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BY ELECTRONIC FILING

Catherine O'Hagan Wolfe
Clerk of Court
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *State of Connecticut v. Exxon Mobil Corp.*, No. 21-1446

Dear Ms. Wolfe:

Pursuant to Federal Rule of Appellate Procedure 28(j), appellant writes in response to appellee's letter regarding *City & County of Honolulu v. Sunoco LP*, 2022 WL 2525427 (9th Cir. July 7, 2022). The Ninth Circuit erred by rejecting removal on federal-officer and OCSLA grounds, relying largely on the erroneous reasoning in its decision in *San Mateo v. Chevron Corp.*, 32 F.4th 733 (2022), which appellant has already addressed. *See* Dkt. 144.

With respect to federal-officer removal: the Ninth Circuit held (Op. 12-16) that four of the activities defendants cited as being federally directed failed to satisfying the "acting under" requirement. But it did so only by adopting a cramped view of the federal-officer removal statute, contrary to the Supreme Court's repeated instructions. *See* Br. of Appellant 37. As to the other two factual bases for removal—the production of military jet fuel and products to support the military in World War II—the court concluded (Op. 12, 17-18) only that defendants failed to plead a colorable federal defense. But on that point, the Ninth Circuit failed to recognize that notices of removal are to be construed liberally, like a complaint, with the court crediting the defendant's theory of the case. *See* Br. of Appellant 37, 43. A removing defendant need only raise a plausible federal defense and need not establish that the defense is meritorious at the point of removal. *See id.* at 43.

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With respect to OCSLA: the Ninth Circuit departed from the statutory text in analyzing the nexus between the plaintiffs' claims and the defendants' operations on the outer continental shelf. OCSLA authorizes federal jurisdiction over actions "arising out of, or in connection with," operations on the shelf, but the court read that broad language to require "*more than* 'but-for' causation." Op. 20 (emphasis added). Even under that erroneous interpretation, however, the requisite nexus is present, because appellee seeks to recover for alleged harm from climate change in Connecticut. *See* Br. of Appellant 45. A considerable amount of fossil fuels stem from products extracted from the outer continental shelf. *See id.* at 45-46.

Respectfully submitted,

/s/ Kannon K. Shanmugam
Kannon K. Shanmugam

cc: All counsel of record (via electronic filing)