ORAL ARGUMENT NOT YET SCHEDULED

Nos. 22-5036 & 22-5037 (Consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FRIENDS OF THE EARTH; HEALTHY GULF; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs-Appellees,

v.

DEBRA HAALAND, in her official capacity as U.S. Secretary of the Interior, LAURA DANIEL-DAVIS, in her official capacity as the Assistant Secretary of the Interior for Land and Minerals Management; U.S. DEPARTMENT OF INTERIOR; BUREAU OF OCEAN ENERGY MANAGEMENT,

Defendants-Appellees,

and

AMERICAN PETROLEUM INSTITUTE; STATE OF LOUISIANA,

Defendant Intervenors-Appellants.

On Appeal from the United States District Court for the District of Columbia, Civil Action No. 1:21-cv-02317-RC

BRIEF OF AMICUS CURIAE SHELL OFFSHORE INC. IN SUPPORT OF DEFENDANT INTERVENORS-APPELLANTS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

All parties, intervenors, and amici appearing before the district court and in this Court are listed in the Opening Brief of the American Petroleum Institute ("API"), except for Shell Offshore Inc., which is *amicus curiae* in support of the Appellants, and additional *amici* identified in separate briefs of *amicus curiae*.

B. Rulings Under Review

References to the rulings at issue appear in the Opening Brief of API.

C. Related Cases

This case has not previously been before this Court. The Opening Brief of API accurately identifies related litigation.

Dated: June 13, 2022

/s/ Michael J. Mazzone
Michael J. Mazzone
Counsel for Shell Offshore Inc.

CERTIFICATE OF CONSENT AND NECESSITY OF SEPARATE AMICUS BRIEF

All parties have consented to the filing of this brief. Shell Offshore Inc. filed its notice of intent to participate in this case as amicus curiae on June 8, 2022.

Pursuant to D.C. Circuit Rule 29(d), counsel for Shell Offshore Inc. represents that the submission of a separate brief is necessary to inform the Court of the significant interests of Shell that are at stake in this litigation, and Shell's distinct, fact-specific considerations that bear on the appropriate remedy should the Court uphold the district court's determination that Lease Sale 257 violated NEPA.

Dated: June 13, 2022

/s/ Michael J. Mazzone
Michael J. Mazzone
Counsel for Shell Offshore Inc.

SHELL OFFSHORE INC. CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 26.1, Shell Offshore Inc. discloses that it is a wholly owned subsidiary of SOI Finance, Inc., which is a wholly owned subsidiary of Shell US E&P Investments LLC, which is in turn, a wholly owned subsidiary of Shell USA, Inc. Shell USA, Inc. is a wholly owned indirect subsidiary of Shell plc, a publicly held UK company. No other publicly traded company owns 10% or more of the stock of Shell plc.

These representations are made in order that judges of this Court may determine the need for recusal.

Dated: June 13, 2022

/s/ Michael J. Mazzone
Michael J. Mazzone
Counsel for Shell Offshore Inc.

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GLOSSARY

APA	Administrative Procedure Act
API	American Petroleum Institute
BOEM	Bureau of Ocean Energy Management
EIS	Environmental Impact Statement
ESA	Endangered Species Act
Interior	United States Department of the Interior
Lease Sale 257	BOEM's offshore oil and gas lease sale 257
NEPA	National Environmental Policy Act
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act

STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

Shell Offshore Inc. ("Shell") has for many decades engaged in oil and gas exploration and production activities on the Outer Continental Shelf ("OCS") of the Gulf of Mexico. Shell conducts these activities pursuant to oil and gas leases administered by the United States Department of the Interior ("Interior"). Shell currently owns interests in more than 400 leases in the Gulf of Mexico.

Shell submits this brief as *amicus curiae* in support of the appeals of Defendant Intervenors-Appellants, American Petroleum Institute ("API") and State of Louisiana ("Louisiana"). API and Louisiana challenge the district court's determination that the Bureau of Ocean Energy Management's ("BOEM") decision to conduct offshore oil and gas lease sale 257 ("Lease Sale 257") violated the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.* ("NEPA") and Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq.* ("APA").

Based upon its proprietary analysis of prospective offshore lease parcels, Shell submitted twenty bids during Lease Sale 257, for a total bid amount of $17,888,240. Shell was the high bidder on these leases, and accordingly paid $3,577,648 to Interior (or 20% of its high bid

amounts). Shell is prepared to pay the remainder of its high bids once BOEM issues the leases.

If the district court's decision vacating Lease Sale 257 is upheld, Shell immediately would lose both the competitive advantages of its confidential and proprietary process for identifying and valuing OCS leases, and the significant investments in time and resources that Shell made in preparing and submitting its sealed bids for Lease Sale 257. Because Shell's proprietary valuations have now been revealed to the public and because Interior has cancelled all remaining lease sales in the U.S. Gulf of Mexico for the foreseeable future, Shell cannot be placed in the same position with respect to the lease tracts covered by Lease Sale 257, either in a reconvened Lease Sale 257 or a future OCS lease sale covering the same tracts.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

Under Federal Rule of Appellate Procedure 29(a)(4), Shell states that no party's counsel authored this brief in whole or in part. No person other than Shell contributed money intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

API's Opening Brief demonstrates that the district court erred by, among other things, finding that: (i) the NEPA challenge by Plaintiffs, Friends of the Earth, Healthy Gulf, Sierra Club, and Center for Biological Diversity (collectively, "Friends of the Earth") to Interior's approval and conduct of Lease Sale 257 is ripe, and (ii) Lease Sale 257 violated NEPA by failing to quantify the effect on foreign greenhouse gas emissions attributable to reduced foreign consumption. API has further shown that the district court improperly vacated Lease Sale 257 in remanding to BOEM to address this purported error.

Shell submits this brief as *amicus curiae* to provide further legal and factual support with respect to the district court's imposition of vacatur. If this Court determines that the decision to conduct Lease Sale 257 violated NEPA, the appropriate remedy is remand of the Lease Sale to BOEM without vacatur. Indeed, no OCS lease sale has ultimately been vacated for a NEPA violation during the 44 years since the OCS Lease Act's current statutory scheme was enacted in 1978.

ARGUMENT

I. A REMAND WITHOUT VACATUR WOULD BE THE ONLY APPROPRIATE REMEDY WERE A NEPA VIOLATION FOUND.

Lease Sale 257 did not violate NEPA, and this Court should therefore reverse the district court. But, if the Court concludes otherwise, a remand without vacatur of Lease Sale 257 is the appropriate remedy in this case.

While the APA provides that "[t]he reviewing court shall . . . hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious," the APA also makes clear that "[n]othing herein . . . affects . . . the power or duty of the court to . . . deny relief on any . . . appropriate . . . equitable ground." 5 U.S.C. §§ 702, 706(2)(A). Instead, "[a]lthough the . . . court has power to do so, it is not required to set aside every unlawful agency action. The court's decision to grant or deny injunctive or declaratory relief under APA is controlled by principles of equity." *Nat'l Wildlife Fed'n v. Espy*, 45 F.3d 1337, 1343 (9th Cir. 1995).[1]

[1] It is not entirely clear that 5 U.S.C. § 706's definition of the "Scope of review" under the APA itself calls for any remedy. *See* John Harrison, *Section 706 of the Administrative Procedure Act Does Not Call for Universal Injunctions or Other Universal Remedies*, 37 JREG Bulletin 37, 45–46 (2020).

Under those principles, vacatur is not appropriate where "there is at least a serious possibility that the [agency] will be able to substantiate its decision on remand" and vacatur would have disruptive consequences. *Allied-Signal, Inc. v. U.S. Nuclear Reg. Comm'n*, 988 F.2d 146, 151 (D.C. Cir. 1993).

The Courts of Appeals that have directly addressed the issue have ***uniformly*** followed the lead of *Allied-Signal* and confirmed that the "remedy of remand without vacatur is within a reviewing court's equity powers under the APA." *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1289 (11th Cir. 2015) (quotation omitted); *see also WildEarth Guardians v. Bureau of Land Mgmt.*, 870 F.3d 1222, 1240 (10th Cir. 2017); *Nat. Res. Def. Council v. EPA*, 808 F.3d 556, 584 (2nd Cir. 2015); *Cent. Maine Power Co. v. FERC*, 252 F.3d 34, 48 (1st Cir. 2001); *Nat'l Org. of Veterans' Advocs., Inc. v. Sec'y of Veterans Affs.*, 260 F.3d 1365, 1380 (Fed. Cir. 2001); *Cent. & S.W. Servs., Inc. v. EPA*, 220 F.3d 683, 692 (5th Cir. 2000); *Espy*, 45 F.3d at 1343.

Notably, remand without vacatur is available to remedy deficiencies in an agency's NEPA review. *See*, *e.g.*, *Black Warrior Riverkeeper*, 781 F.3d at 1289–91; *WildEarth Guardians v. Zinke*, 368

F. Supp. 3d 41, 84–85 (D.D.C. 2019); *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 282 F. Supp. 3d 91, 108 (D.D.C. 2017). Indeed, the cause of action for a NEPA claim is provided solely by the APA. *Tulare Cnty. v. Bush*, 306 F.3d 1138, 1143 (D.C. Cir. 2002) ("NEPA [does not] provide[] a cause of action, so the claims must be brought under the Administrative Procedure Act. . . ."). Therefore, a cause of action for a NEPA claim is limited to the relief—and the equitable discretion—offered by the APA. NEPA is "purely procedural" and does not "impose substantive duties mandating particular results." *Grand Council of Crees (of Quebec) v. FERC*, 198 F.3d 950, 959 (D.C. Cir. 2000) (quotation omitted); *see also Baltimore Gas & Elec. Co. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) ("Congress . . . did not require agencies to elevate environmental concerns over other appropriate considerations."). There is no reason to exempt NEPA claims from the remedial discretion that courts routinely apply to violations of a wide variety of statutes.[2]

[2] *See, e.g.*, *Stand Up for California! v. U.S. Dep't of Interior*, 879 F.3d 1177, 1190 (D.C. Cir. 2018) (Clean Air Act); *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442, 451 (D.C. Cir. 2017) (Securities Exchange Act); *Delta Air Lines, Inc. v. Export-Import Bank of the U.S.*, 718 F.3d 974, 978 (D.C. Cir. 2013) (Export-Import Bank Act); *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 244 (D.C. Cir. 2013) (Federal Power Act); *Apache* (continued…)

Indeed, as explained in *Allied-Signal*, where (i) "there is at least a serious possibility that the [agency] will be able to substantiate its decision on remand" and (ii) vacatur will lead to impermissibly disruptive consequences in the interim, at most, a remand is appropriate. *Allied-Signal*, 988 F.2d at 151. This is just such a case. *See* API Br. Section IV.

And that conclusion is hardly remarkable: No OCS lease sale has ultimately been vacated for a NEPA violation, such as the district court's vacatur order here. *See, e.g., Oceana v. Bureau of Ocean Energy Mgmt.*, 37 F. Supp. 3d 147, 186 (D.D.C. 2014) (rejecting NEPA and Endangered Species Act ("ESA") lawsuit challenging Gulf of Mexico OCS Lease Sales 216/222 and 218); *Defenders of Wildlife v. Bureau of Ocean Energy Mgmt., Regulation & Enf't*, 871 F. Supp. 2d 1312, 1339 (S.D. Ala. 2012) (rejecting NEPA and ESA challenges to Lease Sale 213 (Central Gulf of Mexico)); *Tribal Village of Akutan v. Hodel*, 869 F.2d 1185, 1195 (9th Cir. 1989) (rejecting NEPA and ESA challenge to OCS Sale No. 92 (Bristol Bay)); *Village of False Pass v. Clark*, 733 F.2d 605, 616 (9th Cir. 1984) (rejecting NEPA and ESA attacks on OCS Sale No. 70 (St. George

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Corp. v. FERC, 627 F.3d 1220, 1223 (D.C. Cir. 2010) (Natural Gas Act); *Alliance for the Wild Rockies v. Savage*, 375 F. Supp. 3d 1152, 1155 (D. Mont. 2019) (Endangered Species Act).

Basin)); *North Slope Borough v. Andrus*, 642 F.2d 589, 614 (D.C. Cir. 1980) (reversing district court and upholding against NEPA and ESA challenge to first federal leasing of OCS in Beaufort Sea off Alaska); *Suffolk County v. Secretary of Interior*, 562 F.2d 1368, 1390–91(2d Cir. 1977) (reversing district court decision invalidating on NEPA grounds first Atlantic OCS lease sale).

There is no reason this case should be the exception.

II. VACATUR OF LEASE SALE 257 IS HIGHLY DISRUPTIVE TO SHELL'S BUSINESS PLANS AND SIGNIFICANT INVESTMENTS.

If the Court determines that the decision to conduct Lease Sale 257 violated NEPA, the disruptive consequences of vacating Lease Sale 257 support only a remand without vacatur. The impact of vacatur on Shell's long-term investments and planning make this impermissible disruption clear.

Oil and gas leases are both contracts and property. *See Mobil Oil Expl. & Producing Se., Inc. v. United States*, 530 U.S. 604, 607–08 (2000); *Union Oil Co. of Cal. v. Morton*, 512 F.2d 743, 747 (9th Cir. 1975). A court should be loathe, in the absence of a very pressing need, to interfere with either, or with parties' reasonable investment-backed expectations in

these property interests. This is particularly true of leases issued under the Outer Continental Shelf Lands Act ("OCSLA"), through which Congress expressly intended "to make [Outer Continental Shelf] resources available to meet the Nation's energy needs as rapidly as possible." 43 U.S.C. § 1802(2)(A). Indeed, OCSLA incentivizes lessees to rapidly invest in development of issued leases by (i) restricting leases to "an initial period of . . . five years; or not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas . . . of . . . unusually adverse conditions;" and (ii) extending the lease term "as long after such initial period as oil or gas is produced from the area in paying quantities, or [approved] drilling or well reworking operations . . . are conducted thereon." *Id.* § 1337(b)(2)(A)–(B).

For its part, Shell has invested tens of billions of dollars to acquire, explore, develop, and produce from its more than 400 Gulf of Mexico OCS leases. *Declaration of Christopher J. Gonsalves in Support of Brief of Amicus Curiae Shell Offshore Inc. in Support of Defendant Intervenors-*

Appellants (attached hereto as **Attachment 1**, "Gonsalves Decl."), ¶ 4.[3] In line with its existing investments and prospective business goals, Shell plans to continue producing from its OCS leases. *Id.* Specifically, Shell previously announced its intent to become a net zero emissions energy business by 2050. *Id.* ¶ 5. While repositioning the global portfolio and investments to help achieve that ambition, including announcing an intent to limit global investments in oil and gas exploration and production and to decline global production by one-to-two per cent per year through to 2030, Shell ***continues to grow*** its investments in oil and gas in the U.S. Gulf of Mexico. *Id.* ¶ 6. Shell's view is that the world's energy systems will continue to need oil and gas for decades to come, and Shell's production in the U.S. Gulf of Mexico has among the lowest greenhouse gas intensity in the world for producing oil. *Id.* ¶ 7. Moreover, there is a natural decline in production in oil and gas reservoirs at a rate of around five per cent a year across the oil and gas industry, and not all leases contain oil or gas or contain commercial

[3] The Court may consider extra-record materials in assessing proposed remedies. *See*, *e.g.*, *Eco Tour Adventures, Inc. v. Zinke*, 249 F. Supp. 3d 360, 369 n.7 (D.D.C. 2017) (noting "extra-record evidence may be used in cases where relief is at issue") (citations omitted).

volumes of oil or gas; therefore, it takes continuous reinvestment to sustain production. *Id.* ¶ 8. Further, the revenues generated from Shell's U.S. Gulf of Mexico portfolio are critical to delivering near-term cashflows and to enabling Shell's moderate growth in its low-carbon businesses. *Id.* Together, Shell's (i) global "net zero by 2050" ambition, (ii) the strategic importance of the Gulf of Mexico, and (iii) the need to continue oil and gas exploration and production to maintain production levels, makes Interior's OCS lease sales a critical aspect of Shell's business in the Gulf of Mexico. *Id.* ¶ 9. Shell has participated in dozens of Gulf of Mexico lease sales and has submitted thousands of sealed bids to obtain OCS leases. *Id.* ¶ 11. Indeed, Shell carefully tracks when offshore blocks in the Gulf of Mexico may become available for leasing, in order to continue building its portfolio and take advantage of existing infrastructure, installed over decades, in continuing to develop oil and gas on the OCS. *Id.* ¶ 13.

The sealed bids that Shell submits at offshore lease sales are based on information developed over years of geological subsurface analysis and competitor trends observed and interpreted by Shell. *Id.* ¶ 14. For each lease sale, Shell forms a team of interdisciplinary personnel—including

geoscientists, engineers, commercial professionals, regulatory experts, finance professionals, and executives—to develop plans for bidding on available lease blocks. *Id.* Among other things, Shell's valuation of unleased blocks relies on seismic data that Shell has spent hundreds of millions of dollars to acquire and process over years, and that Shell has spent millions to prepare for a specific lease sale. *Id.* Taken together, the information Shell uses to develop its bids is highly confidential, proprietary, and made available only to select Shell personnel. *Id.* ¶ 15.

Applying its proprietary valuation and planning processes, Shell submitted $17,888,240 in high bids on twenty leases in Lease Sale 257. *Id.* ¶ 19. Shell thereafter paid Interior 20% of the high bid values—$3,577,648—to secure its interest in the leases pending final issuance of the lease by BOEM and final payment of the remainder of Shell's high bids to Interior. *Id.*

Shell's investments do not end with submitting high bids on selected, desirable OCS lease tracts. After the lease sale, Shell begins detailed planning to allow for expeditious exploration and development of its leases as required by OCSLA. *Id.* ¶ 16. As part of this process, Shell engages in significant preparations toward oil and gas

development, including designing future operations—such as site surveys, well designs, and facilities planning—that are submitted to Interior as drilling plans and permits, and entering into contracts with multiple parties to carry out these plans. *Id.*

Through OCSLA, Congress incentivizes lessees to rapidly invest in development of issued leases by, *inter alia*, (i) restricting leases to "an initial period of . . . five years; or not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas . . . of . . . unusually adverse conditions;" and (ii) extending the lease term "as long after such initial period as oil or gas is produced from the area in paying quantities, or [approved] drilling or well reworking operations . . . are conducted thereon." 43 U.S.C. § 1337(b)(2).

As dictated by OCSLA's incentive structure, lessees like Shell must expend significant resources to develop and plan because, if exploration does not occur within the initial period of each lease, Shell will not be eligible to retain the lease for continued exploration, development, and production beyond the initial period. *See* Gonsalves Decl., ¶ 17. In other

words, lessees must invest significant sums in preparatory efforts up front or face a complete loss under OCSLA.

In these circumstances, ordering vacatur of Lease Sale 257 would impermissibly wipe out Shell's substantial investments preparing for and participating in Lease Sale 257, undermine the trust and certainty parties should expect in government-sponsored programs and in contracting with the United States, and forestall, if not prevent, the production of domestic energy. *See* Gonsalves Decl., ¶ 22. In short, vacatur would cast a huge shadow over the United States as a reliable place to do business and undermine lessees' reasonable reliance interests. *Declaration of Carl Rewerts*, at ¶ 8, *Gulf Restoration Network v. Bernhardt*, No. 20-5179 (D.C. Cir. Sept. 28, 2020), Document #1863771; *Pub. Emps. for Env't'l Resp. v. Hopper*, 827 F.3d 1077, 1084 (D.C. Cir. 2016) ("economic costs of delay" may be weighed in remedial discretion) (quotation omitted); *Idaho Power Co. v. FERC*, 312 F.3d 454, 460 (D.C. Cir. 2002) (recognizing injury when plaintiff requested "an agency [action] that replaces a certain [contract] outcome with one that contains uncertainty"); *Habitat for Horses v. Salazar*, 745 F. Supp. 2d

438, 457 (S.D.N.Y. 2010) (reliance interests in preparing for planned action and retaining contractors precluded injunctive relief).

Nor could the status quo ante be restored on remand following additional NEPA analyses. In addition to the destructive impact on the statutory sealed-bidding process described by API in their brief at pages 57 to 60, preparatory efforts would be lost to those lessees, operators, and service providers, such as Shell, that spent money preparing for and initiating lease valuation, bidding, and development operations, with no foreseeable opportunity to recover or re-apply those expenses, even during another lease sale held at a different time under different terms. *See* Gonsalves Decl., ¶ 20. The federal defendants, who opted not to appeal, told the district court that BOEM cannot hold another offshore oil and gas lease sale prior to the expiration of the current Five-Year Outer Continent Shelf Leasing Program on June 30, 2022. *Defendants' Response to the Court's January 19, 2022 Minute Order*, at pp. 5–6, *Friends of the Earth, et al. v. Haaland, et al.*, No. 21-02317 (D.D.C. Jan. 24, 2022), Document #74. Moreover, the federal defendants recently cancelled ***all*** remaining oil and gas lease sales planned for the Gulf of Mexico, and, in an unprecedent move in the history of the federal offshore

oil and gas program, neither scheduled nor signaled when they might hold another oil and gas lease sale in the US Gulf of Mexico OCS. *See e.g.,* Rebecca Falconer, *Biden Administration Cancels 3 Major Offshore Oil Lease Sales*, AXIOS, May 11, 2022, https://www.axios.com/2022/05/12/biden-cancels-offshore-oil-lease-sales-gulf-alaska.

Vacatur would thus jeopardize Shell's critical long-term business plans and investments—plans made and decisions taken by Shell for these ***specific*** blocks for this ***specific*** lease sale and under the contractual terms offered at this lease sale. Gonsalves Decl., ¶ 20.

These economic disruptions weigh decisively against vacatur. Courts "have repeatedly considered the economic implications of vacatur—including in cases addressing environmental harms." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 282 F. Supp. 3d 91, 104 (D.D.C. 2017) (citing cases); *see also Pub. Emps.*, 827 F.3d at 1084. In equity, economic harm "can be weighed against environmental harm—and in certain instances outweigh it." *Sierra Club, Inc. v. Bostick*, 539 F. App'x 885, 892 (10th Cir. 2013) ("[W]e too have recognized the appropriateness of weighing financial harm against environmental

harm."); *see also Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (hypothetical environmental harm outweighed by "committed" investments).

The immediate disruptive consequences to Shell and the inability of BOEM to "re-hold" Lease Sale 257 (or any other oil and gas lease sale in the United States Gulf of Mexico OCS in the near term) weigh heavily against vacatur in this case.

CONCLUSION

For the foregoing reasons and those set forth in API's brief, if this Court determines that the decision to conduct Lease Sale 257 violated NEPA, the district court's judgment ordering vacatur of Lease Sale 257 should be reversed.

Respectfully submitted,

Dated: June 13, 2022

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5) because this brief contains 4,947 words, including Attachment 1, but excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word using 14-point Century font.

/s/ Michael J. Mazzone
Michael J. Mazzone
Counsel for Shell Offshore Inc.

Dated: June 13, 2022

CERTIFICATE OF SERVICE

I certify that on June 13, 2022, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Michael J. Mazzone
Michael J. Mazzone
Counsel for Shell Offshore Inc.

ATTACHMENT 1

Declaration of Christopher J. Gonsalves in Support of Brief of Amicus Curiae Shell Offshore Inc. in Support of Defendant Intervenors-Appellants

ORAL ARGUMENT NOT YET SCHEDULED

Nos. 22-5036 & 22-5037

IN THE UNITED STATES COURT OF APPEALS
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DEBRA HAALAND, in her official capacity as U.S. Secretary of the Interior, LAURA DANIEL-DAVIS, in her official capacity as the Assistant Secretary of the Interior for Land and Minerals Management; U.S. DEPARTMENT OF INTERIOR; BUREAU OF OCEAN ENERGY MANAGEMENT,

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and

AMERICAN PETROLEUM INSTITUTE; STATE OF LOUISIANA,

Defendant Intervenors-Appellants.

On Appeal from the United States District Court for the District of Columbia,
Civil Action No. 1:21-cv-02317-RC
Honorable Rudolph Contreras

DECLARATION OF CHRISTOPHER J. GONSALVES IN SUPPORT OF BRIEF OF AMICUS CURIAE SHELL OFFSHORE INC. IN SUPPORT OF DEFENDANT INTERVENORS-APPELLANTS

I, Christopher J. Gonsalves, depose and state as follows:

1. I make this Declaration in support of the *Brief of Amicus Curiae Shell Offshore Inc. in Support of Defendant Intervenors-*

Appellants (the "Amicus Brief"), filed contemporaneously herewith, on the basis of personal knowledge, and am competent to testify with regard to the matters stated herein, which are true and correct to the best of my knowledge, information, and belief.

2. My position with Shell Offshore Inc. ("Shell") is Commercial Manager Exploration, Portfolio & Trading. I have worked for Shell for the past 20 years, 11 of which I served in various capacities involving the Gulf of Mexico. Through my work with Shell, I have acquired knowledge regarding Shell's oil and gas holdings and activities, including Shell's participation in Lease Sales, in the U.S. Gulf of Mexico.

Shell's Investments in Gulf of Mexico Leasing

3. Shell has for many decades engaged in oil and gas exploration and production activities on the Outer Continental Shelf ("OCS") of the Gulf of Mexico. Shell conducts these activities pursuant to oil and gas leases administered by the United State Department of the Interior ("Interior"). Shell currently owns interests in more than 400 leases in the Gulf of Mexico.

4. Shell has invested tens of billions of dollars to acquire, explore, develop, and produce from its Gulf of Mexico leases. Based on

its current investments and prospective business goals, Shell plans to continue producing from its OCS leases.

5. Shell has announced its intent to become a net zero emissions energy business by 2050.

6. While repositioning its global portfolio and investments to help achieve that ambition, including announcing an intent to limit global investments in oil and gas exploration and production and to decline global production by one to two per cent per year through 2030, Shell ***continues to grow*** its investment in oil and gas in the U.S. Gulf of Mexico.

7. Shell's view is that the world's energy systems will continue to need oil and gas for decades to come, and Shell's production in the U.S. Gulf of Mexico has among the lowest greenhouse gas intensity in the world for producing oil.

8. There is a natural decline in production in oil and gas reservoirs at a rate of around five per cent a year across the oil and gas industry, and not all leases contain oil or gas or contain commercial volumes of oil or gas; therefore, it takes continuous reinvestment to sustain production. Further, the revenues generated from Shell's U.S.

Gulf of Mexico portfolio are critical to delivering near term cashflows and to enabling Shell's moderate growth in its low-carbon business.

9. Together, Shell's (i) global "net zero by 2050" ambition, (ii) the strategic importance of the Gulf of Mexico, and (iii) the need to continue oil and gas exploration and production to maintain production levels, makes Interior's Gulf of Mexico lease sales a critical aspect of Shell's Gulf of Mexico business.

10. To engage in oil and gas production activities on the federal OCS in the Gulf of Mexico, Shell has acquired numerous leases through the sealed bid auction process at offshore lease sales managed by Interior. Shell has also acquired existing leases—also originating from Interior's offshore lease sales—from other offshore operators.

11. Shell has participated in dozens of Gulf of Mexico lease sales over many years and has submitted thousands of sealed bids.

12. In making billions of dollars of investments in the Gulf of Mexico, Shell has relied on the future availability of unleased blocks for leasing and on its prospective ability to acquire new leases of unleased—sometimes adjacent—blocks through future Interior lease sales. The

availability of new leases allows Shell to more fully develop previously discovered oil and gas reservoirs and to explore for new reservoirs.

13. Shell carefully tracks when offshore blocks in the Gulf of Mexico may become available for leasing, in order to continue building its portfolio and take advantage of existing infrastructure, installed over decades, in continuing to develop oil and gas on the OCS.

14. The sealed bids that Shell submits at offshore lease sales are based on information developed over years of geological subsurface analysis and competitor trends observed by Shell personnel. Shell spends millions of dollars to prepare for a specific lease sale. For each lease sale, Shell forms a team of interdisciplinary personnel—including geoscientists, engineers, commercial professionals, regulatory experts, finance professionals, and executives—to develop plans for bidding on available lease blocks. Among other things, Shell's valuation of unleased blocks relies on seismic data that Shell has spent hundreds of millions of dollars to acquire and process over the years. The ultimate decision to bid on unleased acreage at a lease sale based on Shell's confidential valuation processes requires appropriate Board and internal approvals.

15. Taken together, the information Shell uses to develop its bids is highly confidential, proprietary, and made available only to select Shell personnel. Shell employs a series of procedures and safeguards to ensure that its valuation of Gulf of Mexico blocks is protected from disclosure prior to Interior's public release of sealed bid amounts following an offshore lease sale. In other words, Shell takes significant measures to protect its proprietary bids from disclosure to the public or its competitors.

16. Shell's investments do not end with submitting high bids on selected, desirable OCS lease tracts. After the lease sale, Shell begins detailed planning to allow for expeditious exploration and development of its leases as required by the Outer Continental Shelf Lands Act ("OCSLA"). As part of this process, Shell engages in significant preparations toward oil and gas development, including designing future operations—including site surveys, well designs, and facilities planning—that are submitted to Interior as drilling plans and permits, and entering into contracts with multiple parties to carry out these plans.

17. In short, as dictated by OCSLA's incentive structure, lessees like Shell must expend significant resources to develop and plan because,

if exploration does not occur within the initial period of each lease, Shell will not be eligible to retain the lease for continued exploration, development, and production beyond the initial period.

Gulf of Mexico Lease Sale 257

18. On August 31, 2021, Interior published a new Record of Decision for Lease 257, deciding to conduct a region-wide lease sale offering all available unleased blocks. 86 Fed. Reg. 50,160 (Sept. 7, 2021). On October 4, 2021, Interior issued a Final Notice of Sale, setting Lease Sale 257 for November 17, 2021. *See* 86 Fed. Reg. 54,728 (Oct. 4, 2021); *see also* Lease Sale 257, BOEM, https://www.boem.gov/Sale-257 (last accessed June 12, 2022).

19. Applying its proprietary valuation and planning processes, Shell submitted $17,888,240.00 in high bids on twenty leases in Lease Sale 257. As the high bidder, Shell thereafter paid Interior 20% of the high bid values—$3,577,648.00—to secure its interest in the leases pending final issuance of the leases by Interior and final payment of the remainder of Shell's high bids to Interior.

20. If the district court's decision vacating Lease Sale 257 is upheld, Shell immediately would lose both the competitive advantages of

its confidential and proprietary process for identifying and valuing OCS leases, and the significant investments in time and resources that Shell made in preparing and submitting its sealed bids for Lease Sale 257. Vacatur would thus jeopardize Shell's critical long-term business plans and investments.

21. Shell cannot be placed in the same position with respect to the lease tracts covered by Lease Sale 257, either in a reconvened Lease Sale 257 or a future OCS lease sale covering the same tracts, because Shell's proprietary valuations have now been revealed to the public.

22. In these circumstances, it is impossible for Lease Sale 257 to be "re-held" in a fair and competitive manner. Moreover, ordering vacatur of Lease Sale 257 would impermissibly wipe out Shell's investments preparing for and participating in Lease Sale 257; undermine the trust and certainty parties should expect in government-sponsored programs and in contracting with the United States; and forestall, if not prevent, the production of domestic energy.

[*Remainder of page left intentionally blank; signature page follows.*]

I declare, under penalty of perjury under the laws of the United States, that the foregoing testimony is true and correct to the best of my knowledge, information, and belief.

Executed this 13th day of June 2022.

/s/ Christopher J. Gonsalves
Christopher J. Gonsalves
Shell Offshore Inc.
Attorney-in-Fact