant should make a showing that, on balance, the interests of the parties and the public favor a stay.”).

I. Defendants-Appellants’ Petition Will Present A Substantial Question.

Defendants-Appellants’ petition for a writ of certiorari will present the question whether defendants can remove to federal court nominally state-law claims that, because of our constitutional structure, are necessarily and exclusively governed by federal law alone.

The panel’s decision affirming the remand orders expressly conflicts with holdings of other courts of appeals that have recognized that federal common law provides a ground for federal removal jurisdiction even if the claims were nominally pleaded under state law. *See* Op.24–25 (acknowledging conflict with *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922, 926 (5th Cir. 1997), and declining to follow it); *see also, e.g., In re Otter Tail Power Co.*, 116 F.3d 1207, 1213–14 (8th Cir. 1997); *Republic of Philippines v. Marcos*, 806 F.2d 344, 352–54 (2d Cir. 1986); *Torres v.*

S. Peru Copper Corp., 113 F.3d 540, 542–43 (5th Cir. 1997); *Newton v. Capital Assurance Co.*, 245 F.3d 1306, 1309 (11th Cir. 2001).

Under the law of these circuits, Plaintiffs-Appellees’ claims would be removable. As the Second Circuit recently explained, purported state-law claims seeking damages for the cumulative impact of global greenhouse-gas emissions from every State in the nation and every country in the world are necessarily and exclusively governed by federal law. *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021). This is because claims centered on transboundary emissions “demand the existence of federal common law” because they span state and even national boundaries, and “a federal rule of decision is necessary to protect uniquely federal interests.” *Id.* at 90. In that case, the Second Circuit held that New York City’s “sprawling” claims, which—like Plaintiffs-Appellees’—sought “damages for the cumulative impact of conduct occurring simultaneously across just about every jurisdiction on the planet,” were “simply beyond the limits of state law” and thus necessarily were “federal claims” that “must be brought under federal common law.” *Id.* at 92, 95.

The same is true of Plaintiffs-Appellees’ claims. Plaintiffs-Appellees seek damages for harms allegedly resulting from the cumulative use

of all fossil-fuel products worldwide, which Plaintiffs-Appellees assert contributed to global climate change, leading to rising sea levels, more frequent extreme heat, and increased extreme precipitation, which in turn caused their alleged physical injuries. *2-Hoboken-JA-69–79*. These claims are necessarily governed exclusively by federal law, *see City of New York*, 993 F.3d at 92–95, and are therefore removable, *see, e.g., Sam L. Majors Jewelers*, 117 F.3d at 926. The conflict between those precedents and the panel’s decision alone demonstrates that there is a considerable likelihood that the Supreme Court will grant certiorari. *See* Sup. Ct. R. 10(a) (“the reasons the Court considers” in granting review include whether “a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals”).¹

A stay is also warranted because the Supreme Court has not yet addressed this recurring and important issue, and the approach followed

¹ While the Supreme Court declined to consider similar issues in *City of Oakland v. BP PLC*, 969 F.3d 895 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2776 (2021), three additional courts of appeals have issued decisions since that case was decided, further deepening the split. *See Rhode Island v. Shell Oil Prods. Co.*, 35 F.4th 44, 53–56 (1st Cir. 2022); *Mayor & City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178, 202 (4th Cir. 2022); *Bd. of Cnty. Comm’rs of Boulder Cnty. v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1257–63 (10th Cir. 2022).

by the panel is in clear tension with the logic of the Supreme Court’s decisions in cases involving interstate and international emissions. *See* Sup. Ct. R. 10(c) (noting that review may be proper where “a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court”). The Supreme Court has long held that, as a matter of constitutional structure, claims hinging on interstate and international emissions are governed by federal law. “[T]he basic scheme of the Constitution . . . demands” that “federal common law” govern disputes involving “air and water in their ambient or interstate aspects,” including claims based on interstate and international emissions. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 421 (2011); *see also Illinois v. City of Milwaukee*, 406 U.S. 91, 105 n.6 (1972) (“*Milwaukee I*”) (noting that the “basic interests of federalism . . . demand[]” this result).

As a result, the Court has made clear that “our federal system does not permit [a] controversy [of this sort] to be resolved under state law.” *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981). Indeed, “state law cannot be used” at all. *City of Milwaukee v. Illinois*, 451

U.S. 304, 313 n.7 (1981) (“*Milwaukee II*”). Rather, the “rule of decision [must] be[] federal,” and the claims thus necessarily “arise[] under federal law.” *Milwaukee I*, 406 U.S. at 100, 108 n.10 (internal quotation marks omitted).

Because the panel’s decision conflicts with the decisions of other courts of appeals and is in tension with decisions of the Supreme Court, Defendants-Appellants’ petition will present a substantial question that is ripe for Supreme Court review and for which there is a reasonable likelihood of reversal.

II. There Is Good Cause To Stay The Mandates.

There is also “good cause for a stay” here. Fed. R. App. P. 41(d)(1). Absent a stay of the mandates, these actions could be remanded to multiple state courts for further proceedings while the Supreme Court considers Defendants-Appellants’ petition for a writ of certiorari. Congress has bestowed on defendants the right to litigate in federal court “actions that originally could have been filed in federal court.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Without a stay of the mandates, Defendants-Appellants could be deprived of that right, even if they later prevail before the Supreme Court.

Moreover, Defendants-Appellants could be forced to litigate these claims in two different state-court systems, which could entail resolving numerous threshold and dispositive motions, as well as potentially extensive discovery—all under two separate bodies of state law. If the mandate issues and the Supreme Court ultimately reverses the panel’s decision, this litigation will have proceeded in those state courts in the wrong forums and under the wrong laws—requiring the parties and the courts to start over from scratch once the cases are returned to federal court. A stay therefore serves the interests of judicial economy, as there is no need to proceed in state court until the question of federal jurisdiction has been finally resolved.

Finally, Plaintiffs-Appellees will not suffer harm as a result of the stay. Plaintiffs-Appellees claim that they do not seek to enjoin any of Defendants-Appellants’ conduct; rather, they ask only for monetary relief. *See 1-Hoboken-JA-17* (Hoboken is “seek[ing] compensation to offset the costs it has and will continue to incur to protect itself from the effects of global warming”); *5-Hoboken-JA-748* n.1 (“To the extent there is any ambiguity, Plaintiff disclaims expressly any intent to seek an injunction ‘against Defendants’ production of oil and gas.”); *1-Delaware-JA-31* n.4

(“The Court, thus, understands that Plaintiff seeks no injunctive relief ‘directed at [D]efendants’ forward-looking activities in any way.” (alteration in original)). That Plaintiffs-Appellees’ alleged entitlement to money damages could be modestly delayed is the antithesis of irreparable harm.

For this reason, other courts considering substantially similar climate-change cases have routinely stayed the mandate. Recently, the Ninth Circuit stayed the mandate under almost identical circumstances. *See Order, Cnty. of San Mateo v. Chevron Corp.*, No. 18-15499 (9th Cir. June 30, 2022), Dkt. 329. And Delaware’s counsel expressly consented to a stay pending the conclusion of any Supreme Court proceedings in yet another similar climate-change action in the Northern District of California. *See Pac. Coast Fed’n of Fishermen’s Ass’ns, Inc. v. Chevron Corp.*, No. 3:18-cv-7477 (N.D. Cal. Jan. 2, 2019), Dkt. 91, at 3 (“[T]he Parties jointly request that the Court stay further proceedings in this action until” the *San Mateo* and *Oakland* appeals “are finally resolved, including resolution of any en banc proceedings in the Ninth Circuit or proceedings in the United States Supreme Court.”).

Because a stay of the mandates will not harm Plaintiffs-Appellees, whereas issuance of the mandates would threaten to impose substantial burdens and hardships not only for Defendants-Appellants but also for state and federal court dockets, there is “good cause” to stay the mandates.

CONCLUSION

This Court should stay issuance of the mandates pending the filing and disposition of a timely petition for a writ of certiorari.

September 30, 2022

K&L GATES LLP

/s/ Steven L. Caponi

Steven L. Caponi
600 N. King Street, Suite 901
Wilmington, DE 19801
Telephone: (302) 416-7000
Email: steven.caponi@klgates.com

K&L GATES LLP

Loly G. Tor
One Newark Center, 10th Fl.
Newark, NJ 07102
Phone: (973) 848-4026
Email: loly.tor@klgates.com

KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.

David C. Frederick
Grace W. Knofczynski
Daniel S. Severson
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Email: dfrederick@kellogghansen.com
Email: gknofczynski@kellogghansen.com
Email: dseverson@kellogghansen.com

*Counsel for Defendants-Appellants Shell
plc (f/k/a Royal Dutch Shell plc) and
Shell USA, Inc. (f/k/a Shell Oil Com-
pany)*

Respectfully Submitted,

/s/ Theodore J. Boutrous, Jr.

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutrous, Jr.
William E. Thomson
Joshua D. Dick
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
Email: tboutrous@gibsondunn.com
Email: wthomson@gibsondunn.com
Email: jdick@gibsondunn.com

Andrea E. Neuman
200 Park Avenue
New York, NY 10166
Telephone: (212) 351-4000
Facsimile: (212) 351-4035
Email: aneuman@gibsondunn.com

Thomas G. Hungar
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: (202) 955-8500
Facsimile: (202) 467-0539
Email: thungar@gibsondunn.com

STERN, KILCULLEN & RUFOLO,
LLC

Herbert J. Stern
Joel M. Silverstein
325 Columbia Turnpike, Suite 110
Florham Park, New Jersey 07932-0992
Telephone: (973) 535-1900
Facsimile: (973) 535-9664
Email: hstern@sgklaw.com
Email: jsilverstein@sgklaw.com

ARNOLD & PORTER KAYE
SCHOLER LLP

/s/ Nancy G. Milburn

Nancy G. Milburn
Diana E. Reiter
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8383
Facsimile: (212) 836-8689
Email: nancy.milburn@arnoldporter.com
Email: diana.reiter@arnoldporter.com

Erica W. Harris
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
Email: eharris@susmangodfrey.com

*Attorneys for Defendants-Appellants
Chevron Corp. and Chevron U.S.A. Inc.*

Jonathan W. Hughes
3 Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3156
Facsimile: (415) 471-3400
Email: jonathan.hughes@arnoldporter.com

Matthew T. Heartney
John D. Lombardo
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
Email: matthew.heartney@arnoldporter.com
Email: john.lombardo@arnoldporter.com

Paul J. Fishman
One Gateway Center, Suite 1025
Newark, NJ 07102
Telephone: (973) 776-1900
Facsimile: (973) 776-1919
Email: paul.fishman@arnoldporter.com

*Attorneys for Defendants-Appellants BP
America Inc. and BP p.l.c.*

RICHARDS, LAYTON & FINGER, P.A.

/s/ Jeffrey L. Moyer

Jeffrey L. Moyer
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Email: moyer@rlf.com

CRAVATH, SWAINE & MOORE LLP

Kevin Orsini
Vanessa A. Lavelly
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1718
Facsimile: (212) 474-3700
Email: korsini@cravath.com
Email: vlavelly@cravath.com

Attorneys for Defendant-Appellant Occidental Petroleum Corporation

EIMER STAHL LLP

/s/ Nathan P. Eimer

Nathan P. Eimer
Pamela R. Hanebutt
Lisa S. Meyer
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7600
Email: neimer@eimerstahl.com
Email: phanebutt@eimerstahl.com
Email: lmeyer@eimerstahl.com

Robert E. Dunn
99 S. Almaden Blvd. Suite 642
San Jose, CA 95113
Telephone: (408) 889-1690
Email: rdunn@eimerstahl.com

Attorneys for Defendant CITGO Petroleum Corporation.

SHOOK, HARDY & BACON L.L.P.

/s/ Tristan L. Duncan

Tristan L. Duncan
Daniel B. Rogers
2555 Grand Blvd.
Kansas City, MO 64108
Telephone: (816) 474-6550
Email: tlduncan@shb.com
Email: drogers@shb.com

Attorneys for Defendant-Appellant Murphy USA Inc.

MARON MARVEL BRADLEY
ANDERSON & TARDY LLC

/s/ Antoinette D. Hubbard

Antoinette D. Hubbard (No. 2308)
Stephanie A. Fox (No. 3165)
1201 N. Market Street, Suite 900
P.O. Box 288
Wilmington, DE 19801
Telephone: (302) 425-5177
Email: Adh@maronmarvel.com
Email: Saf@maronmarvel.com

HUNTON ANDREWS KURTH LLP

Shannon S. Broome
Ann Marie Mortimer
50 California Street
San Francisco, CA 94111
Telephone: (415) 975-3718
Email: SBroome@HuntonAK.com
Email: AMortimer@HuntonAK.com

Shawn Patrick Regan
200 Park Avenue
New York, NY 10166
Telephone: (212) 309-1046
Email: SRegan@HuntonAK.com

Attorneys for Defendants-Appellants Marathon Petroleum Corporation, Marathon Petroleum Company LP, and Speedway LLC

WOMBLE BOND DICKINSON (US)
LLP

/s/ Kevin J. Mangan

Kevin J. Mangan
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
Email: kevin.mangan@wbd-us.com

MCGUIREWOODS LLP

Kathryn M. Barber
800 East Canal Street
Richmond, VA 23219
Telephone: (804) 775-1000
Email: kbarber@mcguirewoods.com

RIKER DANZIG LLP

Anthony J. Zarillo, Jr.
Jeffrey M. Beyer
One Speedwell Avenue
Morristown, NJ 07962-1981
Telephone: (973) 538-0800
Facsimile: (973) 451-8343
Email: azarillo@riker.com
Email: jbeyer@riker.com

Attorneys for Defendant-Appellant American Petroleum Institute

WHITE AND WILLIAMS LLP

/s/ Christian J. Singewald

Christian J. Singewald
600 N. King Street
Suite 800
Wilmington, DE 19801
Telephone: (302) 654-0424
Email: singewaldc@white-
andwilliams.com

MCGUIREWOODS LLP

Joy C. Fuhr
Brian D. Schmalzbach
800 East Canal Street
Richmond, VA 23219
Telephone: (804) 775-1000
Email: jfuhr@mcguirewoods.com
Email: bschmalzbach@mcguire-
woods.com

*Attorney for Defendant-Appellant Devon
Energy Corporation*

CROWELL & MORING LLP

/s/ Kathleen Taylor Sooy

Kathleen Taylor Sooy
Tracy A. Roman
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 624-2500
Email: ksooy@crowell.com
Email: troman@crowell.com

Honor R. Costello
590 Madison Avenue, 20th Fl.
New York, NY 10022
Telephone: (212) 223-4000
Email: hcostello@crowell.com

*Attorneys for Defendant-Appellant CON-
SOL Energy Inc.*

DUANE MORRIS LLP

/s/ Mackenzie M. Wrobel

Mackenzie M. Wrobel
1201 N. Market Street, Suite 501
Wilmington, DE 19801-1160
Telephone: (302) 657-4900
Email: MMWrobel@duanemorris.com

SHOOK HARDY & BACON LLP

Michael F. Healy
555 Mission Street, Suite 2300
San Francisco, CA 94105.
Telephone: (415) 544-1942
Email: mfhealy@shb.com

DUANE MORRIS LLP

Michael L. Fox
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
Telephone: (415) 957-3092
Email: MLFox@duanemorris.com

*Attorneys for Defendant-Appellant
Ovintiv INC.*

JONES DAY

/s/ Noel J. Francisco

Noel J. Francisco
David M. Morrell
J. Benjamin Aguiñaga
51 Louisiana Avenue, N.W.
Washington, DC 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
Email: njfrancisco@jonesday.com
Email: dmorrell@jonesday.com
Email: jbaguinaga@jonesday.com

David C. Kiernan
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 626-3939
Facsimile: (415) 875-5700
Email: dkiernan@jonesday.com

*Attorneys for Defendant-Appellant CNX
Resources Corp.*

LATHAM & WATKINS LLP

/s/ Steven M. Bauer

Steven M. Bauer
Margaret A. Tough
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com

BARTLIT BECK LLP

Jameson R. Jones
Daniel R. Brody
1801 Wewatta Street, Suite 1200
Denver, CO 80202
Telephone: (303) 592-3123
Email: jameson.jones@bartlit-beck.com
Email: dan.brody@bartlit-beck.com

MCCARTER & ENGLISH LLP

Daniel J. Brown
Alexandra M. Joyce
Renaissance Centre
405 N. King St., 8th Floor
Wilmington, DE 19801
Telephone: (302) 984-6331
Email: djbrown@mccarter.com
Email: ajoyce@mccarter.com

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
/s/ Kannon K. Shanmugam
Kannon K. Shanmugam
William T. Marks
2001 K Street, N.W.
Washington, DC 20006
Telephone: (202) 223-7325
Facsimile: (202) 204-7397
Email: kshanmugam@paulweiss.com
Email: wmarks@paulweiss.com

Theodore V. Wells, Jr.
Daniel J. Toal
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
Email: twells@paulweiss.com
Email: dtoal@paulweiss.com

MARINO, TORTORELLA & BOYLE, P.C.
Kevin H. Marino
John D. Tortorella
437 Southern Boulevard
Chatham, NJ 07928
Tel: (973) 824-9300
Fax: (973) 824-8425
Email: kmarino@khmarino.com
Email: jtortorella@khmarino.com

*Attorneys for Defendants-Appellants
Exxon Mobil Corporation, ExxonMobil Oil
Corporation, and XTO Energy Inc.*

CHIESA SHAHINIAN & GIANTO-
MASI PC
Jeffrey S. Chiesa
Dennis M. Toft
Michael K. Plumb
One Boland Drive
West Orange, New Jersey 07052
Telephone: (973) 325-1500
Facsimile: (973) 325-1501
Email: jchiesa@csglaw.com
Email: dtoft@csglaw.com
Email: mplumb@csglaw.com

*Attorneys for Defendants-Appellants
ConocoPhillips and ConocoPhillips
Company*

LATHAM & WATKINS LLP
/s/ Steven M. Bauer
Steven M. Bauer
Margaret A. Tough
505 Montgomery Street, Suite 2000
San Francisco, California 94111-6538
Telephone: (415) 391-0600
Email: steven.bauer@lw.com
Email: margaret.tough@lw.com

MCCARTER & ENGLISH LLP
Daniel J. Brown
Alexandra M. Joyce
Renaissance Centre
405 N. King St., 8th Floor
Wilmington, DE 19801
Telephone: (302) 984-6331
Email: djbrown@mccarter.com
Email: ajoyce@mccarter.com

RICHARDS LAYTON & FINGER, P.A.

/s/ Robert W. Whetzel

Robert W. Whetzel
Alexandra M. Ewing
One Rodney Squarem
902 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7634
Facsimile: (302) 651-7701
Email: whetzel@rlf.com
Email: ewing@rlf.com

Attorneys for Apache Corporation

WHITE AND WILLIAMS LLP

/s/ Joseph J. Bellew

Joseph J. Bellew
600 N. King Street, Suite 800
Wilmington, DE 19801-3722
Telephone: (302) 467-4532
Facsimile: (302) 467-4540
Email: bellewj@whiteandwilliams.com

BAKER BOTTS L.L.P.

J. Scott Janoe
910 Louisiana Street, Suite 3200
Houston, Texas 77002-4995
Telephone: (713) 229-1553
Facsimile: (713) 229-7953
Email: scott.janoe@bakerbotts.com

Megan Berge
700 K Street, N.W.
Washington, D.C. 20001-5692
Telephone: (202) 639-1308
Facsimile: (202) 639-1171
Email: megan.berge@bakerbotts.com

Attorneys for Defendant-Appellant Hess Corporation

GIBBONS P.C.

Anthony P. Callaghan, Esq.
Thomas R. Valen, Esq.
Sylvia-Rebecca Gutiérrez, Esq.
One Gateway Center
Newark, NJ 07102
Tel: (973) 596-4500
Fax: (973) 596-0545
Email: acallaghan@gibbonslaw.com
Email: tvalen@gibbonslaw.com
Email: sgutierrez@gibbonslaw.com

Attorneys for Defendants-Appellants Phillips 66 and Phillips 66 Company

ABRAMS & BAYLISS LLP

/s/ Michael A. Barlow
Michael A. Barlow
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
Telephone: (302) 778-1000
Email: barlow@abramsbayliss.com

ORRICK, HERRINGTON & SUTCLIFFE LLP

Robert P. Reznick
1152 15th Street NW
Washington, DC 20005
Telephone: (202) 339-8600
Email: rreznick@orrick.com

Attorneys for Marathon Oil Corporation

WHITE AND WILLIAMS LLP

/s/ Joseph J. Bellew

Joseph J. Bellew
600 N. King Street, Suite 800
Wilmington, DE 19801-3722
Telephone: (302) 467-4532
Facsimile: (302) 467-4540
Email: bellewj@whiteandwilliams.com

BAKER BOTTS L.L.P.

J. Scott Janoe
910 Louisiana Street, Suite 3200
Houston, Texas 77002-4995
Telephone: (713) 229-1553
Facsimile: (713) 229-7953
Email: scott.janoe@bakerbotts.com

Megan Berge
700 K Street, N.W.
Washington, D.C. 20001-5692
Telephone: (202) 639-1308
Facsimile: (202) 639-1171
Email: megan.berge@bakerbotts.com

*Attorneys for Defendant-Appellant Mur-
phy Oil Corporation*

RICHARDS, LAYTON & FINGER, P.A.

/s/ Robert W. Whetzel

Robert W. Whetzel
Blake Rohrbacher
Alexandra Ewing
One Rodney Square
920 N. King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Email: whetzel@rlf.com
Email: rohrbacher@rlf.com
Email: ewing@rlf.com

*Attorneys for Defendants-Appellants To-
tal S.A. and TotalEnergies Marketing
USA, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2022, an electronic copy of the foregoing Motion for Defendants-Appellants was filed with the Clerk of Court for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system, and that service on the following Filing Users will be accomplished by the appellate CM/ECF system.

Date: September 30, 2022

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d) because it contains 2,026 words, as determined by the word-count function of Microsoft Word 2010, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 27(a)(2)(B).

2. This Motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point New Century Schoolbook font.

Date: September 30, 2022

/s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071