

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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Plaintiff,

v.

EXXON MOBIL CORP., *et al.*

Defendants.

Civil Action No. 20-1932 (TJK)

**PLAINTIFF DISTRICT OF COLUMBIA'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff District of Columbia hereby notifies the Court of supplemental authority with respect to its Motion to Remand (Dkt. 46). *See City & County of Honolulu v. Sunoco LP et al.* and *County of Maui v. Sunoco LP et al.*, Nos. 21-15313, 21-15318, Dkt. 133 (9th Cir. July 7, 2022) (**Ex. A**) (“Order”). Writing for a unanimous Ninth Circuit panel, Judge Ryan D. Nelson held the district court below lacked subject-matter jurisdiction, concluding: “This case is about whether oil and gas companies misled the public about dangers from fossil fuels. It is not about companies that acted under federal officers, conducted activities on federal enclaves, or operated on the OCS.” Order at 23. The court affirmed remand of analogous state-law actions to state court, rejecting three of the removal arguments Defendants advance here:

Federal-officer removal. *See* Order at 10–16. (rejecting federal-officer removal because defendants were not “acting under” federal officers in their role supplying the federal government “with widely available commercial products” through “normal commercial or regulatory relationships that do not involve detailed supervision,” including during wartime, in support of

military operations, and as part of outer continental shelf production); *id.* at 16–18 (holding that the defendants failed to “assert a colorable federal defense” because proffered defenses either “d[id] not arise from official duties” or were supported only by “conclusory statements and general propositions of law [that] do not make their defenses colorable”).

Federal-enclave jurisdiction. *See* Order at 18–20 (holding that “Plaintiffs’ claims do not implicate federal enclave activities” because the “Defendants’ activities on federal enclaves are too remote and attenuated from Plaintiffs’ injuries,” and rejecting the contention that any conduct by defendants on federal enclaves supports removal because “[f]ederal enclave jurisdiction needs a direct connection between the injury and conduct”).

Outer Continental Shelf Lands Act (“OCSLA”) jurisdiction. *See* Order at 20–23 (finding that “oil and gas companies’ OCS activities are too attenuated and remote from Plaintiffs’ alleged injuries” to support OCSLA jurisdiction, as “sporadic OCS activities cannot shoehorn OCSLA jurisdiction for just any tort claim” and that “ruling for Defendants would dramatically expand OCSLA’s scope” (cleaned up)).

Respectfully Submitted,

Dated: July 18, 2022

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