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February 14, 2022

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:

Nothing in *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, 2022 WL 363986 (10th Cir. 2022) ("Op."), justifies denying federal jurisdiction here.

**Federal Officer Removal:** The Tenth Circuit confirmed a defendant acts under federal officers when it "produce[s] essential government products," and "[w]artime production" is "the paradigmatic example." Op. \*6. This standard is easily satisfied because Defendants here "produced and supplied large quantities of highly specialized fuels that are required to conform to exact DOD specifications" to meet unique military needs. Opening Br. 29; *see id.* at 29–38. These activities are "critical efforts the federal superior would need to undertake itself in the absence of a private contract." Op. \*6. Indeed, these "essential government products" are the "lifeblood of the full range of [DOD] capabilities," Opening Br. 5, and the government has "instructed the oil industry about which products to produce, how to produce them and where to deliver them," *id.* at 34.

This evidence was not before the Tenth Circuit, where the record closed in 2018 and removal was premised solely on ExxonMobil's OCS leases. Op. \*4–8. And on that issue, the far more extensive record here (including unrebutted expert declarations) establishes that "[t]he federal government directed operations on the OCS," 2-ER-75, including "by actively directing the terms of access, locations, methods and pacing of development, and rates of production," 2-ER-149; *see* 2-ER-73–150. Moreover, the record here demonstrates Defendants' production of government-owned OCS resources serves national security goals

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the government would otherwise have had to implement itself. Opening Br. 41–46; 43 U.S.C. § 1332(3).

**Federal Enclaves:** The Tenth Circuit’s analysis was limited to the location of *injuries*. Op. \*21. Here, Plaintiffs’ claims encompass global production and emissions, and thus *conduct* that occurred on federal enclaves. Opening Br. 63–64.

**OCSLA:** The Tenth Circuit erred in nullifying the statute’s “in connection with” prong by requiring “but-for” causation. Opening Br. 60–63. Regardless, Plaintiffs’ complaints here allege they were injured by Defendants’ “fossil fuel products,” *e.g.*, 8-ER-1530, a substantial portion of which were produced on the OCS, Opening Br. 58 & n.8, 61.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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*Chevron Corporation and Chevron U.S.A.*

cc: All counsel of record (via ECF)