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SCOTUS
TERM IN REVIEW

April 17, 2026

Supreme Court Clarifies Broad Rule for Federal Officer Removal

By Josh Wesneski and Max Bloom

Today, in a largely unanimous decision written by Justice Thomas, the Supreme Court held in *Chevron USA Inc. v. Plaquemines Parish* that a defendant can remove state-court lawsuits to federal court where a lawsuit challenges conduct that is "closely connected" to acts performed at the direction of the federal government, even if the challenged conduct was not itself directed by the federal government.

Congress has provided that a defendant sued in state court may remove to federal court if the lawsuit is directed at a person "acting under" a federal officer "for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1). This statute allows contractors who have worked for the federal government to remove state-court lawsuits to federal court in certain litigation relating to such work.

Plaquemines Parish concerns the phrase "relating to any act under color of such office." Louisiana parishes sued oil producers in state court, alleging that the defendants had violated state laws when producing crude oil off of the Louisiana coast. Chevron removed to federal court, invoking the federal officer removal statute. Chevron argued that the production of crude oil was connected to its work as a military contractor in World War II, during which a predecessor of Chevron had refined crude oil into aviation gasoline for the U.S. military. The Fifth Circuit disagreed. It held that Chevron had "act[ed] under" federal officers when it refined the aviation gasoline. But the court held that the lawsuit was not "relat[ed] to" such acts, because the federal government had not directed Chevron to engage in the crude-oil production off the coast of Louisiana.

The Court reversed, reasoning that the phrase "relating to" in the federal statute does not require a causal connection between the conduct charged in the lawsuit and any official direction by the federal government. Instead, the Court explained, "relating to" is satisfied when there is a "close relationship" between the party's "challenged conduct and the performance of its federal duties,"

rather than a "tenuous, remote, or peripheral one." The Court held that this test was satisfied here because Chevron's conduct in Louisiana allowed it to produce crude oil that Chevron could then refine to satisfy its government contracts. Even if the federal Government had not specifically told Chevron how to produce the crude oil that Chevron would refine, the production still "relate[d] to" Chevron's aviation gasoline refining. Justice Jackson concurred in the judgment to explain her view that the federal officer removal statute requires a "causal nexus between the targeted conduct and the federal duties," but that this requirement was satisfied here, because Chevron's refining obligations required Chevron to produce crude oil.

Plaquemines Parish will likely be a significant decision for any businesses that do work for the federal government, since it clarifies the relatively low bar defendants must establish under the "relating to" prong of the federal officer removal statute. Most importantly, the Court clarified that the underlying lawsuit need not challenge conduct that was itself directed by the federal government, but rather that the defendant need only show a sufficiently close relationship between the challenged conduct and the work undertaken at the direction of the government. As here, that could include conduct that supports, facilitates, or allows the actions taken at the direction of the government.

Weil's SCOTUS Term in Review is published by the Appeals and Strategic Counseling practice of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, www.weil.com.

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