

Supreme Court, U.S.  
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No. 25- 1027

IN THE  
**Supreme Court of the United States**

SAN DIEGO FAMILY HOUSING, LLC; LINCOLN  
MILITARY PROPERTY MANAGEMENT LP,

*Petitioners,*

*v.*

LENA CHILDS; DONALD CHILDS, T.C., AND A.C.,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

This petition arises from the attempts of former military housing residents to hold the United States Navy's government contractors under the Military Housing Privatization Initiative ("MHPI"), 10 U.S.C. §§2871-85, liable in state court for their military housing operational activities for the U.S. Navy under contracts and plans with, and under supervision and oversight by, the U.S. Navy. This case was immediately removed to federal court by Petitioners, as the federal officer removal statute allows for federal jurisdiction over civil actions against "any person acting under [an] officer of the United States *for or relating to* any act under color of such office." This case proceeded in federal court until 2024, when the United States interjected itself into the proceeding to argue that Petitioners did not meet the "causal nexus" standard of the Ninth Circuit per *Lake v. Ohana Mil. Communities*, 14 F.4th 993 (9th Cir. 2021), as there was no "causal nexus" between "plaintiffs' claims and the actions [it] took pursuant to a federal officer's direction." The District Court agreed, relying heavily on *Lake*, to remand the case. The Ninth Circuit also agreed, focusing on the "causal nexus" test and *Lake* to support its position. Petitioners sought rehearing en banc, which was also denied.

The questions presented are:

1. Whether a causal nexus test of any variety, including that used by the Ninth Circuit, survives the 2011 amendment to the federal officer removal statute.

2. Whether a federal contractor can remove to federal court when sued for U.S. Navy military housing operational activities which it undertook to fulfill federal contracts with the U.S. Navy as to the operation of such housing, and specifically as to the housing's management and maintenance, and in following plans, directions, and oversight from the U.S. Navy as to such military housing.

**PARTIES TO THE PROCEEDING**

Petitioners are San Diego Family Housing LLC and Lincoln Military Property Management LP. Petitioners were defendants-appellants below.

Respondents are Lena Childs, Donald Childs, T.C., a minor, and A.C., a minor. Respondents were plaintiffs-appellees below.

InDepth Corporation is a defendant in the case but has not been a party to the appellate proceedings.

## **CORPORATE DISCLOSURE STATEMENT**

Petitioner San Diego Family Housing is a California privately held limited liability company. It is not publicly held or traded. No publicly held corporation or other publicly held entity holds 10% or more of its stock.

Petitioner Lincoln Military Property Management, L.P. is presently known as LMH Military Property Management, L.P., which is a Delaware privately held limited partnership. It is not publicly held or traded. No publicly held corporation or other publicly held entity holds 10% or more of its stock.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Childs v. San Diego Family Housing LLC*, No. 24-1256, (9th Cir. August 28, 2025) (opinion and judgment)
- *Childs v. San Diego Family Housing LLC*, No. 24-1256, (9th Cir. October 8, 2025) (denial of petition for rehearing en banc)
- *Childs v. San Diego Family Housing LLC*, 19-cv-2329-JM-SBC (S.D. Ca. February 1, 2024) (order remanding case)

Petitioners are not aware of any other proceedings that are directly related to this case within the meaning of Rule 14.1(b)(iii).

**TABLE OF CONTENTS**

	<i>Page</i>
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDING .....	iii
CORPORATE DISCLOSURE STATEMENT .....	iv
STATEMENT OF RELATED PROCEEDINGS .....	v
TABLE OF CONTENTS.....	vi
TABLE OF APPENDICES .....	viii
TABLE OF CITED AUTHORITIES .....	xi
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	3
JURISDICTION.....	3
STATUTORY PROVISION INVOLVED .....	4
STATEMENT OF THE CASE .....	4
A. Legal Background.....	4
B. Factual Background.....	6
C. Procedural History.....	12
REASONS FOR GRANTING THE PETITION.....	15

*Table of Contents*

	<i>Page</i>
I. The Ninth Circuit’s Decision Conflicts with the Post 2011 Statutory Standard for Federal Officer Removal, Other Ninth Circuit decisions and Other Circuit Decisions . . . . .	16
A. The Ninth Circuit’s Decision Improperly Relies Heavily on a Strict Causal Nexus Standard that the Statute No Longer Requires after the 2011 Amendment. . . . .	16
B. The Ninth Circuit Has in More Recent Years Often Supported a More Lenient Standard than a Strict Casual Nexus, Adding to the Confusion and Causing Inconsistent Rulings within this Circuit Which this Court Should Address. . . . .	19
C. The Decision is a Hallmark of the Ongoing Split between Circuits on this Issue . . . . .	28
II. This Issue Requires Resolution in Multiple Factual Scenarios, and in Multiple Circuits, Given the Critical Nature of this Issue for Government Contracts and Contractors’ Ongoing Work for the Federal Government . . . . .	31
CONCLUSION . . . . .	34

TABLE OF APPENDICES

	<i>Page</i>
<u>APPENDIX</u>	
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED AUGUST 28, 2025 .....	1a
APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED OCTOBER 8, 2025.....	25a
APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, FILED FEBRUARY 1, 2024 .....	27a
APPENDIX D — RELEVANT STATUTORY PROVISION .....	58a
APPENDIX E — DECLARATION OF PHILIP RIZZO OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, FILED OCTOBER 26, 2023.....	61a
APPENDIX F — NAVY AND MARINE CORPS FACTS ABOUT HOME MOLD TESTING, FILED OCTOBER 26, 2023.....	77a

*Table of Appendices*

	<i>Page</i>
APPENDIX G — LETTER OF THE DEPARTMENT OF THE NAVY HOUSING PRIVATION PARTNERS, FILED OCTOBER 26, 2023.....	85a
APPENDIX H—SCOTT D. FORREST LETTER TO THE DEPARTMENT OF THE NAVY, FILED OCTOBER 26, 2023.....	90a
APPENDIX I — LETTER OF THE DEPARTMENT OF THE NAVY, FILED OCTOBER 26, 2023.....	94a
APPENDIX J — SCOTT D. FORREST AND CHARLES A. WILLIAMS LETTERS TO THE DEPARTMENT OF THE NAVY, FILED OCTOBER 26, 2023.....	100a
APPENDIX K — PLAINTIFF’S FIRST AMENDED COMPLAINT FOR DAMAGES AND JURY TRIAL DEMAND OF THE SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION, FILED DECEMBER 5, 2019 .....	116a
 <u>SEALED APPENDIX</u>	
APPENDIX L—EXHIBIT B: THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF SAN DIEGO FAMILY HOUSING, LLC, DATED FEBRUARY 1, 2010 .....	S. App. 1

*Table of Appendices*

	<i>Page</i>
APPENDIX M — EXHIBIT C: THIRD AMENDED AND RESTATED REAL ESTATE GROUND LEASE, UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, AS LESSOR AND SAN DIEGO FAMILY HOUSING, LLC, AS LESSEE, DATED MARCH 10, 2017 .....	S. App. 111
APPENDIX N — EXHIBIT D: SECOND AMENDED AND RESTATED REAL ESTATE GROUND LEASE, UNITED STATES OF AMERICA, DEPARTMENT OF THE NAVY, AS LESSOR AND SAN DIEGO FAMILY HOUSING, LLC, AS LESSEE, DATED OCTOBER 1, 2007 .....	S. App. 196
APPENDIX O — EXHIBIT E: THIRD AMENDED AND RESTATED PROPERTY MANAGEMENT AGREEMENT .....	S. App. 272
APPENDIX P — EXHIBIT F: WATER INTRUSION/MOLD OPERATIONS AND MAINTENANCE MANAGEMENT SYSTEM .....	S. App. 360

TABLE OF CITED AUTHORITIES

	<i>Page</i>
<b>Cases</b>	
<i>Arizona v. Manypenny</i> , 451 U.S. 232 (1981) . . . . .	5, 23, 31
<i>Baker v. Atl. Richfield Co.</i> , 962 F.3d 937 (7th Cir. 2020) . . . . .	28
<i>Bd. of Cnty Comm'rs v. Suncor Energy (U.S.A.) Inc.</i> , 25 F.4th 1238 (10th Cir. 2022) . . . . .	28
<i>Campbell-Ewald v. Gomez</i> , 136 S.Ct. 663 (2016) . . . . .	13
<i>Caver v. Cent. Alabama Elec. Coop.</i> , 845 F.3d 1135 (11th Cir. 2017) . . . . .	29
<i>Childs v. San Diego Family Housing, LLC</i> , 22 F.4th 1092 (9th Cir. 2022) . . . . .	13
<i>DeFiore v. SOC, LLC</i> , 85 F.4th 546 (9th Cir. 2023) . . . . .	14, 26, 27, 28
<i>Dist. of Columbia v. Exxon Mobil Corp.</i> , 89 F.4th 144 (D.C. Cir. 2023) . . . . .	28, 29
<i>Durham v. Lockheed Martin Corp.</i> , 445 F.3d 1247 (9th Cir. 2006) . . . . .	1, 17, 23-24, 26
<i>Fidelitad v. Insitu</i> , 904 F.3d 1095 (9th Cir. 2018) . . . . .	17

## Cited Authorities

	<i>Page</i>
<i>Goncalves by and through Goncalves v. Rady's Children's Hospital of San Diego, 865 F.3d 1237 (9th Cir. 2017)</i> . . . . .	6, 14, 23-28
<i>In re Commonwealth's Motion to Appoint Counsel Against or Directed to Defender Association of Philadelphia, 790 F.3d 457 (3d Cir. 2015, as amended June 16, 2015)</i> . . . . .	5-6, 28, 29
<i>Isaacson v. Dow Chemical Co., 517 F.3d 129 (2d Cir. 2008)</i> . . . . .	21, 24, 27
<i>Jefferson County v. Acker, 527 U.S. 423 (1999)</i> . . . . .	1, 5, 17, 21, 24, 27
<i>Lake v. Ohana Mil. Communities, 14 F.4th 993 (9th Cir. 2021)</i> . . . . .	6, 13, 14, 17, 18, 20, 26
<i>Latiolais v. Huntington Ingalls, Inc., 951 F.3d 286 (5th Cir. 2020)</i> . . . . .	30
<i>Leite v. Crane Co., 749 F.3d 1117 (9th Cir. 2014)</i> . . . . .	14, 17, 20-24, 27, 28
<i>Maryland v. Soper, 270 U.S. 9 (1926)</i> . . . . .	5, 24
<i>Minnesota ex rel. Ellison v. Am Petroleum Instit., 63 F.4th 703 (8th Cir. 2023)</i> . . . . .	30

*Cited Authorities*

	<i>Page</i>
<i>Moore v. Elec. Boat Corp.</i> , 25 F.4th 30 (1st Cir. 2022) .....	28
<i>Morales v. Trans World Airlines</i> , 504 U.S. 374 (1992) .....	17
<i>Ohio St. Chiropractic Ass'n v.</i> <i>Humana Health Plan Inc.</i> , 647 Fed. Appx. 619 (6th Cir. 2016) .....	29
<i>Papp v. Fore-Kast Sales Co.</i> , 842 F.3d 805 (3d Cir. 2016) .....	29
<i>Plaquemines Par. v. BP Am. Prod. Co.</i> , 103 F.4th 324 (5th Cir. 2024), <i>cert. granted</i> <i>sub nom. Chevron USA Inc. v. Plaquemines Par.</i> , No. 24-813, 2025 WL 1678985 (U.S. June 16, 2025) .....	15, 19, 30, 33
<i>Sawyer v. Foster Wheeler LLC</i> , 860 F.3d 249 (4th Cir. 2017) .....	5, 28, 29
<i>Shaw v. Delta Air Lines, Inc.</i> , 463 U.S. 85 (1983) .....	17
<i>Watson v. Philip Morris Cos.</i> , 551 U.S. 142 (2007) .....	1, 4, 17, 31
<i>Willingham v. Morgan</i> , 395 U.S. 402 (1969) .....	4, 5, 20, 21, 23, 26, 27, 31

*Cited Authorities*

	<i>Page</i>
<i>Yearsley v. W.A. Ross Construction Co.</i> , 309 U.S. 18 (1940).....	13
 <b>Statutes, Regulations and Other Authorities</b>	
10 U.S.C. §2885 .....	6
10 U.S.C. §§2871-85.....	6
28 U.S.C. §1254 .....	3
28 U.S.C. §1442 .....	1, 4, 23
28 U.S.C. §1442(a)(1) . . . .	1, 5, 12, 14, 15, 17, 21, 23, 31-33
Pub. L. No. 112-51, 125 Stat. 545 (2011) .....	1, 5, 17

## PETITION FOR WRIT OF CERTIORARI

Federal officer removal is a critical vehicle for federal government contractors to have claims against them pertaining to their work for the federal government heard in federal court, separated from any biases and preconceptions of state court, or such venues' lacking familiarity with federal issues. The federal officer removal statute, 28 U.S.C. §1442, has been continually expanded over the decades; after the Civil War, Congress expanded the original language to guarantee government contractors the same protections as federal officers, and it was again expanded to cover additional subject matters after World War II. *Watson v. Philip Morris Cos.*, 551 U.S. 148, 151-52 (2007). Even prior to the 2011 amendment, removal under 28 U.S.C. §1442(a)(1) was recognized to have a "low bar" or "lenient" standard, more so than removal under any other provision. *See, e.g., Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006) (quoting *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999)). After the 2011 amendment, the statute was once again broadened by Congress, to encompass not only claims relating to actions for acts under color of federal office, but for *or related to* acts under color of federal office. 28 U.S.C. §1442(a)(1), 125 Stat. 545 (2011).

The Ninth Circuit's decision below stands at direct odds with the 2011 amendment. In the decision below, and in the wake of the 2011 amendment, the Ninth Circuit has continued to use a causal nexus standard, which contravenes the statute. Even worse, the Ninth Circuit inconsistently applies this standard, at times voicing more leniency and at times not, so there is a total lack of clarity as to what standard the court will apply on any given case.

While Petitioners here unequivocally are government contractors performing ongoing work for the U.S. Navy operating its military housing, which the Navy otherwise would have to do itself, under contracts, plans, directions and oversight from the Navy, the Ninth Circuit panel erroneously found this was insufficient for federal officer jurisdiction, where the Childs' claims specifically relate to that government work performed by Petitioners.

The decision further contravenes other Ninth Circuit cases, which applied a more flexible standard to government contractors. The decision additionally stands at odds with the decisions of the majority of other circuits, which have rejected causal nexus or contractual directive tests in the wake of the 2011 amendment.

The Ninth Circuit's decision here is particularly dangerous, and damaging to federal contractors in California and the Ninth Circuit, who are sued for claims plainly relating to their work for the government, but need to meet an elevated standard to have their cases in federal court that the federal officer removal statute and most other circuits do not support. Even more precarious may be the Ninth Circuit's current *modus operandi* of not only still acknowledging its use of a causal nexus test in contravention of the statute, but further either tightening or loosening the constraints thereof on a case by case basis, depending on an unclear, nebulous standard, creating complete uncertainty. The result is that government contractors like Petitioners, who perform ongoing work across the country in multiple jurisdictions for the U.S. Navy, may be able to clearly avail themselves of federal officer jurisdiction in one location, but be denied it in another, and then face not only hostile state courts on

occasion, but inconsistent results. For their actions which are taken to fulfill their federal contracts and in following federal plans and directions, Petitioners should have any claims against them for *or relating to* such work heard in federal court. The language of the statute dictates this result and certainty they should be able to rely upon.

This Court should grant review to make clear that the Ninth Circuit's causal nexus standard, treated as "flexible" or not, cannot stand in the face of the 2011 Removal Clarification Act's changes to the statutory language, and neither can the causal nexus tests of any other circuit. Federal contractors carrying out the government's work, who are sued for claims connected to such work, should have those claims, and their defenses thereto, heard in federal court, because such claims plainly "relate to" their work for the federal government.

### **OPINIONS BELOW**

The Ninth Circuit's opinion is reported at 150 F.4th 1151 and reproduced at App. 1a-24a.

The Ninth Circuit's denial of rehearing en banc is reproduced at App. 25a-26a. The Southern District of California's remand order is reported at 714 F.Supp.3d and reproduced at App. 27a-57a.

### **JURISDICTION**

On October 8, 2025, the Ninth Circuit denied a timely petition for rehearing en banc. This Court has jurisdiction under 28 U.S.C. §1254.

## STATUTORY PROVISION INVOLVED

The federal officer removal statute, 28 U.S.C. §1442, is reproduced in the Appendix at App. 58a-60a.

## STATEMENT OF THE CASE

### A. Legal Background

The federal officer removal statute has a long history. It was first authorized by Congress as a temporary measure during the War of 1812,<sup>1</sup> but Congress soon thereafter enacted permanent federal officer removal statutes to, in large part, “protect federal officers from interference by hostile state courts” as to their conducting of federal activities. *Willingham v. Morgan*, 395 U.S. 402, 405 (1969). After the Civil War, Congress expanded removal to include not only federal officers, but “any person acting under or by authority of any such officer” to enforce federal law in certain areas. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 148 (2007). Following World War II, however, the federal officer removal statute was expanded yet again, to no longer contain subject area limitations, and it was made clear that the statute encompassed all those “acting under” federal officers, performing jobs that the government would otherwise have to perform itself. *Id.* at 153-54.

This Court’s sentiments on the right of removal have repeatedly been, in recent decades, that it is “absolute for conduct performed under color of federal office,” and the “policy favoring removal ‘should not be frustrated

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1. See Act of February 4, 1815, sec. 8, 3 Stat. 195, 198.

by a narrow, grudging interpretation of §1442(a)(1).” *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) (quoting *Willingham*, 395 U.S. at 407); see also *Maryland v. Soper*, 270 U.S. 9, 33 (1926) (“[T]he statute does not require that the prosecution must be for the very acts which the officer admits to have been done by him under federal authority. It is enough that his acts or his presence at the place in performance of his official duty constitute the basis, though mistaken or false, of the state prosecution.”). Further, this Court has found that “[t]he circumstances that gave rise to the” claim against the federal officer, “not just” the specific challenged acts of that federal officer, are enough to establish the “essential nexus” between the activity under “color of office” and a claim against the officer. *Jefferson County v. Acker*, 527 U.S. 423, 433 (1999).

In 2011, the federal officer removal statute was broadened once again by Congress, making it so that a defendant invoking the statute no longer had to show that the lawsuit was only “for a[n] act under color of federal office,” but now could alternatively invoke the statute for an act “for or relating to any act under color of such office.” 28 U.S.C. §1442(a)(1) (emphasis added); see Pub. L. No. 112-51, 125 Stat. 545 (2011).

In the wake of this expansion of the federal officer removal statute, most circuits have now disposed of any requirement to show a “causal nexus” or “contractual directive” as to the act(s) in question and the basis of the lawsuit, and defaulted instead to a connection or relationship standard. See, e.g., *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 258 (4th Cir. 2017); *In re Commonwealth’s Motion to Appoint Counsel Against or Directed to Defender Association of Philadelphia*, 790

F.3d 457, 471 (3d Cir. 2015, *as amended* June 16, 2015). However, the Ninth Circuit, in particular, proceeded incongruously, sometimes utilizing a strict causal nexus test, and other times, relaxing its parameters, causing inconsistency. *See, e.g., Lake*, 14 F.4th 993 (strict causal nexus standard); *Goncalves by and through Goncalves v. Rady's Children's Hospital of San Diego*, 865 F.3d 1237 (9th Cir. 2017) (relaxed standard).

## **B. Factual Background**

1. In 1996, to improve the quality of military housing, Congress passed the Military Housing Privatization Initiative ("MHPI"). 10 U.S.C. §§2871-85. Under the MHPI, branches of the armed forces established public-private ventures ("PPVs") to own, develop, and manage military housing. These PPVs build and renovate military housing in areas of need on an expedited and improved basis at a lower cost to the U.S. Government, with the Government retaining oversight. App. 63a-64a.

Under the MHPI, a branch of the Armed Forces leases land to a private entity selected through a competitive bidding process, which then enters into a PPV agreement with that branch to manage the military housing on it. *Id.* Once the Department of Defense opts to delegate its management function over military housing to a PPV, the MHPI tasks the Department with ensuring that there is direct oversight and accountability in place to "manage military housing privatization projects," including: (1) conducting "monthly site visits;" (2) requiring "quarterly reports" concerning "construction or renovation of housing units;" and (3) conducting "meetings" to ensure contractors are performing to "performance and schedule requirements." 10 U.S.C. §2885.

2. On August 1, 2001, pursuant to the MHPI, the U.S. Navy entered into an Operating Agreement with Lincoln/Clark San Diego, LLC to form SDFH, to operate and manage Navy military housing. App. 64a-65a. The Navy has an ownership interest in SDFH. Id.; S.App. 1-110. While SDFH, the PPV, has primary responsibility for managing the military housing in its jurisdiction, SDFH itself includes the U.S. Navy as the "government partner" or "public" member of SDFH. Further, the Navy made a capital contribution to this PPV in the eight (8) figures, and has various ongoing duties, oversight, and approval responsibilities relating to the military housing. The Third Amended Operating Agreement covers the span of the Childs' tenancy. App. 64a-65a. On the same date as the Operating Agreement, the Navy and SDFH entered a 50-year ground lease (the "Ground Lease") for the Silver Strand I community at Naval Amphibious Base Coronado where the property at issue at 1331 Saipan Avenue, Coronado, California ("the Property") is located, and certain other military housing communities in the San Diego area; the Second and Third Amended Ground Leases cover the timeframe of the Childs' tenancy. App. 65a-66a, S.App. 111-270.

Under the terms of the Ground Leases and Operating Agreement, the Navy retained ownership of the land on which the Silver Strand I community is located and only conveyed ownership of the improvements located on the land to SDFH for the term of the Ground Lease. App. 65a, S.App. 121-122, 204-205. Upon termination of the Ground Lease, the improvements on the land will be abandoned in place and become property of the Navy as the fee owner of the land. Id.

Pursuant to the Operating Agreement, SDFH (which, again, includes the U.S. Navy as a member) entered into a property management agreement (“Property Management Agreement”) with LMPM, relating to the Silver Strand I community (which includes the Property), as well as other housing communities. The Property Management Agreement was prepared jointly by Petitioners, with the U.S. Navy’s involvement in preparing, reviewing and approving the Agreement. SDFH was directed to enter into this Property Management Agreement with LMPM by the terms of the Operating Agreement. App. 66a, S.App. 271-359. Under the terms of the Property Management Agreement, LMPM acts as an agent of SDFH in performing certain property management functions, like leasing and maintenance. The Property Management Agreement also includes a Maintenance Plan which discusses general maintenance for the housing including service request procedures and priorities, routine maintenance, make ready maintenance, and annual and preventative maintenance to be followed. Id.

One of the documents created as directed by the Ground Leases, referenced therein in Section 11, is entitled “Standard Procedures for Operations and Maintenance of Fungi-Containing Materials” (“O&M Plan”). It is referenced within the Ground Leases as the “Mold Management Plan.” The O&M Plan was developed by SDFH in consultation with the Navy, and reviewed and approved by the Navy as the plan for water intrusion and mold issues at the Navy military housing. App. 66a-67a, S.App. 360-370.

The O&M Plan’s purpose is to “help assure that consistent and highest quality operations and management

systems are in place and functioning sufficiently to address water intrusion and mold related conditions” and “verify compliance with applicable laws, regulations, project-related requirements and LMH policies.” S.App. 361. It details how Petitioners will address water intrusion and mold issues at Navy housing. The O&M Plan is based in part on U.S. Navy documents and policies, and language contained in the O&M Plan has been carried over from past and current housing policies of the Navy. App. 67a.

The O&M Plan presents a water intrusion and mold response plan, criteria that must be met, options and considerations for response based on what is discovered at a property, and directions for responding to tenant complaints and service orders for a property that specifically relate to mold and water intrusion. These include, *inter alia*, timing of inspections or contact after a service request (which vary depending on level of urgency, but which levels of urgency and timeframes for response were originally dictated by the U.S. Navy), frequency of inspections, water intrusion/mold procedures, mold remediation, use of third party contractors, and testing/reports<sup>2</sup>. All third party contractors used with the military housing are vetted and approved in advance by the Navy. App. 67a-68a.

Petitioners are required to follow the parameters and directives of the Property Management Agreement’s Maintenance Plan and the O&M Plan, specifically, with

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2. The Navy and Marine Corps policy documents which were in effect at the time of the Childs’ lease of the Property stated that the Navy does not recommend mold testing in housing unless requested by an environmental contractor. App. 68a, 77a-80a.

respect to reports of mold, moisture or water intrusion at a property. They track and log all service requests for a property to document all requests and responses. This was done with the Childs' tenancy. App. 68a-69a. There are detailed directives about responding to water or mold related requests in the Maintenance Plan and O&M Plan. *Id.*, S.App. 339-341, 363-368. For example, the O&M Plan and Maintenance Plan consider mold and water intrusions requests as "emergencies." App. 69a, S.App. 340, 363. If mold is found, it must be remediated; if small (less than 10 square feet), it can be approved to be done in house; if large (more than 30 square feet) or deemed by the O&M Coordinator to require an outside vendor, a contractor is required. App. 69a, S.App. 364-365. If water intrusion impacts cellulose materials, three follow up visits and a letter to the tenant are required to ensure the issue is remedied; otherwise, two visits are required. *Id.* Testing is not permitted unless an environmental vendor requests it. App. 68a, 77a-80a.

3. Various persons and departments within the U.S. Navy are involved in an ongoing basis with the military housing. The primary contact point with the government partner is a Navy Business Agreements Manager ("BAM") from Naval Facilities Engineering Systems Command ("NAVFAC"). The BAM acts like an asset manager. Their duties involve budget review, evaluation of metrics (e.g. number and types of work order, maintenance issues, mold/water intrusion events), review of work orders and tenancy notes for the properties, inspections, and general oversight of the military housing. They send inquiries to Petitioners regularly based on their reviews. There are weekly and monthly meetings Petitioners have with NAVFAC personnel, often the BAM,

to discuss the various properties. There are also quarterly walk-throughs of certain housing to view and evaluate it. Petitioners are required to report on certain metrics to the U.S. Navy bimonthly and monthly, including on mold and water intrusion events at the properties. If an issue arises with the housing with which the U.S. Navy wants to become more involved, the BAM or other Navy Housing or NAVFAC personnel have the ability become involved with the service member (tenant) directly, and/or conduct their own inspection of the property. If there is a health issue reported by a tenant, or remediation is required at a property, the Navy is informed of this (typically the BAM). NAVFAC and the BAM oversee the implementation of the O&M Plan. App. 69a-71a.

NAVFAC frequently provides both guidance and directives to Petitioners on all aspects of the military housing which is the subject of the Operating Agreement, Ground Leases and Property Management Agreement (including the O&M Plan), which include instructions on such matters as environmental testing, testing specifically for mold in the housing, access of the Navy to the housing, work order specifications, and tenant relocation from the housing due to repairs. Petitioners must follow these instructions. App. 69a-71a, 85a-115a.

4. The Childs signed a lease for the Property on August 8, 2016. App. 62a-63a. The Lease contains a choice of law clause which selects federal law to apply to the tenancy relationship with only minimal state civil code carve outs. The Childs reported various maintenance issues during their tenancy, of which they complain in their operative Complaint, focused on water intrusion and mold issues, to which Petitioners responded per the

contracts and O&M Plan, and Navy directions. App. 69a, 121a-146a. The Childs moved out of the Property on or about December 2017. App. 63a. The Childs bring state law claims against Petitioners for negligence, nuisance, breach of contract, breach of implied warranty of habitability, breach of implied covenant of peaceful and quiet enjoyment, and constructive eviction, relating to the Property and tenancy. App. 116a-159a. Petitioners contend, as their theory of the case, that they responded to each issue at the Property raised by the Childs in conformance with the contracts, directions and plans under which they operate the housing with the U.S. Navy. App. 69a.

### C. Procedural History

1. The Childs filed suit against Petitioners (and InDepth Corporation) relating to their former military housing tenancy at the Property, in San Diego County Superior Court on May 2, 2019. On October 21, 2019, the Childs served Petitioners with a First Amended Complaint. App. 116a-159a. The Childs allege that the response of Petitioners to their maintenance requests and complaints about conditions at the Property, and the inspections, repairs, and remediation by Petitioners in response, were not adequate and that they should have done more. *Id.* On December 5, 2019, Petitioners timely removed the case to federal court under, *inter alia*, 28 U.S.C. §1442(a)(1), because Petitioners acted under federal officers (the U.S. Navy) for or in relation to acts under color of federal office, with respect to their operation and management of the Navy military housing and the Property at issue, and particularly in their response to the water intrusion and mold items thereat on which

the Childs focused, as Petitioners responded to those issues based on their military housing contracts and plans developed with, approved by the U.S. Navy, policy documents, guidance and instruction from the Navy, and with continuing Navy oversight over their work. The Childs did not seek remand.

2. On April 10, 2020, Petitioners filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) arguing entitlement to derivative sovereign immunity under *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18, 22 (1940) and *Campbell-Ewald v. Gomez*, 136 S.Ct. 663, 672-74 (2016). On September 15, 2020, the District Court entered an order denying the motion, finding that Petitioners could not avail themselves of derivative sovereign immunity. SDFH and LMPM appealed. The Ninth Circuit dismissed the appeal on January 14, 2022 as untimely based on the collateral order doctrine. *Childs v. San Diego Family Housing, LLC*, 22 F.4th 1092 (9th Cir. 2022). The case returned to District Court and litigation ensued.

3. On October 26, 2023, Petitioners filed a motion for summary judgment, arguing, *inter alia*, the federal enclave defense barring certain state law claims, the choice of law provision in the lease barring state law claims, the Supremacy Clause, and derivative sovereign immunity as a defense. The Childs opposed. On December 4, 2023, the United States filed a Statement of Interest, arguing, *inter alia*, that Petitioners did not qualify for federal officer removal due to the Ninth Circuit's ruling in *Lake v. Ohana Mil. Communities*, 14 F.4th 993 (9th Cir. 2021), another military housing case which involved that defendant's admitted failure to follow the government-

related plan, and which focused on a causal nexus standard for evaluating entitlement to federal officer jurisdiction. Further briefing ensued.

On February 1, 2024, the District Court issued an order on jurisdiction, remanding the case, finding that Petitioners *inter alia*, could not avail themselves of federal officer jurisdiction based largely on the Ninth Circuit's decision in *Lake*, its analogizing Petitioners to the defendant in that case, and its reliance on a causal nexus standard. App. 27a-57a.

Petitioners filed a notice of appeal on February 28, 2024. Briefing ensued, with Petitioners arguing that the *Lake* case was factually inapposite as it involved the defendant's admission that it did not follow the plan at issue created under Navy supervision, and how the evidence in this case was far more substantial, showing the U.S. Navy's involvement, oversight and direction with the Property and with the specific issues the Childs complained of, to enable use of federal officer jurisdiction, even under the heightened causal nexus standard upon which the Ninth Circuit relied in *Lake*. On August 28, 2025, the Ninth Circuit issued its published opinion, affirming the District Court's ruling. The opinion relied heavily on the *Lake* decision and a causal nexus test, which conflicted with other panels' post-2011 28 U.S.C. §1442(a) (1) amendment holdings in *Leite v. Crane Company*, *Goncalves by and through Goncalves v. Rady's Children's Hospital San Diego*, and *DeFiore v. SOC, LLC*, as well as the more lenient standard for federal officer removal established by the 2011 amendment to the federal officer removal statute itself, and the opinions of numerous other circuit courts. App. 1a-24a. Petitioners filed a petition

for rehearing en banc on September 10, 2025, raising all of the foregoing points, as well as this Court's recent granting of certiorari in *Plaquemines Par. v. BP Am. Prod. Co.*, 103 F.4th 324 (5th Cir. 2024), *cert. granted sub nom. Chevron USA Inc. v. Plaquemines Par.*, No. 24-813, 2025 WL 1678985 (U.S. June 16, 2025). The petition for rehearing was denied by the Ninth Circuit on October 8, 2025. App. 25a-26a.

### **REASONS FOR GRANTING THE PETITION**

The Ninth Circuit's decision below directly conflicts with the 2011 amendment to the federal officer removal statute by perpetuating an outdated "causal nexus" standard which the present-day statutory language does not support. Moreover, the Ninth Circuit's decisions since the amendment are inconsistent; while still using an improper causal nexus standard, the Court at times espouses more leniency, and acknowledgment of the 2011 amendment, and at other times, does not, creating a unclear and amorphous standard it can alter at will, causing confusion for present day government contractors who continue to perform the government's work on an ongoing basis.

The decision below also further entrenches a split between the circuits. While most circuits have rejected a causal nexus or contractual directive standard following the 2011 amendment, the Ninth Circuit has not. As with the *Plaquemines Parish* case currently under review by this Court, the decision below squarely parts with the current statutory language and relationship standard. But distinct from *Plaquemines Parish*, Petitioners in this case seek review relating to their ongoing governmental

contract work for the U.S. Navy, which spans multiple jurisdictions. Not only is the Ninth Circuit internally inconsistent with how it addresses federal officer removal on any given day, but how Petitioners are treated in California will vary from how they are treated in Virginia, for the same work and same claims relating to the same work, if the situation in the Ninth Circuit is not addressed directly. Because of the critical nature of federal officer jurisdiction and government contractors' entitlement to have claims against them for such work heard in federal court, apart from state court biases and lacking federal claim/defense knowledge, this Court should address this issue across multiple factual scenarios and multiple circuits, to ensure that a consistent standard upon which government contractors can rely in any jurisdiction results from this Court's review.

**I. The Ninth Circuit's Decision Conflicts with the Post 2011 Statutory Standard for Federal Officer Removal, Other Ninth Circuit decisions and Other Circuit Decisions.**

**A. The Ninth Circuit's Decision Improperly Relies Heavily on a Strict Causal Nexus Standard that the Statute No Longer Requires after the 2011 Amendment.**

Prior to 2011, 28 U.S.C. section 1442(a)(1) permitted removal of lawsuits against any officer or person acting under such officer, solely "*for* any act under color of [federal] office." 28 U.S.C. §1442(a)(1) (pre-2011 statute) (emphasis added). As such, the jurisprudence of this Court, and other Courts, which required a "causal connection" or "causal nexus" between the conduct at issue and the federal

authority, made sense. *Jefferson County v. Acker*, 527 U.S. at 431; *Durham v. Lockheed-Martin Co.*, 445 F.3d at 1251. However, following the Removal Clarification Act in 2011, this standard was notably lessened, to permit lawsuits “for or relating to acts under color of [federal] office.” 28 U.S.C. §1442(a)(1) (emphasis added), 125 Stat. 545. This Court has historically interpreted the phrase “relating to” extremely liberally, to mean simply connecting with or associated with. See, e.g., *Morales v. Trans World Airlines*, 504 U.S. 374, 383-84 (1992); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983). Thus, coupling this 2011 expansion of the federal officer removal universe to a loose association test with the already acknowledged standard that the federal officer removal statute is to be “liberally construed,” see, e.g., *Watson*, 551 U.S. 242, there was no more room after 2011 for an old, more stringent, causal nexus standard.

Unfortunately, the Ninth Circuit never eliminated its causal nexus test after the 2011 amendment. Before the 2011 amendment, the Ninth Circuit utilized a standard that combined the statute’s “acting under” and “under color of federal office” prongs: whether “there is a causal nexus between [the defendant’s] actions, taken pursuant to a federal officer’s directions, and plaintiff’s claims.”<sup>3</sup> Despite the 2011 amendment, the Ninth Circuit did not change this standard.<sup>4</sup> While it would claim at times that it had lessened this standard or was applying a more lenient standard, the Ninth Circuit’s continued citation

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3. See, e.g., *Durham*, 445 F.3d at 1251.

4. App. 6a, 15a (Opinion); see also, e.g., *Lake*, 14 F.4th at 1004; *Fidelitad v. Insitu*, 904 F.3d 1095, 1099 (9th Cir. 2018); *Leite v. Crane Co.*, 749 F.3d 1117, 1120 (9th Cir. 2014).

to a causal nexus standard in its decisions after the 2011 amendment spawned the result in *Lake v. Ohana Military Communities*, which repeatedly cited to such standard in finding insufficient support for federal officer jurisdiction. *Lake*, a case involving another military housing provider, although one which admittedly failed to follow the plan it created with the government on the subject at issue in that case, unlike the situation in this matter, was the decision upon which the Ninth Circuit panel in this case most squarely relied to reject federal officer jurisdiction here, finding it “instructive to our analysis” and discussing it at length in comparison with this case. App. 17a. But not only was *Lake* not like this case, as here, Petitioners followed their contracts and plans with the U.S. Navy, and submitted substantial evidence in support of such, but, *Lake* used an outdated causal nexus standard, and the Ninth Circuit, because of this, again used the outdated causal nexus standard in its opinion here, repeatedly citing to the same. App. 17a-18a, 20a-21a.

Based upon the 2011 amendment, historical treatment of the phrase “relating to” and the already existing more “lenient” standard for federal officer jurisdiction, the facts here clearly support removal. Petitioners are present day government contractors of the U.S. Navy, operating Navy military housing under Navy continued direction and oversight, as well as under plans that were developed with and ratified by the Navy, including the O&M Plan. Petitioners are plainly “acting under” a federal officer in operating the Navy’s housing. Further, the O&M Plan and other Navy directions on its housing are squarely at issue in this case, as the Childs directly contend in their lawsuit that Petitioners should have done more than those plans and directions say to, with, *inter alia*, inspections,

remediation work and repairs, and their displacement. Petitioners, in response to the Childs' allegations, contend they followed the O&M Plan and the Navy's directions and guidance. Even if that, somehow, does not amount to a "causal nexus," it clearly amounts to a relationship between the claims the Childs bring in the case and the actions which Petitioners undertook operating the Navy's military housing under their contracts and plans with the Navy.<sup>5</sup>

**B. The Ninth Circuit Has in More Recent Years Often Supported a More Lenient Standard than a Strict Casual Nexus, Adding to the Confusion and Causing Inconsistent Rulings within this Circuit Which this Court Should Address.**

While Petitioners are mindful that this Court has recently granted certiorari in another federal officer jurisdiction case, *Plaquemines Par. v. BP Am. Prod. Co.*, 103 F.4th 324 (5th Cir. 2024), *cert. granted sub nom. Chevron USA Inc. v. Plaquemines Par.*, No. 24-813, 2025 WL 1678985 (U.S. June 16, 2025), the Ninth Circuit's own inconsistent and confusing treatment of federal officer removal is one which this Court should also directly address head on. In several instances since the 2011

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5. While not directly pertinent to the subject of this Petition, Petitioners note that the panel further compounded its errors with applying its improper standard by implying that Petitioners were also a) mere lessees of government property versus government contractors running a government program, and b) merely following the law, versus following Navy contracts, plans and directions. App. 18a-19a. The evidence Petitioners presented plainly belied these erroneous conclusions of the panel.

amendment, while still retaining an acknowledged causal nexus standard, the Ninth Circuit has, in many notable decisions, interpreted that standard more broadly and generously in its results than it did in both *Lake* and this matter, via other panels. Regrettably, this retention of the “causal nexus” standard and uneven application of it, only leads to unpredictable treatment and varied results within the same circuit when it comes to federal officer removal.

In *Leite v. Crane Co.*, 749 F.3d 1117 (9th Cir. 2014), machinists at a Naval shipyard sued government contractor equipment vendor Crane, alleging it did not provide sufficient warnings about asbestos in products they worked with, causing them injury. Crane contended it provided the information required by the government. Similarly, here, Respondents, residents of Navy military housing, sued Navy contractor Petitioners, alleging they did not adequately investigate or remediate water intrusion and mold in the housing, causing them injury. App. 147a-149a. Petitioners contend that they followed the Navy ratified plans and directions. App. 69a. Both sets of plaintiffs claimed the contractors “should have done more” than the requirements and plans told them to. Crane submitted substantial evidence that it was following the government’s directions. 749 F.3d at 1120, 1123. Similarly, Petitioners, even per the panel’s acknowledgement, submitted “numerous pieces of evidence.” App. 16a.

The Ninth Circuit in *Leite* held that Crane simply had to support its position with “competent proof” - which it found it had, despite contradictory evidence submitted by plaintiffs, and further found that while Crane had to supply “competent proof,” this did not mean it had to prove its government contractor defense or win its case

for it to be removed to federal court. Despite citation to a causal nexus standard, *Leite* focused on the evidence Crane submitted and its theory of the case, not the theory of the plaintiffs and their evidence. 749 F.3d at 1123. The Ninth Circuit held: “As the Supreme Court has held, a defendant invoking §1442(a) ‘need not win his case before he can have it removed.’” *Id.* at 1124 (quoting *Willingham*, 395 U.S. at 407. The Ninth Circuit went on:

In assessing whether a causal nexus exists, we credit the defendant’s theory of the case. *Id.* at 432,<sup>6</sup> 119 S.Ct. 2069; *Isaacson*, 517 F.3d at 137.<sup>7</sup> Such a nexus exists here because the very act that forms the basis of plaintiffs’ claims—Crane’s failure to warn about asbestos hazards—is an act that Crane contends it performed under the direction of the Navy. Crane may not be right—indeed, it may be that the Navy had nothing to do with Crane’s failure to warn. But the question “whether the challenged act was outside the scope of [Crane’s] official duties, or whether it was specifically directed by the federal Government, is one for the federal—not state—courts to answer.” *Isaacson*, 517 F.3d at 138; see also *Willingham*, 395 U.S. at 407, 89 S.Ct. 1813.

*Leite*, 749 F.3d at 1124.

Further, in *Leite*, the Ninth Circuit rejected plaintiffs’ contention that Crane “could have” provided more

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6. *Jefferson County v. Acker*, 527 U.S. 423 (1999).

7. *Isaacson v. Dow Chemical Co.*, 517 F.3d 129 (2d Cir. 2008).

warnings, finding that was not the issue and that the government did not need to affirmatively forbid additional warnings or dictate precise warnings. Rather, that they did proscribe certain warnings, which Crane contended it followed and used, was the issue. 749 F.3d at 1123-24.

Here, however, focusing tightly on its “causal nexus” standard, the Ninth Circuit did not credit Petitioners’ theory of the case, nor their position as to what their evidence supported: that the Navy, in the Ground Lease, directed the creation of the O&M Plan for Petitioners to follow in addressing water intrusion and mold at Navy military housing, that the O&M Plan was prepared in concert with the Navy and ratified by the Navy as the plan to be used, and that Petitioners followed the O&M Plan in responding to the water intrusion and mold issues at the Childs home—which response the Childs specifically claim in the lawsuit was insufficient and caused their harm. Petitioners supported this position with the Ground Lease, the O&M Plan, and the declaration of Mr. Rizzo who directly testified about how Petitioners developed the O&M Plan with the Navy, had to follow the O&M Plan and the Navy’s directions to them, and how they were subject to constant Navy oversight, including specifically with following the O&M Plan, none of which evidence was objected to. App. 62a-71a. Under *Leite*, this should have satisfied the Court’s then-evaluation and more leniently-applied standard, but because of their adherence in this case to a stricter “causal nexus” standard, the Ninth Circuit panel here made the decision that Petitioners were “wrong” and definitively decided that there was a not a causal connection between Petitioners’ actions and directions by the Navy. App. 21a. The panel’s further discussion about how “nothing . . . constrained” Petitioners

from doing more to respond to the issues in the Childs home above and beyond the O&M Plan (App. 19a), further runs in direct opposition to *Leite's* holding on the exact same subject.

In *Goncalves by and through Goncalves vs. Rady's Children's Hospital San Diego*, 865 F.3d 1237 (9th Cir. 2017), persons sued a long-time government contractor health insurance subrogator over how certain insurance claims were handled. The subrogator contended it was operating under the directions of a federal office in administering the subrogation, per a government program and associated contracts and plan. Similarly, here, the Respondents sued Petitioners, long-time government contractors operating the Navy's military housing based on the MHPI, under contracts, plans and directions.

The Ninth Circuit's opinion in *Goncalves* was overwhelmingly deferential in favoring removal, accepting the government contractor's theory of the case, and interpreting section 1442 broadly, in line with the prior opinions of the Supreme Court:

The right of removal is "absolute for conduct performed under color of federal office," and the "policy favoring removal 'should not be frustrated by a narrow, grudging interpretation of §1442(a)(1).'" *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981) (quoting *Willingham v. Morgan*, 395 U.S. 402, 407 (1969)).

Throughout our analysis we pay heed to our duty to interpret Section 1442 broadly in favor of removal." *Durham v. Lockheed Martin*

*Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006) (quoting *Jefferson Cty. v. Acker*, 527 U.S. 423, 431, 119 S.Ct. 2069, 144 L.Ed.2d 408 (1999)).

“ . . . the ‘hurdle erected by [the causal-connection] requirement is quite low.’” *Isaacson v. Dow Chem. Co.* 517 F.3d 129, 137 (2d Cir. 2008); see also *Maryland v. Soper*, 270 U.S. 9, 33, 46 S.Ct. 185, 70 L.Ed. 449 (1926) (“[T]he statute does not require that the prosecution must be for the very acts which the officer admits to have been done by him under federal authority. It is enough that his acts or his presence at the place in performance of his official duty constitute the basis, though mistaken or false, of the state prosecution.”). The [subrogator] need show only that the challenged acts “occurred because of what they were asked to do by the Government.” *Isaacson*, 517 F.3d at 137. Here, OPM asked the [subrogator] to administer the plan and to make “reasonable efforts” to pursue known subrogation claims. This meets the low bar that the causal-connection prong requires. The “very act” that forms the basis for challenging the lien—seeking subrogation—“is an act that [the subrogator] contends [they] performed under the direction of [federal officers].” *Leite*, 749 F.3d at 1124.

*Goncalves*, 865 F.3d at 1244-45.

As in *Leite*, the Court in *Goncalves* acceded to the government contractor’s theory of the case, and applied a more lenient standard than a strict causal nexus,

finding that such hurdle was, in fact, “low” in practice. In *Goncalves*, the contractor’s theory that they were conducting their subrogation per a federal program, under contracts and plans with the government, and conducting an activity that the government would otherwise do itself was sufficient. This is exactly the same situation presented here, where Petitioners operate the Navy’s military housing under contracts and per plans and directives developed with and by the Navy, a task which otherwise the Navy would have to do itself, as it did prior to the MHPI. It should have been “enough,” per *Goncalves*, that Petitioners’ conducting military housing water intrusion and mold investigation and remediation, the basis of the Respondents Childs’ claims, was part of their “official duty” to the government in operating Navy military housing. 865 F.3d at 1244-45. Yet, due to confusion over just what the Ninth Circuit’s causal nexus standard is or should be in theory or practice, it was not.

Notably, *Goncalves* is also instructive on its specific commentary on the 2011 amendments, making clear that the “words ‘acting under’ are broad” and that this criteria is met if the entity is involved in an “effort to assist, or to help carry out, the duties or tasks of the federal superior,” (865 F.3d at 1245) which Petitioners are plainly doing by operating the Navy’s military housing with its oversight, guidance and direction, generally and specific to the O&M Plan. App. 62a-73a. *Goncalves* even specifically notes that the 2011 amendments were to *broaden* the statute to allow removal for *or related to* acts under color of federal office, because courts were construing the statute too narrowly, *Id.* at 1250, as ironically, the Ninth Circuit did yet again here.

Very recently, even after *Lake*, in *DeFiore v. SOC, LLC*, 85 F.4th 546 (9th Cir. 2023), the Ninth Circuit again was more deferential in its application of its standards for federal officer removal. Employees of a government contractor providing war zone security claimed they were hired under false pretenses and exposed to hazards in their work; the contractor claimed, and supported with evidence, that they were following the military's directives. Analogously here, Petitioners' tenants alleged they were exposed to mold in their housing, where Petitioners claim, and submit evidence supporting, they were following the contracts, plans and directives of the Navy in their response to the conditions.

The Ninth Circuit in *DeFiore* found that the contractor had a "limited burden" under the federal officer removal statute (85 F.4th at 551) and that courts "afford a 'generous' and 'liberal' construction, interpreting the statute 'broadly in favor of removal.'" *Id.* at 553, quoting *Durham, supra*, 445 F.3d at 1252-53. The Court further found that that the Supreme Court has "... accordingly rejected the notion that removal through §1442 is 'narrow' or 'limited.'" *Id.*, quoting *Willingham, supra*, at 402.

The Ninth Circuit in *DeFiore* specifically stated that the statute was intended to protect the government's agents, and that:

To satisfy the causal-connection requirement, the contractors "need show only that the challenged acts 'occurred because of what they were asked to do by the Government.'" *Goncalves*, 865 F.3d at 1245 (emphasis in

original) (quoting *Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 137 (2d Cir. 2008).

*DeFiore*, 85 F.4th at 557.

The Ninth Circuit reiterated the more relaxed application of the causal nexus standard from both *Leite* and *Goncalves* that “in assessing whether a causal nexus exists, we credit the defendant’s theory of the case” (citing *Leite*, 749 F.3d at 1124) and that “the hurdle erected by [the causal connection] requirement is quite low.” *Id.* at 557, quoting *Goncalves*, 865 F.3d at 1244. Further, the Court held:

“The contractors therefore only need show that the actions they took which gave rise to the guards’ claims resulted from their work for DOD.” See *Jefferson County*, 527 U.S. at 433, 119 S.Ct. 2069 (stating that “[t]he circumstances that gave rise to the” claim against the federal officer, “not just” the specific challenged acts of that federal officer, are enough to establish the “essential nexus” between the activity under “color of office” and a claim against the officer); *Willingham*, 395 U.S. at 409, 89 S.Ct. 1813 (“[I]t [is] sufficient for [removing defendants] to have shown that their relationship to [the plaintiff] derived solely from their official duties.”); *Isaacson*, 517 F.3d at 137–38 (“To show causation, Defendants must only establish that the act that is the subject of Plaintiffs’ attack (here, the production of the byproduct dioxin)

occurred *while* Defendants were performing their official duties.”) (emphasis in original).”

*DeFiore*, 85 F.4th at 557.

As the Childs’ claims here plainly result from Petitioners’ work for the Navy relating to their military housing, as well as directly from their following the O&M Plan and other Navy documents, this should have been sufficient under *Leite*, *Goncalves* and *DeFiore*. Yet because of the Ninth Circuit’s continued citation to its old “causal nexus” requirement in its decisions, despite the 2011 amendment, an inconsistent and improper application of this standard to cases, like this one, has resulted.

**C. The Decision is a Hallmark of the Ongoing Split between Circuits on this Issue.**

Although the Ninth Circuit has inappropriately retained a causal nexus standard since 2011 and then further applied it un-evenhandedly, it is in the minority to use such a standard at all. The First, Third, Fourth, Seventh, Tenth, and D.C. Circuits have all eliminated any “causal nexus” or federal direction requirement following the 2011 amendment. *See Dist. of Columbia v. Exxon Mobil Corp.*, 89 F.4th 144, 155-56 (D.C. Cir. 2023); *Bd. of Cnty Comm’rs v. Suncor Energy (U.S.A.) Inc.*, 25 F.4th 1238, 1251 (10th Cir. 2022); *Moore v. Elec. Boat Corp.*, 25 F.4th 30, 35 (1st Cir. 2022); *Baker v. Atl. Richfield Co.*, 962 F.3d 937, 944 (7th Cir. 2020); *Sawyer v. Foster Wheeler LLC*, 860 F.3d at 258; *Commonwealth’s Motion*, 790 F.3d at 471.

As illustrations, in *Commonwealth's Motion*, the Third Circuit was the first circuit to find, following the 2011 amendment, that the amendment made it “sufficient for there to be a ‘connection’ or ‘association’ between the act in question and the federal office,” as opposed to requiring that the act explicitly occurred because of what they were asked to do by the Government. 790 F.3d at 471. In *Sawyer*, the Fourth Circuit found that “there need be only ‘a connection or association between the act in question and the federal office.’” *Sawyer*, 860 F.3d at 258 (emphasis in original), quoting *Papp v. Fore-Kast Sales Co.*, 842 F.3d 805, 813 (3d Cir. 2016), quoting *Commonwealth's Motion*, 790 F.3d at 471. Most recently, the D.C. Circuit found that section 1442(a) “does not require a causal connection between the acts taken under color of federal office and the basis for the [lawsuit].” *Dist. of Columbia v. Exxon Mobil*, 89 F.4th at 155.

Relatedly, the Eleventh Circuit, while retaining “causal connection” language, has acknowledged that the 2011 amendment’s addition of “[t]he phrase ‘relating to’ is broad and requires only ‘a ‘connection’ or ‘association’ between the act in question and the federal office.’” *Caver v. Cent. Alabama Elec. Coop.*, 845 F.3d 1135, 1144 (11th Cir. 2017), quoting *Commonwealth's Motion*, 790 F.3d at 471. The Sixth Circuit, while not having a published opinion directly on point, has recognized that the 2011 amendment expanded the scope of federal officer removal. *Ohio St. Chiropractic Ass’n v. Humana Health Plan Inc.*, 647 Fed. Appx. 619, 624-25 (6th Cir. 2016).

Unfortunately, the Eighth Circuit, like the Ninth, continues to typically require a causal nexus test, although it also at times espouses a more lenient standard. *See*

*Minnesota ex rel. Ellison v. Am Petroleum Instit.*, 63 F4th 703, 715 (8th Cir. 2023). And, as this Court is aware, the Fifth Circuit has recently re-accepted a form of the causal nexus or contractual directive test, despite its rejection of such criterion in *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 292 (5th Cir. 2020). See *Plaquemines Par.*, *supra*, 103 F.4th 324 (5th Cir. 2024).

This Court is poised to rule on *Plaquemines Parish*. That case, however, involves a very specific and nuanced situation of historic World War II government oil activities and whether that sufficiently relates to present day claims and activities. The Ninth Circuit's situation, and the modern-day situation presented by this case, is far more deeply cutting and worse. A present day government contractor, performing the government's work under contracts and plans with the government, does not know which Ninth Circuit it will get on any given day with respect to federal officer jurisdiction. Will it get a panel which applies a strict causal nexus test, and all but requires that the contractor's defense of the claims against it be proven before being allowed the venue of federal court, despite the 2011 amendment? Or, will it get a panel which claims it does not use a strict causal nexus test, despite its continued use of that phraseology, and applies a more lenient, yet still amorphous, standard? The ongoing inconsistency across the Ninth Circuit's decisions requires direct addressing, as does its outlier position among the circuits of not expanding federal officer jurisdiction openly and uniformly following the 2011 amendment.

## **II. This Issue Requires Resolution in Multiple Factual Scenarios, and in Multiple Circuits, Given the Critical Nature of this Issue for Government Contracts and Contractors' Ongoing Work for the Federal Government.**

Federal officer removal has long been recognized as an important vehicle for federal government contractors to have claims against them pertaining to their work for the federal government, heard in federal court and not state court. After the Civil War, Congress expanded the original statutory language to guarantee government contractors these same protections as federal officers, and again expanded the subject matters covered by this provision after World War II. *Watson*, 551 U.S. 148, 151-52. Even prior to the 2011 amendment, removal under 28 U.S.C. §1442(a)(1) was recognized to have a lower bar standard than removal under any other provision, such that the right of removal is “absolute for conduct performed under color of federal office,” and the “policy favoring removal ‘should not be frustrated by a narrow, grudging interpretation of §1442(a)(1).’” *Arizona v. Manypenny*, 451 U.S. at 242 (quoting *Willingham*, 395 U.S. at 407). This sentiment is even truer today, after the 2011 amendment; yet, the split between circuits continues, and the Ninth Circuit’s continually shifting position and nebulous standard, which it appears it can modify at whim, is both dangerous and perplexing.

The Ninth Circuit’s decision in this case stands as a bar to federal government contractors who operate under contracts and plans with the federal government, and have federal defenses, to be able to have cases brought against them relating to their governmental work heard in federal

court. Claims made against government contractors which relate to, or are connected with or associated with, their ongoing work for the federal government are properly in federal court under the 2011 amendment to 28 U.S.C. §1442(a)(1). That is the plain language of the amendment. Any other interpretation, including use of a causal nexus standard, even one which at times might be more lenient than others, cannot stand against the change in the statutory text. The Ninth Circuit must have a firm standard put upon it by this Court which lines up with the language of the statute, not a mutable, unstructured standard that the Ninth Circuit can choose depending on the day.

This issue is of the utmost importance for present day government contractors, like Petitioners, performing ongoing work for the federal government under contracts, plans, directions and supervision from the government, in the Ninth Circuit as well as other jurisdictions. These contractors need to know, and deserve to know, with certainty the standards by which they can avail themselves of federal officer removal for claims brought against them relating to their government work in any state. The standard should not vary based on their work in Maryland or Virginia versus California, and yet that is exactly the situation that government contractors like Petitioners face, who perform work for the U.S. Navy nationwide, and who may face claims relating to their government work in different jurisdictions. The standard should also not be subject to variation within California or the Ninth Circuit itself, depending on the panel.

Petitioners perform ongoing governmental work operating and managing Navy military housing, doing

what the Navy would otherwise be doing itself. They operate under contracts and plans with, by and ratified by the Navy, and under ongoing Navy directions and supervision. The Childs bring claims against them relating to this work, claiming Petitioners did not do enough or did something wrong in performing this work; Petitioners claim they performed as required under their contracts and plans (and hence further invoke a colorable derivative sovereign immunity defense). This is a far cleaner scenario than the historic World War II work situation presented by *Plaquemines Parish*, but the outcome is the same: The claims against the government contractor Petitioners "relate to" their work for the federal government. The claims, and Petitioners' defenses, accordingly should be heard in federal court.

The decision at issue fails to follow the 2011 amendment revised language of 28 U.S.C. §1442(a)(1), perpetuates the inconsistent decision-making of the Ninth Circuit on federal officer jurisdiction, runs contrary to a more lenient standard from three notable recent decisions from the Ninth Circuit, and runs contrary to numerous other circuit decisions as well as Supreme Court precedent on the broad and lenient interpretation of the federal officer removal statute. Entitlement to federal officer jurisdiction is an issue of extremely high importance, especially for present day government contractors performing ongoing work for the government's behest under government issued and ratified contracts and plans, across multiple states and jurisdictions. It was designed to protect government contractors from state court biases and allow claims against such contractors relating to their government work to be heard in federal court by federal judges understanding of and knowledgeable about federal

concerns. The Ninth Circuit's erroneous standard and further bipolar treatment of the issue over time is an even more dire situation than the Fifth Circuit's recent about-face. This Court should grant certiorari and reverse.

**CONCLUSION**

This Court should grant certiorari.

Respectfully submitted,

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