

No. 20-925

In the Supreme Court of the United States

SEBHAT AFEWORK, M.D.,
Petitioner,

v.

VELANTA MONIQUE BABBITT,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONER
SEBHAT AFEWORK, M.D.

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QUESTION PRESENTED

The question presented is the same as that presented in *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (argued Jan. 19, 2021):

Whether 28 U.S.C. 1447(d) permits a court of appeals to review any issue encompassed in a district court's order remanding a removed case to state court where the removal to federal court was premised in part on the federal officer removal statute, 28 U.S.C. 1442, or the civil rights removal statute, 28 U.S.C. 1443.

ARGUMENT

Because the question presented in this case is identical to the question the Court resolved days ago in *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189 (decided May 17, 2021), and because that decision overrules the circuit precedent which prevented the United States Court of Appeals for the Ninth Circuit from reviewing any basis for removal other than 28 U.S.C. 1442, the Court should grant the petition, vacate the judgment of the Ninth Circuit below, and remand for further consideration—namely, whether 42 U.S.C. 233(j)(2) is a proper basis for petitioner’s removal and requires the substitution of the United States in petitioner’s place.

Section 233(j)(2) is itself an officer removal provision for the benefit of certain entities and individuals (such as petitioner) who are deemed to be federal Public Health Service employees for purposes of the absolute immunity afforded under 42 U.S.C. 233(a). 42 U.S.C. 233 *et seq.* As petitioner explained in his petition, the Ninth Circuit declined to consider Section 233(j)(2), concluding that now-overruled precedent prevented it from doing so. *See* Pet. 5–6; App. 8a–9a (citing *Cty. of San Mateo v. Chevron Corp.*, 960 F.3d 586, 598 (9th Cir. 2020)).

Having urged the Court as an amicus in *BP* to hold as it just did, U.S. Br. as Amicus Curiae in Supp. of Pet., *BP p.l.c. v. Mayor & City Council of Baltimore*, No. 19-1189, at 10–31, the United States as the Federal Respondent agreed with petitioner that this case

should be “disposed of as appropriate in light of” the *BP* decision. Resp. Br. at 8, 10.

Although the parties disagree as to whether Section 233(d)(2) is a proper basis for removal, it is clear, in light of *BP*, that the dispute is for the Ninth Circuit to resolve on remand.

Respectfully submitted.

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