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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*, No. 21-15313; *County of Maui v. Chevron USA Inc.*, No. 21-15318
Defendants-Appellants' Response to Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer:

The district court's decision in *Parish of Plaquemines v. Riverwood Production Co.*, 2022 WL 101401 (E.D. La. Jan. 11, 2022), *appeal pending* No. 22-30055 (5th Cir.), demonstrates federal-officer jurisdiction is appropriate here.

Although several appellants here believe that federal-officer jurisdiction also exists in *Plaquemines* and have noticed an appeal to the Fifth Circuit, *Plaquemines* confirms that government *contractors* (like Defendants) are one category of persons that would typically be found to "act under" federal officers. The court explained that "private parties that are (often, *contractually*) obligated or authorized to act with or for federal officers or agents in affirmatively executing duties under federal law are sufficiently 'acting under' federal control." *Id.* at 5 (emphasis added; cleaned up). Defendants have identified myriad federal contracts between themselves and the federal government requiring Defendants to produce and supply fossil fuels including, for example, contracts with the military for highly specialized fuels and leases on the Outer Continental Shelf. *See* Opening Br. 28-52. At a minimum, *Plaquemines* reaffirmed that "[t]he refineries, who had federal contracts and acted pursuant to those contracts, can likely remove 'for or relating to' any related act," 2022 WL 101401, at *7—and Defendants drilled for, refined and supplied fuels pursuant to these federal contracts, *e.g.*, Opening Br. 34.

Plaquemines also confirmed that, following Congress's amendment to § 1442(a), there is no "causal nexus" requirement to satisfy the "for or relating to" prong. 2022 WL 101401, at *6. The court explained that "the new test" "is, by intention, quite broad, and covers any

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and all acts that stand in some relation; have bearing or concern; or pertain to acts under color of federal office.” *Id.* (cleaned up). Like the defendants in *Plaquemines*, Defendants easily satisfy the “relating to” element. *See* Opening Br. 18-28.

Finally, *Plaquemines* reaffirmed that defendants need only have a “plausible” federal defense. 2022 WL 101401, at *6. The court found for the defendants on this issue, holding that both preemption and due process defenses were “viable.” *Id.* at *6-7. Defendants here have likewise asserted plausible preemption and due process defenses, among others. Opening Br. 53-54.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)