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VIA ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *City and County of Honolulu v. Sunoco LP, et al., No. 21-15313; County of Maui v. Chevron USA Inc., et al., No. 21-15318*

Dear Ms. Dwyer:

Buljic v. Tyson Foods, Inc., --- F.4th ---, 2021 WL 6143549 (8th Cir. 2021), confirms that federal-officer removal is appropriate.

In *Buljic*, the poultry processor Tyson Foods argued the federal government’s designation of the meat industry as “critical” during the COVID-19 pandemic and related regulations established it was “acting under” federal officers. The Eighth Circuit disagreed, reasoning that the government never directed Tyson Foods to take the relevant actions, and meat processing was not a “basic governmental task.” *Id.* at *5-6. Critically, however, the court reaffirmed that federal jurisdiction exists “*where a private contractor provided the government with a product that it needed or performed a job that the government would otherwise have to perform,*” but held that Tyson Foods had made no such showing. *Id.* at *5 (emphasis added).

Plaintiffs mistakenly argue Defendants have asserted only that they fill a “national need” for oil and gas, and “align[ed] production” accordingly. ECF 96-1, at 2. Rather, Defendants have established they provided products to the government and performed jobs the government otherwise would have had to perform itself to fulfill its core national security responsibilities. *See* Opening Br. 28-52. Defendants “produced and supplied large quantities of highly specialized fuels that are required to conform to exact DOD specifications to meet unique operational needs of the U.S. military[.]” *Id.* 29. They “suppl[ied] oil for and manag[ed] the Strategic Petroleum Reserve for the government,” *id.* 38, and operated National Petroleum Reserve No. 1 at Elk Hills “‘in the employ’ of the Navy,” *id.* 49. And they produce oil and gas *owned by the government* from the Outer Continental Shelf at the direction, and under close supervision, of federal officials, in fulfillment of Congress’s directive to make

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those government-owned resources “available for expeditious . . . development.” *Id.* 41-48. The government would otherwise perform these jobs itself in furtherance of national security—indeed, national oil companies perform them elsewhere. These are the exact types of activities—*i.e.*, providing the government with products and performing jobs on its behalf—the Eighth Circuit held are sufficient for federal-officer jurisdiction. *See* 2021 WL 6143549, at *5-7.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)