No. 25-1027

IN THE

Supreme Court of the United States

SAN DIEGO FAMILY HOUSING, LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION, *et al.*,

Petitioners,

v.

LENA CHILDS, *et al.*,

Respondents.

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

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

While Respondents at first claim to accept that this Court's recent ruling in *Chevron U.S.A., Inc. v. Plaquemines Parish, LA*, 608 U.S. ____, 146 S.Ct. 1052 (April 17, 2026) abrogates any causal connection or express direction requirement given the 2011 amendment's addition of "for or relating to" language, they proceed to present an unsupportable position: that the "acting under" prong separately requires express federal direction. Respondents do so in an attempt to resurrect a need for express orders or direction of the challenged conduct to support jurisdiction, and reshape the Ninth Circuit's opinion in this case. This is the exact same argument made by the State of Louisiana in *Plaquemines Parish*, which this Court has already directly rejected as not compatible with the statutory text.

Respondents have now also made this same argument to the Ninth Circuit in response to that court's recent request for supplemental briefing relating to this Court's ruling in *Plaquemines Parish*. The Ninth Circuit seems to be considering amending its opinion in this case, but the open question is how. The Ninth Circuit used a plainly incorrect "causal nexus" standard following the 2011 amendment for fifteen years. This incorrect causal nexus standard further impermissibly conflates the "acting under" and "for or relating to" prongs of the statute, rendering all conclusions reached thereunder inherently suspect, especially here, where the Ninth Circuit also in its decision selectively misapplies clear Supreme Court precedent to further cast government contractor Petitioners as mere private lessees and as simply following federal regulations, despite Petitioners'

federal military housing contractor work for the Navy under Navy contracts and Navy approved plans. *Childs v. San Diego Fam. Hous., LLC*, 150 F.4th 1151, 1161-1162 (9th Cir. 2025) (citing *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733, 760 (9th Cir. 2022) (itself citing to *Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 152 (2007)); quoting *Watson*, 551 U.S. at 152 (2007)).

There is definitive risk that the Ninth Circuit adopts Respondents' argument or some variation thereof to salvage its opinion and improper standard in contravention of this Court's ruling in *Plaquemines Parish*. This Court has the opportunity to foreclose that possibility, reject outright the Ninth Circuit's causal nexus standard and Respondents' erroneous argument, and confirm the ability of current, nationwide government contractors performing federal work that the government would otherwise be doing itself, to remove claims relating to that federal work to federal court. This Court should grant certiorari.

I. Respondents Fail to Acknowledge the Full Breadth of this Court's Ruling in *Plaquemines Parish* and that it Obliterates both the Ninth Circuit's Decision Here and its Use of an Improper Causal Nexus Test which Further Improperly Conflates the "Acting Under" and the "For or Relating to" Prongs of the Statute.

Although Respondents claim to admit that *Plaquemines Parish* answered the first question presented by Petitioners, that any "causal nexus" test does not survive the 2011 amendment to 28 U.S.C §1442(a)(1), they simultaneously fail to acknowledge the full scope of

this Court's ruling, or its pervasive effect on the Ninth Circuit's opinion here and its specific causal nexus test—a causal nexus test which impermissibly conflates the "acting under" and "for or relating to an act under color of federal office" prongs of the statute.

Respondents repeatedly cite this Court's holding that "a removing defendant need not show that his federal duties specifically required or strictly caused the challenged conduct,"[1] which addresses what a removing defendant no longer needs to show, but they leave out the second part of this Court's holding as to what the proper standard is. A removing defendant, following the 2011 statutory amendment, only need show that it acted as a federal agent and that the challenged conduct "related to" or had a close connection with its federal activities, one that was not merely tenuous, remote, or peripheral.[2] *Plaquemines Parish*, 146 S.Ct. at 1061. To that end, this Court further stated, "One thing can relate to another even if the connection is 'indirect.'" *Id.* at 1060. "[O]ne thing can relate to another even . . . without a strict causal relationship." *Id.* "[T]he ordinary meaning of 'relating to' does not require the defendant to show that his federal duties specifically invited the challenged conduct." *Id.* at 1062.

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1. Opposition Brief at pp. 1, 7 (citing *Chevron U.S.A., Inc. v. Plaquemines Parish, LA*, 608 U.S. __, 146 S.Ct. 1052, 1060 (2026)).

2. This Court gave, as an example of "tenuous," "remote" or "peripheral," "Ordinary readers would not understand the statement that someone is 'related to Joe' to refer to 'a mutual tie to Adam and Eve.'" *Id.* at 1061 (citing *Rutledge v. Pharmaceutical Care Mgmt. Assn*, 592 U.S. 80, 94 (2020), Thomas, J., concurring).

This Court's ruling in *Plaquemines Parish* eviscerates the Ninth Circuit's decision in this case, which is unquestionably based on the Ninth Circuit's own specific "causal nexus" test, a test which impermissibly conflates the "acting under" and "for or related to an act under color of federal office" prongs of the statute: whether "there is a causal nexus between [the defendant's] actions, taken pursuant to a federal officer's directions, and plaintiff's claims." App. 6a, 15a; *see also*, *e.g.*, *Lake v. Ohana Mil. Communities*, 14 F.4th 993, 1004 (9th Cir. 2021); *Leite v. Crane Co.*, 749 F.3d 1117, 1120 (9th Cir. 2014). The Ninth Circuit's decision in this case references "causal nexus" nine times. *Childs*, 150 F.4th at 1156, 1160-62 (2025). Respondents' position that any part of the *Childs* decision survives *Plaquemines Parish*, in light of the Ninth Circuit's repeated reliance on a causal nexus test that further impermissibly conflates the "acting under" and "for or relating to" prongs of the statute, is unavailing and unsustainable.

Because Respondents acknowledge neither the conflated nature of the Ninth Circuit's causal nexus test nor the full scope of this Court's ruling, they further cabin this Court's ruling to just a pronouncement rejecting a causal nexus requirement generically, so that they can then twist the Ninth Circuit's decision into one which was based instead on the "acting under" prong, to try to salvage it. Not only is this impossible because the Ninth Circuit impermissibly conflated the "acting under" prong with the "for or related to" prong under its causal nexus test, but it wholly ignores, and runs directly afoul of, this Court's opinion as to this exact same "acting under" argument made by the State of Louisiana in *Plaquemines Parish*.

II. The State of Louisiana Made the Same Argument as Respondents Do Here in *Plaquemines Parish* as to the "Acting Under" Prong, Which this Court Directly Rejected in its Ruling.

In *Plaquemines Parish*, the State of Louisiana argued that even if the "for or relating to" prong was expanded by the 2011 amendment, the "acting under" prong still required a specific federal direction in taking the specific actions challenged. 608 U.S. ____, 146 S.Ct. at 1062-63 (2026) (citing Brief for Respondents Louisiana, et al. at pp. 18, 21, *Chevron U.S.A. Inc. v. Plaquemines Parish*, No. 24-813 (U.S. Nov. 13, 2025)). That same position is precisely what Respondents devote the majority of their brief to arguing. However, this Court has already held that this theory

> . . . is not consistent with the statutory text. The statute permits the removal of state-court suits against "any officer (or person acting under that officer)" that are "for or relating any act under color of such office." 28 U.S.C. §1442(a)(1). It contemplates removal of suits against officers and their agents for acts that were not done under color of their offices, so long as the suits "relat[e] to" such acts.

Plaquemines Parish, 146 S.Ct. at 1063. This Court further cautioned that the "acting under" prong of 28 U.S.C. §1442(a) is not to be conflated with the "for or relating to" prong: a defendant need not show that he was directed by the federal officer in taking the specific actions challenged, only that the challenged actions *relate to* the defendant's federal activities, lest the "relating to" requirement be rendered essentially functionless. *Id.*

As argued by Chevron in *Plaquemines Parish*, "In cases . . . involving government contractors, the acting-under element is readily satisfied." Reply Brief for Petitioners Chevron U.S.A. Inc., et al. at p. 2, *Chevron U.S.A. Inc. v. Plaquemines Parish*, No. 24-813 (U.S. Dec. 15, 2025). As Chevron further presented, citing both this Court's and the Fifth Circuit's jurisprudence, "[a] private party 'working under a federal contract to produce an item the government needed' is the 'archetypal case' of a defendant 'acting under' a federal officer." *Id.* at p.18 (citing Pet. at p.15, Case No. 24-813 (quoting *Williams v. Lockheed Martin Corp.*, 990 F.3d 852, 859 (5th Cir. 2021)), accord *Watson v. Philip Morris Cos.*, 551 U.S. 142, 153-54 (2007). The "acting under" prong answers the "who" question of federal officer removal—who can remove cases under 28 U.S.C. §1442(a)(1). The "for which" activities question was that which was broadened by the 2011 amendment with the "for or relating to any act under color of federal office" language addition, as confirmed by this Court in *Plaquemines Parish*. *See* Brief of Petitioners Chevron U.S.A. Inc., et al. at p. 51, *Chevron U.S.A. Inc. v. Plaquemines Parish*, No. 24-813 (U.S. Sept. 4, 2025).

Undisputedly, Petitioners are current federal contractors under ongoing federal Navy contracts, who perform their duties under Navy approved plans and Navy policies, to operate and maintain U.S. Navy military housing, a task the Navy would otherwise have to do itself. App. 65a-71a, 85a-115a; S. App. 229, 361-370. They do not just lease government property but operate Navy military housing upon it, and they do not just follow federal regulations, but follow their contracts and Navy guidance, approved plans and policies. *Id.* Respondents' claims calling Petitioners' response to

mold and water intrusion issues in their housing into question plainly "relate to" Petitioners' federal work for the Navy's housing. Respondents' attempt to read an "express federal direction" or federal order requirement back into the statute via the "acting under" prong goes against the statutory language and this Court's opinion in *Plaquemines Parish*, and, as this Court stated, such an interpretation would render the "relating to" language redundant. *Plaquemines Parish*, 608 U.S. ___, 146 S.Ct. at 1063.

Were Respondents' position correct, this Court would have said so in response to Louisiana's identical argument, and not outright rejected it as it did. Were Respondents' position correct, Chevron could have been found by this Court (and/or the Fifth Circuit below) to have not been acting under a federal officer, as its ongoing crude oil production activities over the past several decades were not done at the express direction of a federal officer. However, those activities were properly found by this Court to be "relating to" their prior crude procurement and avgas refining activities under their federal contracts during World War II, even though those contracts were historic and did not specifically dictate how to obtain the crude for the avgas.

It does not get any clearer than what this Court has already said. Respondents' argument that the "acting under" prong still requires an express federal direction or order has already been rejected by this Court.

III. Respondents' Repeated Citation to Now-Defunct Pre-*Plaquemines Parish* Ninth Circuit Case Law to Support their Erroneous "Acting Under" Position and that the Ninth Circuit's Decision Below Still at Least in Part Survives *Plaquemines Parish*, Underscores Why This Court Should Grant Certiorari.

Doubling down on their erroneous and unsustainable "acting under" position, Respondents walk through various pre-*Plaquemines Parish* Ninth Circuit cases, and the Ninth Circuit's decision here, to try to support their argument that "the causal nexus test did not affect the outcome of this case because Petitioners were not 'acting under' a federal officer."[3] They do this while ignoring that these Ninth Circuit cases and causal nexus test, which impermissibly conflated the "acting under" and "for or relating to" prongs under it, have been effectively overruled by *Plaquemines Parish*. Describing impermissible conflation as "analyzed . . . *together*" or "combined consideration" does not save the argument. Respondents' Opposition Brief at pp.10-11. This position is also now what Respondents have argued to the Ninth Circuit, in response to its recent call for supplemental briefing on *Plaquemines Parish*.

Herein lies the danger if this Court does not grant certiorari. Respondents, and other parties, will continue to make this very argument in the Ninth Circuit, if not in other jurisdictions, to try to save at least some of the Ninth Circuit's present and historical rulings. Parties

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3. Respondents' Opposition Brief at p.9, Heading of Section III.

will claim that the "acting under" prong of the statute still requires express direction, obviating the "for or relating to" prong and keeping Ninth Circuit's impermissibly conflated causal nexus analysis alive. Federal contractors, doing the federal government's work, will be deprived of a federal court venue for claims relating to that work. Even the Ninth Circuit itself could adopt Respondents' argument, as this argument is before that court right now, to try to avoid being directly overruled by this Court while saving face as to its past fifteen years of decisions using an incorrect causal nexus test that further impermissibly conflates the "acting under" and "for or relating to an act under color of federal office" prongs of 28 U.S.C. §1442(a)(1).

This Court should accept Petitioners' invitation to directly address, and reject, the Ninth Circuit's impermissibly conflated causal nexus standard, which retains a causal requirement and express direction requirement that both the post-2011 statutory language, and this Court, do not support. Because of the arguments presented by Respondents, the first question presented by Petitioners, as to the Ninth Circuit's causal nexus standard, should be directly addressed by this Court.

Like with Chevron, Petitioners are being sued in state court for activities undertaken while performing their federal contracts. Chevron's contracts were for government avgas production during a war; Petitioners' contracts are for government military housing. Both had or have federal contracts; both were or are federal contractors. The parish and Louisiana contend that Chevron should have obtained the crude by other means that would not have caused the claimed damage. Respondents claim that Petitioners should have done

more or something different than what they did with their response to mold and water intrusion that would have not caused the claimed damage. Chevron alleged that it obtained the crude in the best way it could to produce the avgas expeditiously as required by the government. Petitioners allege that they followed their contracts and the plans created with and for the Navy for their housing response, and further responded to the specific situation of Respondents in the best way they could to fulfill their housing operations and maintenance obligations to the Navy. This case belongs in federal court, and so do all other cases in the Ninth Circuit and nationwide which are analogous to it.

Current federal contractors performing important nationwide governmental work for the military or other government branches, that those governmental entities would otherwise be performing themselves, should have definitive certainty that they can remove cases to federal court where there are claims brought against them "relating to" that work. That is the second question presented by Petitioners, and this Court should answer it directly, especially in light of the spin which it is clear will follow, as per Respondents' arguments, if this Court does not.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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