

No. 21-15318

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

COUNTY OF MAUI,

Plaintiff-Appellee,

v.

CHEVRON USA INC., et al.,

Defendants-Appellants.

Appeal From The United States District Court for the District of Hawaii,
No. 20-cv-00470

The Honorable Derrick K. Watson

**DEFENDANTS' OPPOSED MOTION FOR EXTENSION OF TIME
TO FILE OPENING BRIEF**

Theodore J. Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071-3197
(213) 229-7000
tboutrous@gibsondunn.com

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

Defendants-Appellants hereby move this Court, under Federal Rule of Appellate Procedure 26(b) and Circuit Rule 31-2.2(b), for a 60-day extension of time in which to file their Opening Brief, which currently is due on Wednesday, May 19, 2021, Dkt. 32, so that Defendants can address in their Opening Brief a forthcoming decision from the Supreme Court of the United States in a climate-change case that will bear directly upon the scope of issues on appeal. That Supreme Court decision is expected before the end of the current Term, and thus within the next 60 days. If Defendants' request is granted, the new deadline would be Monday, July 19, 2021. Defendants previously requested and received a streamlined 30-day extension. Dkts. 31, 32. Plaintiff-Appellee has indicated that it opposes this motion. Furthermore, the Court has not scheduled oral argument, and therefore the requested extension will not require any modification of the Court's schedule.

In accordance with Circuit Rule 31-2.2(b)(5), Defendants' counsel represent that they have exercised diligence and are prepared to file the Opening Brief within the time requested. Good cause exists for the requested extension, as set forth in the attached Declaration of Theodore J. Boutrous, Jr., because a pending U.S. Supreme Court case will directly bear upon the scope of the issues that Defendants will present in their Opening Brief, and accordingly the interests of fairness, efficiency, and judicial economy support the requested extension.

Defendants are appealing from the district court’s order remanding this action to state court. The district court rejected several grounds for federal jurisdiction, including (among others) the federal-officer removal statute, 28 U.S.C. § 1442; the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1349; and federal enclave jurisdiction. Last year, this Court held that it has appellate jurisdiction to review a remand order “only to the extent it addresses § 1442(a)(1),” the federal-officer removal statute, and therefore “dismiss[ed] the . . . appeals for lack of jurisdiction to the extent the [appellants] s[ought] review of the district court’s ruling as to other bases for subject-matter jurisdiction.” *County of San Mateo v. Chevron Corp.*, 960 F.3d 586, 598 (9th Cir. 2020), cert. pending, No. 20-884 (filed Dec. 30, 2020). The U.S. Supreme Court subsequently agreed to consider the scope of appellate jurisdiction over remand orders in *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (U.S.) (asking whether a court of appeals has jurisdiction “to review any issue encompassed in a district court’s order remanding a removed case to state court where the removing defendant premised removal in part on the federal-officer removal statute”).

The Supreme Court heard argument in *Baltimore* on January 19, 2021. Its decision will determine the scope of issues to be raised in Defendants’ Opening Brief in this case. Specifically, the Court’s decision will determine whether Defendants are limited to contesting only the district court’s rejection of jurisdiction under the

federal-officer removal statute, or instead are entitled to challenge the district court's other jurisdictional holdings, as well. Accordingly, the requested extension is necessary so that Defendants will be able to file an Opening Brief in this appeal that addresses the full range of issues that will properly be before this Court. Given the jurisdictional uncertainties created by the impending Supreme Court decision, it would be inefficient for Defendants to be required to file their Opening Brief before the Court has issued its decision, which is expected by the end of June.

For all the foregoing reasons, Defendants respectfully request that this motion for a 60-day extension be granted.

DATED: April 30, 2021

Respectfully Submitted,

By: /s/ Deborah K. Wright
Deborah K. Wright
Keith D. Kirschbraun
Douglas R. Wright
WRIGHT & KIRSCHBRAUN
A Limited Liability Law Company

Paul Alston
Claire Wong Black
Glenn T. Melchinger
John-Anderson L. Meyer
DENTONS US LLP

Theodore V. Wells, Jr.
Kannon K. Shanmugam
Daniel J. Toal

By: ** /s/ Theodore J. Boutrous, Jr.
Theodore J Boutrous, Jr.
GIBSON, DUNN & CRUTCHER LLP

Melvyn M. Miyagi
WATANABE ING LLP

*Attorneys for Defendants Chevron
Corporation and Chevron U.S.A., Inc.*

**** Pursuant to Ninth Circuit L.R. 25-5(e),
counsel attests that all other parties on
whose behalf the filing is submitted concur
in the filing's contents.**

Yahonnes Cleary
Caitlin E. Grusauskas
William T. Marks
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

*Attorneys for Defendants Exxon Mobil
Corporation and ExxonMobil Oil
Corporation*

By: /s/ Crystal K. Rose
Crystal K. Rose
Adrian L. Lavarias
David A. Morris
BAYS, LUNG, ROSE & HOLMA

Steven M. Bauer
Margaret A. Tough
LATHAM & WATKINS LLP

*Attorneys for Defendants ConocoPhillips,
ConocoPhillips Company, Phillips 66, and
Phillips 66 Company*

Jameson R. Jones
Daniel R. Brody
Sean C. Grimsley
BARTLIT BECK LLP
*Attorneys for Defendants ConocoPhillips
and ConocoPhillips Company*

By: /s/ Joachim P. Cox
Joachim P. Cox
Randall C. Whattoff
COX FRICKE LLP

David C. Frederick
Daniel S. Severson
KELLOGG, HANSEN, TODD,

By: /s/ Michael Heihre
C. Michael Heihre
Michi Momose
CADES SCHUTTE

J. Scott Janoe
Megan Berge
Sterling Marchand
BAKER BOTTS LLP

*Attorneys for Defendants
Sunoco LP, Aloha Petroleum, LTD., and
Aloha Petroleum LLC*

By: /s/ Lisa Woods Munger
Lisa Woods Munger
Lisa A. Bail
David J. Hoftiezer
GOODSILL ANDERSON QUINN &
STIFEL LLP

John D. Lombardo

FIGEL & FREDERICK, P.L.L.C.

*Attorneys for Defendants
Royal Dutch Shell plc, Shell Oil Company,
and Shell Oil Products Company LLC*

By: /s/ Breon S. Peace

Breon S. Peace

Victor L. Hou

Boaz S. Morag

CLEARY GOTTlieb STEEN &
HAMILTON LLP

Margery S. Bronster

Lanson K. Kupau

BRONSTER FUJICHAKU ROBBINS

*Attorneys for Defendants BHP Group
Limited, BHP Group plc, and BHP Hawaii
Inc.*

Jonathan W. Hughes

Matthew T. Heartney

ARNOLD & PORTER KAYE SCHOLER
LLP

*Attorneys for Defendants
BP plc and BP America Inc.*

By: /s/ Shannon S. Broome

Shannon S. Broome

Ann Marie Mortimer

Shawn Patrick Regan

HUNTON ANDREWS KURTH LLP

Ted N. Pettit

CASE LOMBARDI & PETTIT

*Attorneys for Defendant
Marathon Petroleum Corp.*