

No. 25-1027

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

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

v.

LENA CHILDS, DONALD CHILDS, T.C., AND A.C.,  
*Respondents.*

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

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**RESPONDENTS' BRIEF IN OPPOSITION**

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## QUESTIONS PRESENTED

1) Whether the Court should grant review to consider whether the federal officer removal statute requires a defendant seeking removal to show a causal nexus between plaintiffs' claims and the defendants' federal duties, when the Court answered that precise question last month in *Chevron USA Inc. v. Plaquemines Parish*.

2) Whether the Court should grant review to apply *Plaquemines Parish* to the facts presented by this case, when the United States Court of Appeals for the Ninth Circuit has already directed the parties in this case to submit supplemental briefing to do exactly that.

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## INTRODUCTION

This case, originally filed in state court, is a landlord-tenant dispute over residential mold abatement. Petitioners removed the case to federal court under the federal officer removal statute. The district court granted a motion to remand, holding that the federal officer removal statute did not apply, and the Ninth Circuit affirmed. Petitioners sought certiorari, presenting two questions.

First, Petitioners ask this Court to address whether a removing defendant must show a causal nexus between its federal duties and the conduct challenged by the lawsuit. This Court subsequently issued its opinion in *Chevron USA Inc. v. Plaquemines Parish*, 146 S. Ct. 1052 (2026), holding that a “removing defendant need not show that his federal duties specifically required or strictly caused the challenged conduct.” *Plaquemines Parish* completely resolves the first question presented by the petition.

Second, Petitioners in essence ask this Court to apply the rule in *Plaquemines Parish* to the specific facts of this case. In the meantime, however, the Ninth Circuit, which retained jurisdiction over this matter when it stayed the issuance of its mandate, has issued an order directing the parties to file supplemental briefs addressing the effect of *Plaquemines Parish* and other intervening authorities on the issues presented by the case. This Court, then, should deny certiorari and permit the Ninth Circuit to address that fact-bound question in the first instance.

In any event, the causal nexus question decided in *Plaquemines Parish* is irrelevant to the outcome of

this case. The courts below determined that Petitioners had not carried their burden of establishing that they acted under a federal officer—separate and apart from any question of causality.

## STATEMENT

### **Factual Background**

Petitioner San Diego Family Housing (SDFH) operates and manages a housing community located within the boundaries of a naval base in Coronado, California. Pet. App. 28a. Formed under the Military Housing Privatization Initiative, SDFH is a public-private venture between the United States Navy and Lincoln/Clark San Diego, LLC, in which Lincoln/Clark San Diego retains “exclusive management and control of the business of” SDFH and “full authority to take all actions necessary or appropriate to pursue the business and carry out the purpose of the Company.” Pet. App. 18a, 28a. SDFH, in turn, contracted with Petitioner Lincoln Military Property Management (LMPM) to provide property management services to the community. *Id.* at 3a.

In 2016, Respondents Lena and Donald Childs leased a home from SDFH. *Id.* Soon after Mr. and Mrs. Childs and their children moved in, the home had repeated water leaks, leading to severe mold contamination. *Id.* The contamination caused serious health issues for each member of the family, including chronic headaches, fatigue, nausea, and shortness of breath. *Id.* at 3a, 123a–24a.

The Childs family reported the issues to Petitioners. *Id.* at 3a. LMPM sent a mold remediation company to inspect the property. *Id.* The company documented visible mold in multiple areas,

and the family vacated the home while the company purported to remediate. *Id.* at 3a–4a. Five days later, the family was told they could return to their home. *Id.* at 125a. When the family requested proof that abnormal levels of mold were no longer present, however, LMPM refused to provide it. *Id.* at 4a.

The family hired an independent mold test provider to verify that the home was habitable. *Id.* It was not. *Id.* The independent provider’s tests revealed heightened levels of hazardous molds throughout the house. *Id.* at 4a, 126a. Although the family conveyed the results of this testing to Petitioners, Petitioners dismissed the family’s concerns and insisted that the home was habitable. *Id.* On the advice of their doctors, the Childs family did not move back into the house. *Id.* at 4a, 127a.

Petitioners took no further steps to remediate the property. *Id.* at 4a. Although the home remained unsafe, Petitioners also immediately stopped paying the family’s relocation costs. *Id.*

### **Procedural History**

In 2019, Plaintiffs sued SDFH and LMPM<sup>1</sup> in San Diego County Superior Court, asserting negligence and other state-law claims. *Id.* Petitioners removed the action to federal court, alleging federal enclave, federal agency, and federal officer jurisdiction. *Id.*

After further proceedings not relevant here, Petitioners moved for summary judgment, arguing that they were entitled to derivative sovereign immunity and that federal enclave jurisdiction

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<sup>1</sup> Plaintiffs also sued the mold remediation company hired by LMPM. That defendant settled. *Id.* at 4a, 5a n.1.

precluded most of the family’s state-law claims. *Id.* at 5a. The Childs family opposed the motion. And the United States filed a statement of interest opposing the motion, arguing that (1) Petitioners were not entitled to derivative sovereign immunity, (2) federal enclave jurisdiction did not apply, and, relevant here, (3) the case should be remanded to state court because the district court lacked federal officer or agency jurisdiction. *Id.* The district court, agreeing with the Childs family and the United States, held that it lacked subject matter jurisdiction and remanded the case to state court. *Id.* at 27a–57a.

As to jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), the district court began by describing the elements of the Ninth Circuit’s then-governing two-part “causal nexus” test, under which a removing party must demonstrate “(1) that the person was ‘acting under’ a federal officer in performing some ‘act under color of federal office,’ and (2) that such action is causally connected with the plaintiff’s claims against it.” Pet. App. 46a (quoting *County of San Mateo v. Chevron Corp.*, 32 F.4th 733, 755 (9th Cir. 2022)). The court concluded that Petitioners did not “satisf[y] their burden” to show that they were “acting under officers of the Navy” with respect to the family’s complaint. *Id.* at 45a–46a. The record included no communications with a federal officer about the mold issues, and the operating agreement between the Navy and Lincoln/Clark San Diego, LLC, “disclaim[ed] Navy responsibility over management and control decisions.” *Id.* at 46a, 48a. The fact that “the Navy reviewed and approved” the facility’s mold management plan, the court explained, was “insufficient to show SDFH and LMPM’s actions

were controlled by the Navy.” *Id.* at 48a–49a (quoting *County of San Mateo*, 32 F.4th at 757 (“[A] person’s *compliance* with the law (or *acquiescence* to an order) does not amount to ‘acting under’ a federal official who is giving an order or enforcing the law.” (internal quotation marks omitted)). Any general directives issued by the Navy were likewise “insufficient to show [Petitioners] were ‘acting under’ the Navy in this case,” since, “[i]n order for a private person to be ‘acting under’ a federal officer, the relationship must go beyond simply complying with the law, even if the laws are highly detailed.” *Id.* at 51a (internal quotation marks and citation omitted). In sum, because Petitioners failed to show that they were “acting under” the Navy, the district court remanded to state court. *Id.* at 57a.

Petitioners appealed to the Ninth Circuit. The United States filed an amicus brief in support of the Childs family, arguing that Petitioners’ argument that they were “acting under” a federal officer was “erroneous.” Brief for the United States as Amicus Curiae at 22, *Childs v. San Diego Family Hous., LLC*, No. 24-1256 (9th Cir. Oct. 30, 2024), Dkt. No. 30.1.

The court of appeals affirmed. On the issue of federal officer removal, the court reiterated the well-established principle that a private defendant must show that they were acting under a federal officer in performing some act under color of federal office. Pet. App. 16a. As the court of appeals explained, Petitioners failed to meet that “acting under” test here.

First, the court of appeals emphasized that the operating agreement with the Navy afforded

Lincoln/Clark “exclusive management and control of the business of [SDFH] as well as full authority to take all actions necessary or appropriate to pursue the business and carry out the purpose of the Company.” *Id.* at 17a–18a (internal quotation marks omitted).

Second, the court noted that, when the United States leased the housing development to SDFH, the lease agreements “explicitly assigned responsibilities, costs, and liability over mold management during the applicable term to SDFH.” *Id.* at 18. Moreover, the court explained that “the federal government’s willingness to lease federal property ... to a private entity for that entity’s commercial purposes does not, without more, constitute the kind of assistance required to establish that the private entity is ‘acting under’ a federal officer.” *Id.* (quoting *County of San Mateo*, 32 F.4th at 760).

Third, the court rejected Petitioners’ reliance on the Navy’s promulgation of documents containing “pertinent facts about the hazards of mold, the efficacy of testing, and general recommendations by expert bodies,” as well as “general guidelines for minimum housing standards.” *Id.* at 19a. Relying on this Court’s holding in *Watson v. Philip Morris Cos.*, the court explained that “[a] private firm’s compliance (or noncompliance) with federal laws, rules, and regulations does not by itself fall within the scope of the statutory phrase ‘acting under’ a federal ‘official.’” *Id.* at 19a–20a (quoting *Watson*, 551 U.S. 142, 153 (2007)).

In sum, the court found that, “[g]iven the dearth of evidence suggesting federal involvement in or control over Defendants’ mold management

practices,” Petitioners did not meet their burden to prove they were entitled to federal officer removal. *Id.* at 20a, 24a. Petitioners sought rehearing en banc, which the court denied with no judge requesting a vote. App. 26a.

## **REASONS FOR DENYING THE WRIT**

### **I. This Court recently resolved the first question presented by the petition.**

Petitioners first seek review of the question whether a removing defendant, seeking to establish that the suit “relat[es] to” an act under color of federal office under 28 U.S.C. § 1442(a)(1), must demonstrate “a causal nexus” between their actions and a plaintiff’s claims. Pet., at i. While the petition has been pending, however, this Court resolved that precise question: In *Chevron USA Inc. v. Plaquemines Parish*, the Court held that “a removing defendant need not show that his federal duties specifically required or strictly caused the challenged conduct.” 146 S. Ct. 1052, 1060 (2026); *see also* Pet. 33 (acknowledging that the “outcome” of the legal question when claims against “government contractor Petitioners ‘relate to’ their work for the federal government” is “the same” as in *Plaquemines Parish*).

In light of the recent decision in *Plaquemines Parish*, no legal question remains for this Court to resolve in this case.

### **II. The court of appeals is currently considering, in this case, the second question presented by the petition.**

Petitioners also ask this Court to grant certiorari to address the case-specific question whether they

properly removed this matter to federal court. *See* Pet., at ii. That fact-bound question does not present an important issue that warrants this Court’s review. *See* Sup. Ct. R. 10. Moreover, renewed proceedings in the court of appeals render review wholly unnecessary.

Specifically, granting Petitioners’ motion, the Ninth Circuit stayed the issuance of its mandate pending this Court’s “final disposition of the matter.” Order, *Childs v. San Diego Family Hous.*, No. 24-1256 (9th Cir. Oct. 16, 2025), Dkt. No. 59. The court thus retained jurisdiction, and, shortly after this Court issued its opinion in *Plaquemines Parish*, it exercised that jurisdiction to sua sponte order the parties to file supplemental briefs “addressing the effect of *Chevron USA Inc. v. Plaquemines Parish*, 608 U.S. \_\_\_ (2026) and other intervening authorities on the issues presented in this case.” Order, *Childs v. San Diego Family Hous.*, No. 24-1256 (9th Cir. May 4, 2026), Dkt. No. 64.1.

As a consequence of the court of appeals’ recent order, even granting the petition for the purpose of vacating the decision below and remanding is unnecessary. That procedural mechanism is “potentially appropriate” where “recent developments” that the Court has “reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation.” *Lawrence ex rel. Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam). Here, though, the Ninth Circuit is already in the midst of considering whether

its previous opinion rests upon a premise affected by intervening precedent of this Court.

**III. The causal nexus test did not affect the outcome of this case because Petitioners were not “acting under” a federal officer.**

Even if this Court had not already decided *Plaquemines Parish*, and even if the Ninth Circuit had not already directed the parties to address the effect of *Plaquemines Parish* on the issues in this case, certiorari would be unwarranted because the existence or absence of a causal relationship between the conduct at issue and the asserted federal duties did not “determine the ultimate outcome” that Petitioners had not carried their burden of demonstrating federal officer jurisdiction. *See Chater*, 516 U.S. at 167. Instead, both the district court and the court of appeals concluded that Petitioners failed to establish a different statutory prerequisite of federal officer jurisdiction: that they either are federal officers or were “acting under” federal officers. *See Chevron USA Inc. v. Plaquemines Par.*, 146 S. Ct. 1052, 1057 (2026); 28 U.S.C. § 1442(a)(1).

Under the federal officer removal statute, a defendant seeking to remove a case to federal court must satisfy each of three requirements: “First, the removing defendant must be the United States, a federal agency, a federal officer, or a person ‘acting under’ a federal officer, such as certain private parties hired to assist federal officers.” *Plaquemines Parish*, 146 S. Ct. at 1057 (citing *Watson*, 551 U.S. at 148–53). “Second, the suit must be ‘for or relating to any act under color of such office.’” *Id.* (quoting 28 U.S.C. § 1442(a)(1)). “Third, the removing defendant

must assert ‘a colorable federal defense.’” *Id.* at 1057–58 (quoting *Mesa v. California*, 489 U.S. 121, 129 (1989)).

Focusing on the second of these requirements, Petitioners argue that the 2011 amendment to the federal officer removal statute expanded the realm of cases subject to federal officer removal from suits “for any act under color of [federal] office” to suits “for *or relating to*” such acts, rendering obsolete the Ninth Circuit’s requirement that a removing defendant demonstrate a causal connection between the conduct at issue and the asserted federal duties. Pet., at i–ii, 1–3, 16–28. And, of course, the Court recently held as much in *Plaquemines Parish*, 146 S. Ct. at 1060.

The court below, however, did not rely on the absence of a causal connection between the conduct at issue and the asserted federal duties in concluding that the district court lacked federal officer jurisdiction. Instead, the court analyzed the “acting under” and “relating to” elements *together*, referring to the overall inquiry as a “causal nexus” requirement. Pet. App. 16a (quoting *County of San Mateo*, 32 F.4th at 755); *see id.* at 46a; *Goncalves By & Through Goncalves v. Rady Children’s Hosp. San Diego*, 865 F.3d 1237, 1244–45 (9th Cir. 2017) (describing the “causal nexus” requirement as comprised of two prongs: the “acting under” prong and the “causal-connection” prong). And the court’s discussion of the evidence set forth by Petitioners makes clear that—apart from any question of causality—it did not find the “acting under” element satisfied.

To start, the Ninth Circuit’s decision cited cases analyzing the “acting under” element. Pet. App. 16a–17a (citing *Goncalves*, 865 F.3d at 1245 (noting that the “only real question” presented by the case under the “causal nexus” prong was “whether ... [defendant] ‘acted under’ a federal officer”); *Stirling v. Minasian*, 955 F.3d 795, 800 (9th Cir. 2020) (addressing whether Defendant was “acting under” a federal officer)). And it did so immediately before concluding that the evidence presented by Petitioners “demonstrate[d], at most, only general federal oversight over Defendants’ housing management efforts and compliance with applicable laws and regulations.” *Id.* at 17a.

The court went on to observe that *Lake v. Ohana Military Communities, LLC*, 14 F.4th 993 (9th Cir. 2021), was “instructive” to its analysis. *Id.* In *Lake*, like in this case, the removing defendant was “a military housing public-private venture.” *Id.* As in *Goncalves* and *Stirling*, the opinion in *Lake* used the phrase “causal nexus analysis” to describe the court’s combined consideration of the “relating to” and “acting under” elements. 14 F.4th at 1004. But *Lake* ultimately concluded that removal was not supported based on the “acting under” element: “The Navy’s consent power over aspects of the housing arrangement does not change the result. Requiring federal agency consent on collateral points fall[s] within the simple compliance with the law circumstance that does not meet the acting under standard.” *Lake*, 14 F.4th at 1005 (internal citation omitted).

As in *Lake*, the Ninth Circuit concluded here that the arrangement between the Navy and SDFH—as reflected in the operating agreement between the

entities, the ground leases, SDFH's operation and management plan, and the Navy's promulgation of general information about the hazards of mold—did not evince that SDFH was “acting under” federal officers. *See generally* Pet. App. 17a–21a; *see id.* at 17a (explaining that the “relationship between someone acting under a federal officer and the federal officer typically involves subjection, guidance, or control” (quoting *Stirling*, 955 F.3d at 800 (internal quotation marks omitted))); *id.* at 20a (highlighting “the dearth of evidence suggesting federal involvement in or control over Defendants’ mold management practices”).<sup>2</sup>

That the court below reached its jurisdictional determination based on the “acting under” element is also reflected in Petitioners’ Petition for Rehearing En Banc before the Ninth Circuit. In that filing, Petitioners challenged the panel’s conclusion that “leasing federal property ... to a private entity for that entity’s commercial purposes does not, without more, constitute the kind of assistance required to establish that the private entity is ‘acting under’ a federal officer.” Pet. for R’hg En Banc at 12–13, *Childs v. San Diego Family Hous.*, No. 24-1256 (9th

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<sup>2</sup> Likewise, the district court concluded that “the evidence on the record does not support SDFH and LMPM’s arguments [that] the challenged actions (or omissions) in this case were controlled by the Navy.” *Id.* at 48a. In reaching that conclusion, it leaned on cases, including *Lake*, that reasoned that an agreement that requires “federal agency consent on collateral points” does not evince that a defendant acted under that agency, but rather “simple compliance with the law.” *Id.* at 49a (quoting *Lake*, 14 F.4th at 1005 (citations omitted)).

Cir. Sep. 10, 2025), Dkt. No. 56.1 (internal quotation omitted).

Finally, the decision below, agreeing with the position of the United States as amicus curiae, was correct: Petitioners did not carry their burden of establishing that they were “acting under” a federal officer. As this Court has explained, that statutory phrase contemplates that the private entity acts “subordinate” to a “superior” federal agency or officer, “to assist, or to help carry out, the duties or tasks of the federal superior,” in a relationship that involves “subjection, guidance, or control.” *Watson*, 551 U.S. at 151–52 (cleaned up).

Petitioners, as the district court correctly observed, never “contend[ed] they were acting directly under the instructions of a federal officer”: There was no evidence of any communications between Petitioners and a federal officer as to the Childs’s mold complaints. Pet. App. 46a.

Absent that evidence, Petitioners argued that they adhered to a mold management plan that, according to them, was developed with the input and approval of the Navy. *Id.* at 46a–47a. The court below correctly determined that this point did not establish the type of relationship contemplated by the removal statute. *See id.* at 16a–21a; *see also Watson*, 551 U.S. at 153 (observing that compliance with federal laws, rules, and regulations is insufficient to establish that a private defendant is “acting under” a federal official, “even if the regulation is highly detailed and even if the private firm’s activities are highly supervised and monitored.”).

Significantly, the operating agreement between the Navy and Lincoln/Clark San Diego, LLC, “disclaims Navy responsibility over management and control decisions, stating Lincoln/Clark San Diego, LLC—and not the Navy—has ‘exclusive management and control’ over SDFH, including ‘full authority to take all actions necessary or appropriate to pursue the business and carry out’ SDFH’s purpose.” Pet. App. 48a (quoting Operating Agreement at 15, § 5.01(b), S. App. 20); *see also* Brief for the United States as Amicus Curiae at 22–24, *Childs v. San Diego Family Hous.*, No. 24-1256 (9th Cir. Oct. 30, 2024), Dkt. No. 30.1. (quoting Operating Agreement at 15, § 5.01, S. App. 20 (“[m]anaging [m]ember” of SDFH, not the government, has “exclusive management and control of the business of” SDFH and “commit[s] to ensuring superior quality operations and management”). Thus, to the extent that the Navy had input into the mold management plan, at most that input reflected “general federal oversight over Defendants’ housing management efforts and compliance with applicable laws and regulations.” Pet. App. 17a; *see also id.* at 48a–51a (reviewing the operating agreement and other evidence submitted by Petitioners and concluding that “[t]he evidence on the record does not support [Petitioners’] arguments that the challenged actions (or omissions) in this case were controlled by the Navy”).

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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