

No. 24-783

IN THE
Supreme Court of the United States

ENBRIDGE ENERGY, LP, *et al.*,
Petitioners,
v.

DANA NESSEL, ATTORNEY GENERAL OF THE
STATE OF MICHIGAN, ON BEHALF OF THE
PEOPLE OF THE STATE OF MICHIGAN,
Respondent.

**On Writ of Certiorari to the
U.S. Court of Appeals for the Sixth Circuit**

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	Page(s)
REPLY ARGUMENT SUMMARY.....	1
ARGUMENT	2
I. The presumption of equitable tolling applies because Section 1446(b)'s 30-day window is a statutory filing deadline.	2
II. The Michigan Attorney General has not rebutted the equitable-tolling presumption.....	12
III. The Michigan Attorney General's remaining argument is without merit and outside the question presented.	22
CONCLUSION	24

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Arellano v. McDonough</i> , 598 U.S. 1 (2023)	20, 21
<i>Boechler, P.C. v. Comm’r of Internal Revenue</i> , 596 U.S. 199 (2022)	6, 8, 12
<i>Burnett v. New York Cent. R.R. Co.</i> , 380 U.S. 424 (1965)	14
<i>Califano v. Yamasaki</i> , 442 U.S. 682 (1979)	13
<i>In re Delta America Re Ins. Co.</i> , 900 F.2d 890 (6th Cir. 1990)	17
<i>Gamage v. Peal</i> , 217 F. Supp. 384 (N.D. Cal. 1962)	19
<i>Gillis v. Louisiana</i> , 294 F.3d 755 (5th Cir. 2002)	12
<i>Hallstrom v. Tillamook County</i> , 493 U.S. 20 (1989)	4, 5
<i>Harrow v. Dep’t of Def.</i> , 601 U.S. 480 (2024)	5, 6, 7
<i>Holland v. Florida</i> , 560 U.S. 631 (2010)	2, 10, 13

<i>Irwin v. Dep't of Veterans Affs.</i> , 498 U.S. 89 (1990)	7, 13
<i>Kamen v. Kemper Fin. Servs., Inc.</i> , 500 U.S. 90 (1991)	23
<i>Lebron v. Nat'l R.R. Passenger Corp.</i> , 513 U.S. 374 (1995)	23
<i>Loftin v. Rush</i> , 767 F.2d 800 (11th Cir. 1985)	12
<i>Lozano v. Montoya Alvarez</i> , 572 U.S. 1 (2014)	4, 5
<i>Martin v. Hunter's Lessee</i> , 14 U.S. 304 (1816)	8
<i>Mackay v. Uinta Dev. Co.</i> , 229 U.S. 173 (1913)	8, 9, 10
<i>Margan v. Chemetron Fire Sys., Inc.</i> , 954 F. Supp. 1127 (E.D. Va. 1997)	19
<i>Nutraceutical Corp. v. Lambert</i> , 586 U.S. 188 (2019)	6, 7, 12, 13
<i>Powers v. Chesapeake & O. R. Co.</i> , 169 U.S. 92 (1898)	10, 11
<i>S. Pac. Co. v. Stewart</i> , 245 U.S. 359 (1917)	8, 9
<i>S. Pac. Co. v. Stewart</i> , 245 U.S. 562 (1918)	9

<i>Syngenta Crop Prot., Inc. v. Henson</i> , 537 U.S. 28 (2002)	11
<i>United States v. Locke</i> , 471 U.S. 84 (1985)	7
<i>United States v. Wong</i> , 575 U.S. 402 (2015)	14, 21
<i>Young v. United States</i> , 535 U.S. 43 (2002)	1, 3, 4, 7
<i>Zipes v. Trans World Airlines, Inc.</i> , 455 U.S. 385 (1982)	6, 7

Statutes

28 U.S.C. 1369	19
28 U.S.C. 1441(a)	11
28 U.S.C. 1441(d)	17, 20
28 U.S.C. 1441(e)	19, 20
28 U.S.C. 1441(e)(1)(B)	19
28 U.S.C. 1442a	18–19
28 U.S.C. 1446(b)	1, 2, 7, 13–21
28 U.S.C. 1446(b)(1)	1, 3
28 U.S.C. 1446(b)(2)(B)	15
28 U.S.C. 1446(b)(3)	15, 16

28 U.S.C. 1447(c)	11, 14
28 U.S.C. 1453	17
28 U.S.C. 1453(b)	17
28 U.S.C. 1454(b)	18, 20
38 U.S.C. 5110(b)	20, 21

Other Authorities

14C Charles Alan Wright & Arthur R. Miller, <i>Federal Practice and Procedure</i> 3724 (2018)	17
14C Charles Alan Wright & Arthur R. Miller, <i>Federal Practice and Procedure</i> 3728 (2018)	18
14C Charles Alan Wright & Arthur R. Miller, <i>Federal Practice and Procedure</i> 3728.1 (2018)	17, 18

REPLY ARGUMENT SUMMARY

The Sixth Circuit correctly applied a presumption of equitable tolling to Section 1446(b)'s 30-day removal window. Pet. App. 20a. It erred by resorting to interpretive canons "insufficient to overcome the strong and longstanding" presumption. Amicus Br. of Professor Arthur R. Miller 6.

The Michigan Attorney General says the Sixth Circuit got the presumption wrong because, in her view, it applies only to statutes of limitations governing new causes of action. Respondent's Br. 3, 21, 27–28. But this Court has consistently recognized that the presumption applies to *all* statutory time limits that "prescribe[] a period within which certain rights ... may be enforced." *Young v. United States*, 535 U.S. 43, 47 (2002). Section 1446(b)'s 30-day window is one such limit. After 30 days, the right to remove is no longer available unless equitable tolling is available. The presumption applies.

Next, the Michigan Attorney General argues that the presumption of equitable tolling has been rebutted. She cites no statutory language prohibiting tolling but says such intent can be inferred from the statutory structure, pointing to "numerous express exceptions to § 1446(b)(1)'s deadline." Respondent's Br. 4. But there are no exceptions in Section 1446(b) itself, so the Michigan Attorney General is forced to look "elsewhere." Respondent's Br. 38. She tries to draw inferences from the removal statute's enactment history and raises policy concerns, too, but none are sufficient to overcome the longstanding presumption in favor of equitable tolling. This Court should so hold.

Finally, the Michigan Attorney General argues that Enbridge cannot show that this case warrants equitable tolling. Respondent's Br. 53–54. She recognizes that the district court made factual findings to support tolling but argues that the district court did not apply the correct legal framework. *Id.* This argument is waived and not within the question presented. The Court should disregard it.

Accordingly, the Court should reverse the court of appeals and remand with instructions to rescind the remand order.

ARGUMENT

I. The presumption of equitable tolling applies because Section 1446(b)'s 30-day window is a statutory filing deadline.

The Sixth Circuit started with the well-established presumption that courts may grant “equitable exceptions to non-jurisdictional statutes” such as Section 1446(b). Pet. App. 20a (citing *Holland v. Florida*, 560 U.S. 631, 645–46 (2010)).

The Michigan Attorney General now challenges that premise, arguing the presumption “applies only to statutes of limitations.” Respondent's Br. 3, 21, 27–28. She defines such statutes as deadlines that “begin to run when a plaintiff's cause of action accrues and prevent the plaintiff from bringing its claim after too long has passed.” *Id.* at 21. The 30-day removal window does not meet this definition, she says, because it relates to “a forum issue that arises only *after* a claim for relief has been brought.” *Id.* at 28. But this Court has never limited the presumption to such a narrow category of statutes.

1. In *Young v. United States*, the Court held that bankruptcy courts may equitably toll a statutory “lookback period” applicable to the IRS for collecting back taxes from a debtor during the pendency of a prior bankruptcy petition. 535 U.S. at 44. The “lookback period” did not prescribe a time in which the IRS must bring a cause of action or take any action. *Id.* at 46. Instead, it dictated how far back a bankruptcy court could go—i.e., the last three years—in deciding which income taxes will not be discharged from bankruptcy. *Id.* While the IRS could not sleep on its rights, it had no control over the lookback period. *Id.* at 46–48.

The Court held that the lookback period qualified as a tollable “limitations period because it prescribes a period within which certain rights (namely, priority and nondischargeability in bankruptcy) may be enforced.” *Young*, 535 U.S. at 47. Even though the lookback period was not a traditional statute of limitations, it served the “basic policies” furthered by all limitation periods. *Id.* at 47–48 (citation modified). The Court thus “presumed” that Congress drafted the statutory lookback period against the background principle of equitable tolling. *Id.* at 49–50.

Under *Young*, then, the question is not whether a statute is a limitations period governing new causes of action but whether it “prescribes a period within which certain rights ... may be enforced.” 535 U.S. at 47. Section 1446(b)(1)’s removal window is just such a period.

In arguing to the contrary, the Michigan Attorney General plucks a single line from *Lozano v. Montoya Alvarez*: “we have only applied that presumption [of equitable tolling] to statutes of limitations.” 572 U.S. 1, 13–14 (2014) (citing *Hallstrom v. Tillamook County*, 493 U.S. 20, 27 (1989)); Respondent’s Br. 27. But just two paragraphs later, the *Lozano* Court explicates this principle by discussing how the Court applied the presumption in *Young*: “We concluded that the lookback period serves the same basic policies furthered by all limitations periods ... *i.e.*, certainty and repose” and thus “was ... presumptively subject to equitable tolling.” *Lozano*, 572 U.S. at 14 (citation modified) (citing *Young*, 535 U.S. at 47). The Court thus employs an *expansive* understanding of what constitutes a statute of limitations, examining the timing provision’s “functional characteristics” and not its label. *Id.* at 15 n.6.

Lozano’s provision did not serve the main goal of such a statute: encouraging a party to act promptly or risk losing its rights. Under the terms of the international treaty at issue there, when a parent abducts a child and flees to another country, that country must “return the child immediately if the other parent requests return within one year.” *Lozano*, 572 U.S. at 4. But the expiration of the one-year period would not cut off any rights held by the left-behind parent. After one year, the court could *still* order the return of the child, but it had to consider the child’s interests as well as the left-behind parent’s. *Id.* at 14–15. Because the one-year period addressed only policy issues that were “not the sort of interest addressed by a statute of limitations,” it was not subject to the presumption. *Id.* at 15.

Hallstrom, cited in *Lozano* and repeatedly by the Michigan Attorney General, is consistent with this functional view. Respondent’s Br. 26–29, 35, 54; *Lozano*, 572 U.S. at 13–14. In *Hallstrom*, the Court held that a presuit notice requirement did not “operate[] as” a statute of limitations and thus was not “subject to equitable modification and cure.” 493 U.S. at 25, 27. “Unlike a statute of limitations,” the Court explained, the “60-day notice provision is not triggered by the violation giving rise to the action. Rather, petitioners have full control over the timing of their suit: they need only give notice to the appropriate parties and refrain from commencing their action for at least 60 days.” *Id.* at 27. The presuit requirement did not have the functional characteristics of a statute of limitations because it did not encourage a party to timely file a claim or risk losing rights. *Id.*

The Court’s post-*Lozano* precedents hold that the equitable-tolling presumption applies to statutory appeal deadlines, further confirming the presumption is not limited to statutes of limitations governing new causes of action, as the Attorney General contends.

In *Harrow v. Dep’t of Def.*, a government employee initiated a personnel claim with the Merits System Protection Board. 601 U.S. 480, 482 (2024). The Board affirmed an adverse ALJ ruling. *Id.* The employee had the right to appeal the Board’s decision to the Federal Circuit “within 60 days” but missed this statutory deadline by more than two months. *Id.* at 482. The 60-day appeal deadline was obviously not a limitations period that started “to run when a plaintiff’s cause of action accrues and prevent[ed] the

plaintiff from bringing its claim after too long has passed.” Respondent’s Br. 21. Yet the Court ruled that the statutory filing deadline was a “nonjurisdictional timing rules ... presumptively subject to equitable tolling.” *Harrow*, 601 U.S. at 489 (citation modified).

Similarly, in *Boechler, P.C. v. Comm’r of Internal Revenue*, the taxpayer initiated an administrative process for challenging a proposed levy. 596 U.S. 199, 202 (2022). The agency appellate body sustained the levy, and the taxpayer later missed the 30-day statutory deadline for petitioning the Tax Court for review of that decision. *Id.* at 203. This Court held that the 30-day appellate filing deadline was “presumptively subject to equitable tolling.” *Id.* at 209.

Likewise, in *Nutraceutical Corp. v. Lambert*, the plaintiffs sought tolling of the 14-day deadline in the federal appellate rules for seeking permission to appeal the denial of class certification. 586 U.S. 188, 190 (2019). The Court classified the deadline as nonjurisdictional, then asked “whether the text of the rule leaves room for such flexibility” or “show[s] a clear intent to preclude tolling.” *Id.* at 192–93. While the Court did not expressly mention the presumption, its search for a “clear intent to preclude tolling” reflects an understanding that the presumption in favor of tolling applied. *Id.* at 193, 198.

The Court has also applied the presumption to other statutory deadlines that do “not begin to run when a plaintiff’s cause of action accrues” or are not “triggered by the event giving rise” to the cause of action. Respondent’s Br. 21, 28. *E.g.*, *Zipes v. Trans*

World Airlines, Inc., 455 U.S. 385, 393–94 (1982) (90-day period for filing a “charge” with the EEOC in a Title VII case—a prerequisite for a later lawsuit—is “subject to waiver, estoppel, and equitable tolling”); *Irwin v. Dep’t of Veterans Affs.*, 498 U.S. 89, 94–96 (1990) (applying presumption to filing deadline that was measured not from the date the claim accrued, but from notice of final action from the EEOC); *United States v. Locke*, 471 U.S. 84, 94 n.10 (1985) (“Statutory filing deadlines are generally subject to the defenses of waiver, estoppel, and equitable tolling.”).

2. Given this precedent, the Sixth Circuit correctly applied the presumption in favor of equitable tolling. Pet. App. 20a. By prescribing the time in which that “right[] ... may be enforced,” *Young*, 535 U.S. at 47, Section 1446(b) serves the main goals of a statute of limitations—certainty and repose. As the Michigan Attorney General acknowledges, Section 1446(b) serves the important goals of encouraging the defendant to promptly remove the action to federal court, thereby giving the parties certainty regarding the choice of forum. Respondent’s Br. 30–31, 49, 50–52.

The Michigan Attorney General then makes two policy arguments divorced from any holding of this Court. First, the Attorney General argues that the equitable-tolling presumption should not apply to a statutory deadline that merely changes the forum. Respondent’s Br. 28–29. But the statutory deadlines in both *Harrow* and *Nutraceutical* also involved forum changes—i.e., appeals—and the presumption in favor of equitable tolling still applied. The Attorney General concedes that this “Court has long analogized

the transfer of jurisdiction from state to federal court to the transfer of jurisdiction from trial to appellate court.” Respondent’s Br. 31 (citing *Martin v. Hunter’s Lessee*, 14 U.S. 304, 349 (1816)). And as Professor Miller explains, the statutory right of removal serves “important federal interest[s]” by ensuring that litigants have access to federal courts, and that the federal courts can exercise judicial power under Article III of the Constitution. Amicus Br. of Professor Arthur R. Miller 7–8; accord Amici Br. of U.S. Chamber of Commerce 6–8.

Second, the Attorney General suggests that the equitable-tolling presumption should apply only in statutory remedial schemes where non-lawyers typically “initiate the process.” Respondent’s Br. 29 (quoting *Boechler*, 596 U.S. at 209). But *Boechler*’s point in referencing non-lawyers was that their involvement “does nothing to rebut the presumption that nonjurisdictional deadlines can be equitably tolled.” 596 U.S. at 209. Neither *Boechler* nor any other case suggests that the presumption *requires* a remedial scheme with non-lawyers involved. And because the right to removal is based on litigants’ status as defendants, and not whether they have representation, nonlawyers *do* file notices of removal.

3. The Michigan Attorney General next points to two cases purportedly “strictly enforc[ing] the removal deadline,” arguing that they require a different result. Respondent’s Br. 30–31 (citing *S. Pac. Co. v. Stewart*, 245 U.S. 359 (1917), and *Mackay v. Uinta Dev. Co.*, 229 U.S. 173 (1913)). Neither case has anything to say about the question presented here.

In *Stewart*, the question was “whether a case removed solely upon the ground of diversity of citizenship ... may be brought by a writ of error to this court.” 245 U.S. at 363–64. The answer was no, given that the Court had no jurisdiction at the time to review cases grounded entirely on the parties’ diversity of citizenship. “[T]he jurisdiction of the federal court was invoked solely on [diversity jurisdiction] and that fact” foreclosed the Court’s review. *Id.* at 361, 364–65 (citing Section 128 of the Judicial Code, 36 Stat. 1157).¹

Mackay represents the exact opposite of strict enforcement. The question presented was whether a case “irregularly removed” based on the defendant’s counterclaim “could be lawfully tried and determined” in federal court. 229 U.S. at 175–76. The Court answered yes: the parties can be “realigned” post-removal, so that the defendant is the plaintiff, to create federal court jurisdiction. *Id.* at 176.

While the parties cannot confer jurisdiction by consent, “removal proceedings are in the nature of *process* to bring the parties before the United States court.” *Id.* (emphasis added). The removal statute sets forth “other forms of process”—i.e., that the case be removed “on motion of the proper person, at the proper time”—but these “provisions are for *the benefit of the defendant*, and intended to secure his appearance.” *Id.* at 176 (emphasis added). “When

¹ The Court later reversed itself after the defendant showed the case was also removed under the Interstate Commerce Act. *S. Pac. Co. v. Stewart*, 245 U.S. 562 (1918) (granting rehearing and reinstating the case on the Court’s docket).

that result is accomplished by *his* voluntary appearance,” a court will not “inquire as to the regularity of the issue ... or, indeed, whether there was any process at all.” *Id.* (emphasis added).

Conversely, the issue presented here *was* raised in *Powers v. Chesapeake & O. R. Co.*, 169 U.S. 92 (1898). See Enbridge Br. 32. In *Powers*, the defendant removed the case “after the time mentioned in the act ha[d] expired.” *Powers*, 169 U.S. at 98–99. The Court ruled that the “reasonable construction of the act of congress” is to hold that the incidental time requirements for removing must “yield to the principal enactment as to the right” when “necessary to carry out the purpose of the statute.” *Id.* at 100–01. As Professor Miller explains, *Powers* “interpreted a previous removal statute to allow for equitable tolling.” Amicus Br. of Professor Arthur R. Miller 5; Amici Br. of West Virginia 6. *That*—and not what the Michigan Attorney General claims—is “the tradition Congress had in mind when it enacted the current version of the removal statute” Respondent’s Br. 31; *Holland*, 560 U.S. at 646.

The Attorney General protests that *Powers*—decided decades before the Court developed its equitable-tolling doctrine—does not use the phrase “equitable tolling.” Respondent’s Br. 51–52. But there is no question the removal notice in *Powers* violated the then-existing statute’s time limitation—i.e., to remove at or before the answer was due in state court. 169 U.S. at 100. “[I]t by no means follows ... that [the case] cannot be removed at all” since the removal time period is “not essential to jurisdiction.”

Id. at 98–99. The Court then interpreted the statute to allow tolling of the deadline. *Id.* at 100–01.

4. Finally, the Michigan Attorney General says that federalism principles demand a strict construction of the removal requirements. Respondent’s Br. 31–32 (citing *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)).

The removal in *Syngenta* raised significant federalism concerns because there was no original jurisdiction in federal court. 537 U.S. at 32–34. The defendant had tried unsuccessfully to use the All Writs Act to avoid complying with the jurisdictional requirement in 28 U.S.C. 1441(a). *Id.* The Court strictly construed Section 1441(a) because the federal courts must scrupulously confine their own jurisdiction to the precise limits defined in the statute. *Id.* at 32.

But here the parties agree the 30-day removal window is non-jurisdictional. Enbridge Br. 26–31; Respondent’s Br. 25 & n.8. Moreover, the district court ruled that Enbridge established original jurisdiction in federal court, and the court of appeals did not disturb that ruling. Enbridge Br. 15, 21–22; Pet. App. 7a–8a & n.2. Congress required a remand to state court only when the federal court lacks subject-matter jurisdiction. 28 U.S.C. 1447(c). As a result, federalism concerns are diluted when it comes to the 30-day removal window. Amici Br. of West Virginia 11; Amicus Br. of Professor Arthur R. Miller 7–8; Amici Br. of U.S. Chamber of Commerce 20–21; Amici Br. of North America Building Trade Unions 20–21, 24–26.

The Attorney General and her amici say that tolling will lead to uncertainty and gamesmanship. Respondent’s Br. 49; Amici Br. of Federal Courts and Civil Procedure Scholars 13–14; Amici Br. of Great Lakes Business Network 8–16; cf. *Boechler*, 596 U.S. at 211 (rejecting similar argument for tax collection actions). Such concerns are exaggerated.

Equitable tolling of the removal window under the current statute has existed for decades and its invocation has been rare and limited. *E.g.*, *Loftin v. Rush*, 767 F.2d 800, 805 (11th Cir. 1985); *Gillis v. Louisiana*, 294 F.3d 755, 759 (5th Cir. 2002). Such tolling has not led to any meaningful shift in case load from state to federal courts. That’s because equitable tolling is controlled by longstanding equitable principles that require a defendant to overcome the high burden of establishing extraordinary circumstances. Amici Br. of West Virginia 10–25; Amici Br. of U.S. Chamber of Commerce 13–20. The Court should reject the Attorney General’s faux federalism concerns.

II. The Michigan Attorney General has not rebutted the equitable-tolling presumption.

To overcome the presumption, the Michigan Attorney General must show a clear congressional intent to preclude tolling. *Nutraceutical*, 586 U.S. at 192–93. Like the Sixth Circuit before her, the Attorney General has not rebutted that presumption here.

1. The Michigan Attorney General disputes that she is required to show a “clear intent to preclude tolling,” saying this language was dicta in *Nutraceutical*. Respondent’s Br. 33 & n.10. But this Court has consistently held that courts retain their traditional equitable authority unless Congress makes its intent to displace that authority absolutely clear. *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) (“[a]bsent the *clearest command* to the contrary from Congress”) (emphasis added).

Echoing *Califano*, the Court in *Holland* stressed that courts “will not construe a statute to displace courts’ traditional equitable authority absent the ‘clearest command.’” 560 U.S. at 646 (citation modified). *Nutraceutical* uses this language several times, once when announcing the general rule and again when concluding this high bar was satisfied there. 586 U.S. at 192–93 (“Where the pertinent rule or rules invoked show a clear intent to preclude tolling, courts are without authority to make exceptions”); *id.* at 193 (“the governing rules ... make clear that its deadline is not subject to equitable tolling.”); *id.* at 198.

2. As the Michigan Attorney General concedes, Section 1446(b)’s 30-day time window is directed at *the defendant*, not the court. Respondent’s Br. 34–35. Section 1446(b) does not directly speak to the court’s authority to toll the 30-day window on equitable grounds. Where tolling is presumed, congressional silence on this issue is interpreted as intent *to include* equitable tolling. *Irwin*, 498 U.S. at 95–96.

The Attorney General argues that Section 1446(b) creates a “strict requirement” because its heading refers to “requirements” and its text directs that the defendant “shall ... file” the removal notice within 30 days. Respondent’s Br. 34; Amici Br. of Federal Courts and Civil Procedure Scholars 6. But there is nothing unusual about this language. Statutory deadlines always set time limits for filings. Enbridge Br. 34. Indeed, this Court has applied equitable tolling to filing deadlines framed in more emphatic language. *E.g.*, *United States v. Wong*, 575 U.S. 402, 420 (2015) (time prescription stating that an untimely filing “shall be forever barred” was subject to equitable tolling); *Burnett v. New York Cent. R.R. Co.*, 380 U.S. 424, 426 (1965) (applying equitable tolling to statute that said “no action shall be maintained ... unless commenced within three years from the day the cause of action accrued”). Section 1446(b)’s text says nothing about the *court’s* authority to toll the 30-day window. Amici Br. of North America Building Trade Unions 11–12.

In stark contrast to Section 1446’s litigant focus, Section 1447 speaks to the *court’s* authority. Section 1447(c) expressly distinguishes between “subject matter jurisdiction” and “any [other] defect” such as an untimely removal. 28 U.S.C. 1447(c). Section 1447(c) then directs that the federal court remand the action to state court “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” *Id.* That Congress expressly required a remand in those circumstances—but not when the removal is untimely—indicates an intent to allow equitable tolling. Enbridge Br. 39.

3. The Michigan Attorney General argues that the “removal statute” contains “six express exceptions” to Section 1446(b)’s default rule, reflecting an intent to foreclose any further exceptions. Respondent’s Br. 36–44. She says that “two exceptions to the default rule appear in § 1446(b) itself,” and the remainder “appear *elsewhere* in the removal statute.” *Id.* at 36–37, 38 (emphasis added). Her examples are not helpful.

a. As Enbridge explained, Section 1446(b) itself does not contain any express exceptions to the default rule. Enbridge Br. 46–49. Contra Respondent’s Br. 37–38.

Section 1446(b)(2)(B) is not an exception to the default rule. Enbridge Br. 46–47. It deals with the situation when multiple defendants are served at different times. When one of those defendants files a timely removal within 30-days of having received the initial pleading, an earlier-served defendant “may consent” to a later-served defendant’s timely removal. “even though that earlier-served defendant did not previously initiate or consent to removal.” 28 U.S.C. 1446(b)(2)(B). This adds a nuance to the default rule but maintains the 30-days-from-service benchmark; it does not create an exception.

Nor is Section 1446(b)(3) an exception. It applies when the “case stated by the initial pleading is not removable” but a later-received paper gives the defendant notice that the case has become removable. 28 U.S.C. 1446(b)(3). As Enbridge explained, this opportunity arises only when the initial pleading is not removable but retains the 30-day limit once the case becomes removable. Enbridge Br. 47. The

Michigan Attorney General and her amici do not disagree. Respondent's Br. 37–38; Amici Br. of Federal Courts and Civil Procedure Scholars 6. Section 1446(b)(3) is thus not an exception to the default rule, and allowing equitable tolling would not render Section 1446(b)(3) superfluous. Enbridge Br. 47.

The Michigan Attorney General notes that Section 1446(c) curtails a defendant's ability to remove based on diversity of citizenship after one year. Respondent's Br. 38; Amici Br. of Federal Courts and Civil Procedure Scholars 6–7. True. But Section 1446(c) is not an exception to Section 1446(b)'s default rule for removing within 30 days of the initial complaint. Enbridge Br. 48. To the extent Section 1446(c) is relevant here, it confirms an intent to *allow* equitable tolling of the time limits. When the courts were split on whether the one-year cap could be tolled based on plaintiff's bad faith, Congress resolved the split *in favor* of allowing equitable tolling. Enbridge Br. 48.

b. With no exceptions in Section 1446(b) itself, the Michigan Attorney General hunts for them “elsewhere.” Respondent's Br. 38. She invokes other provisions in Chapter 89 where Congress enlarged both jurisdiction and removal opportunities for discrete cases. For each, the removal provisions were part of comprehensive legislation targeting a particular area for reform. Congress chose to impose a different set of rules for removal in those areas.

Class Actions. Section 1453(b) was added as part of the Class Action Fairness Act of 2005 (CAFA). 28 U.S.C. 1453(b); 14C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3724 (2018). CAFA was enacted to make federal courts the primary venue for large, class-action litigation. Under CAFA, federal courts may exercise removal jurisdiction over state-law class actions if there is “minimal” rather than “complete” diversity, and the amount in controversy exceeds \$5 million. 28 U.S.C. 1453. CAFA requires removal within 30 days of the initial pleading but liberalizes other requirements in Section 1446, such as allowing removal even without the consent of all defendants and removing the one-year cap. 28 U.S.C. 1453(b). CAFA dealt with the complex problem of removal posed by class actions, which involve large numbers of usually unidentified plaintiffs by exempting such cases from the strict requirements of Section 1446 altogether and creating a different scheme. Section 1453(b) is not an exception to Section 1446(b) but a comprehensive removal scheme for class-action lawsuits.

Actions against Foreign States. Section 1441(d) was added as part of the Foreign Sovereign Immunity Act of 1976 (FSIA). 28 U.S.C. 1441(d). When a foreign state is named as a defendant, FSIA creates a different default rule by granting an absolute right of removal to federal court, liberalizing the 30-day removal time window “for good cause shown,” and requiring that the case be tried in federal court without a jury. 28 U.S.C. 1441(d); *In re Delta America Re Ins. Co.*, 900 F.2d 890, 893 (6th Cir. 1990). Given the potential sensitivity of actions against foreign states, Congress “felt some obligation to bring some

order to the field through legislation, and did in 1976.” 14C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3728.1 (2018). This is a different default rule and regime applicable to foreign states, not an exception to Section 1446(b).

Patents, plant variety protection, and copyright cases. Section 1454(b) was added as part of the Leahy-Smith America Invents Act of 2011 (AIA). 28 U.S.C. 1454(b); 14C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3728 (2018). Section 1454(b) allows removal in a civil action when any party asserts a claim arising under a federal statute relating to patents, plant variety protection, and copyright. 28 U.S.C. 1454(b). It abolishes the well-pleaded complaint rule as a predicate for removal. *Id.* And it allows any party to remove. *Id.* So if a defendant files a counterclaim under the federal copyright or patent acts, both the plaintiff and defendant have the right to remove to federal court. *Id.* Section 1454(b) also provides that the time limits in Section 1446(b) may be extended for “cause shown.” *Id.* Again, this is not an exception to Section 1446(b) but a conceptually different removal framework for intellectual-property disputes.

Suits against members of the U.S. armed forces. Section 1442a was codified at its present location in 1956 but its predecessor was enacted as part of the 1916 Articles of War. 28 U.S.C. 1442a; Act of Aug. 29, 1916, § 3, 29 Stat. 619, 669. Section 1442a confers on members of U.S. armed forces the right to remove to federal court a civil action or criminal prosecution against them for conduct arising out of their official duties. The removal right is not dependent on the

allegations of the complaint but rather the facts verified in the removal notice. *Gamage v. Peal*, 217 F. Supp. 384, 385 (N.D. Cal. 1962).

An armed forces member may remove “at any time before the trial or final hearing.” 28 U.S.C. 1442a. Section 1442a’s main purpose is to allow members of the armed forces an opportunity to raise any possible defense in federal court. *Margan v. Chemetron Fire Sys., Inc.*, 954 F. Supp. 1127, 1130 (E.D. Va. 1997). This regime reflects solicitude toward military defendants by providing a different, and far more permissive, opportunity to remove the case to federal court.

Multiparty, Multiforum jurisdiction. Section 1441(e) was added as part of the Multiparty, Multiforum Trial Jurisdictional Act of 2002 (MMTJA). 28 U.S.C. 1441(e). MMTJA greatly expands the original and removal jurisdiction of federal courts over mass torts involving at least 75 deaths in a discrete location arising from a single accident with only minimal diversity. 28 U.S.C. 1369(a). It creates a special set of removal requirements for suits brought under it. 28 U.S.C. 1441(e). For example, it radically departs from traditional requirements by allowing a defendant to remove “even if the action to be removed could *not* have been brought in a district court as an original matter.” 28 U.S.C. 1441(e)(1)(B) (emphasis added). It also liberalizes the time for removing. *Id.* Again, this is not an exception to Section 1446(b) but a different removal framework for mass tort suits.

The Michigan Attorney General notes that three of these provisions cross-reference Section 1446(b)'s 30-day window. Respondent's Br. 40 (citing 28 U.S.C. 1441(d), 1441(e), 1454(b)). For example, Section 1441(d) states: "Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown." 28 U.S.C. 1441(d). But this cross reference is necessary to avoid the implication that there are two sets of timing rules covering the same litigants. It makes clear that the exempted litigants are governed by the separate rule's removal regime, not that Section 1446(b) is immune from the presumption of equitable tolling.

The Michigan Attorney General emphasizes that all these statutory provisions—none of which appear in Section 1446(b)—liberalize the time requirements for removing to federal court. Respondent's Br. 38–41. They surely do, in the case of the specific litigants governed by the separate statutory schemes. But Congress broke them off from the main body of litigants, expanded removal jurisdiction, and created drastically different procedural rules for removal. This says nothing about Section 1446(b)'s default rule applicable to run-of-the-mill defendants.

That's why this situation is not analogous to *Arellano v. McDonough*, 598 U.S. 1 (2023). Contra Respondent's Br. 41. There, the default rule and the 16 detailed exceptions were all in the same section of the code. *Arellano*, 598 U.S. at 8–9 (discussing 38 U.S.C. 5110(b)). They also applied to the same group of claimants—U.S. military veterans seeking disability benefits. *Id.* The statutory text stated that

the default rule applies “unless specifically provided otherwise in this chapter,” and the 16 exceptions in the same section “provided otherwise.” 38 U.S.C. 5110(b). And Congress capped retroactive benefits at roughly a year in all but one instance—reflecting that it did not want open-ended tolling to increase the award. *Id.* at 9–10 & n.2.

In contrast, Section 1446(b) contains its own default rule, and there are no exceptions to that rule. Provisions found “elsewhere” are poor evidence of what Congress intended in Section 1446(b). *Wong*, 575 U.S. at 408–10 (plaintiff must “establish, through evidence *relating to a particular statute of limitations*, that Congress clearly opted to forbid equitable tolling”) (emphasis added). Unlike in *Arellano*, none of the Attorney General’s extraneous provisions are rendered superfluous by the application of equitable tolling to Section 1446(b). The differences between this case and *Arellano* underscore the reasons why equitable tolling applies to Section 1446(b).

c. The Attorney General emphasizes that Congress has tinkered with the removal procedures over the last two centuries. Respondent’s Br. 44–48. For example, in the 1800s, the predecessor statute directed the defendant to file the removal notice at the time the answer was due in state court. *Id.* at 46. In 1949, Congress changed the removal window to 20 days and in 1965 to 30 days. *Id.* But all these changes were directed to the defendant—not the court’s equitable powers. Whatever inference can be drawn from this history, it is insufficient to overcome the presumption. Amici Br. of North America Building Trade Unions 20–21.

In sum, the Michigan Attorney General has failed to rebut the presumption in favor of equitable tolling. The Court should make clear that lower courts should not craft specific rules for different non-jurisdictional time limits. The inquiry should focus on the rule itself and whether Congress has clearly intended to override the presumption.

III. The Michigan Attorney General’s remaining argument is without merit and outside the question presented.

The Michigan Attorney General argues that tolling the 30-day removal window is not warranted here. Respondent’s Br. 53–54. She recognizes that the district court made factual findings to support tolling but argues that the district court applied the wrong legal framework in doing so. *Id.* This argument is waived and not within the question presented.

As Enbridge explained, the district court made specific findings that Enbridge demonstrated exceptional circumstances warranting tolling of the 30-day removal window. Enbridge Br. 42–45; Amici Br. of West Virginia 12–25. For example, the district court relied on Michigan’s extraordinary decisions to file a separate enforcement action and then dismiss its own enforcement action after having litigated and lost on the removal question, which the court viewed as an effort to circumvent its authority. Enbridge Br. 43; Amici Br. of U.S. Chamber of Commerce 14–15; Amici Br. of North America Building Trade Unions 24–25. That court also emphasized the substantial federal interests at stake (Pet. App. 36a–37a)—which interests were recently confirmed by the United States and Canada amicus briefs filed in support of

Enbridge on the merits. *Enbridge Energy L.P. v. Whitmer*, No. 20-cv-1141, ECF Nos. 133, 140 (W.D. Mich.); Amici Br. of Washington Legal Foundation 3–9.

On appeal, the Attorney General argued that the district court lacked *any* authority to toll the 30-day deadline and that Enbridge had waived its right to remove by taking actions dictated by local rules in state court. Dkt. 18:21–42. But the Attorney General did not argue that, assuming the 30-day window *could* be tolled, the district court applied the wrong legal framework. Compare Dkt. 18:21–45, with Respondent’s Br. 53–54. As a result, the Sixth Circuit never addressed the issue. Even if the issue were preserved, this argument does not fit within the question presented.

The Michigan Attorney General suggests that Enbridge did not present *its* tolling arguments in the lower court. Respondent’s Br. 3. This is wrong. In its answering brief in the Sixth Circuit, Enbridge explained that the 30-day window is non-jurisdictional and subject to tolling in exceptional circumstances. Dkt. 38:24–28. That’s the same issue Enbridge raises in this Court. Any failure to specifically mention the presumption in favor of equitable tolling is not a waiver. *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99–100 (1991) (party waives issues, not arguments). Anyway, the Sixth Circuit ruled that the presumption in favor of tolling applied here. Pet. App. 20a; *Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995) (waiver does not apply to legal rulings made in the decision below).

Assuming this case is remanded for further proceedings on the removal issue, the parties should be returned to the position they occupied absent the panel's error. Enbridge Br. 50.

CONCLUSION

The judgment of the court of appeals should be reversed with instructions to rescind the remand order.

Respectfully submitted,

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