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APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 25-50092

ARTURO GONZALEZ,

Plaintiff — Appellee,

versus

EL CENTRO DEL BARRIO, *doing business as* CENTROMED,

Defendant —Appellant.

[DATE STAMP]
United States Court of Appeals
Fifth Circuit
FILED
February 6, 2026
Lyle W. Cayce
Clerk

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:24-CV-852

Before Haynes, Duncan, and Ramirez, *Circuit Judges*.

Haynes, *Circuit Judge*:

The underlying case is a class action asserting claims arising out of a data breach. This appeal concerns only whether the defendant below can seek a federal forum under 42 U.S.C. § 233 or 28 U.S.C. § 1442. The district court remanded this case to state court. We likewise conclude that removal was improper under both statutes and AFFIRM the district court's remand.

I. Background

El Centro Del Barrio, doing business as CentroMed, is a Texas nonprofit organization that operates as a community health center. As part of its operations, CentroMed collects and stores on its network some of its patients' personal information. As alleged, cybercriminals infiltrated CentroMed's network and gained access to numerous individuals' private information in 2024. After the data breach was discovered, Arturo Gonzalez, individually and on behalf of those similarly situated, filed a class action petition in Bexar County, Texas. Gonzalez claims that CentroMed failed "to take and implement adequate and reasonable measures to ensure that [Plaintiffs'] Private Information was safeguarded." Relying on both 42 U.S.C. § 233 and 28 U.S.C. § 1442, CentroMed removed the case to the federal court.

A. Statutory Framework

The first statute on which CentroMed relies, 42 U.S.C. § 233, allows for removal by a deemed employee of the Public Health Service ("PHS") in a narrow set of circumstances. 42 U.S.C. § 233(*l*)(1)–(2).

The PHS is supervised by the Department of Health and Human Services ("HHS"). *Id.* § 202. Under § 233(a) of the Public Health Services Act ("PHSA"), a PHS employee is provided "absolute immunity . . . for actions arising out of the performance of medical or related functions within the scope of their employment." *Hui v. Castaneda*, 559 U.S. 799, 806 (2010). Where such a claim is asserted, the United States is substituted for the defendant and the action proceeds under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671–80. *See* 42 U.S.C. § 233(a), (c).

In the Federally Supported Health Centers Assistance Act ("FSHCAA"),[1] Congress extended this immunity to certain private health centers that receive federal funds. 42 U.S.C. §§ 233(g)(4), 254b. For a federally-funded health center to avail itself of this immunity, the HHS Secretary must first "deem" the health center to be part of the PHS for a given calendar year, which involves seeking approval for grant funds and submitting an application to HHS demonstrating that it meets the enumerated requirements. *See id.* § 233(g)(1)(A), (g)(1)(D), (g)(4), (h). But the deeming decision alone does not provide immunity. For an action to be covered, it must seek personal injury damages "resulting from the performance of medical, surgical, dental, or related functions" that were conducted by a PHS employee

[1] *See* Federally Supported Health Centers Assistance Act, Pub. L. No. 102-501, 106 Stat. 3268, 3268–72 (1992); *see also* Federally Supported Health Centers Assistance Act, Pub. L. No. 104-73, 109 Stat. 777, 777–83 (1995).

"acting within the scope of [its] . . . employment." *Id.* § 233(a); *see also Hui*, 559 U.S. at 806.

When an action is filed against a federally-funded health center in state court, § 233 sets out the process for removal to federal court. The center must "promptly furnish copies of the pleading" to the appropriate United States attorney, the Attorney General, and the Secretary of HHS. 42 U.S.C. § 233(b). After receiving notice, the Attorney General may certify "that the defendant was acting in the scope of [its] employment at the time of the incident," and, where that is the case, removal is required. *Id.* § 233(c). More precisely, however, § 233 clarifies that, "within 15 days" of notification of the action, the Attorney General "shall make an appearance in such court and advise such court as to whether the Secretary has determined" that the center "is deemed to be an employee of the [PHS] for purposes of [§ 233] with respect to the actions or omissions that are the subject of such civil action or proceeding." *Id.* § 233(*l*)(1). "Such advice" is "deemed to satisfy" § 233(c)—the scope of employment certification. *Id.* But "[i]f the Attorney General fails to appear in State court" within 15 days, the health center may remove. *Id.* § 233(*l*)(2).

The second statute on which CentroMed relies allows certain federal officers to remove a state-court action to federal court. 28 U.S.C. § 1442. Specifically, the federal officer removal statute allows "any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office" to remove an action filed in state court to federal court. *Id.* § 1442(a)(1). This "is a pure jurisdictional statute, seeking to do nothing more than grant district court jurisdiction over cases in which a federal officer is a defendant." *Guadalupe-Blanco River Auth. v. City of Lytle*, 937 F.2d 184, 185 (5th Cir. 1991) (quoting *Mesa v. California*, 489 U.S. 121, 136 (1989)). The federal officer must remove the action within 30 days after it receives a pleading or other paper from which the right to remove is ascertainable. *See Morgan v. Huntington Ingalls, Inc.*, 879 F.3d 602, 607 (5th Cir. 2018) (citing 28 U.S.C. § 1446(b)(1), (3)).

B. Procedural History

CentroMed receives federal funding under the PHSA, 42 U.S.C. §§ 233(g)(4), 254b, and has, in some circumstances, been "deemed" a PHS employee. After CentroMed was served in this case on June 26, 2024, it delivered the pleading to HHS and requested coverage. The Attorney General, through the United States Attorney for the Western District of Texas,[2] first appeared in state court on July 12, 2024. The Attorney General clarified that notice of the action was received from HHS on July 8, 2024, and informed

[2] The United States Attorney for the relevant district "is authorized to make the statutory certification that the covered person was acting at the time of the incident out of which the suit arose under circumstances in which Congress has provided by statute that the remedy provided by the [FTCA] is made the exclusive remedy." 28 C.F.R. § 15.4(b).

the state court that, as of that time, HHS had "not yet provided its report as to whether the deemed status of CentroMed under 42 U.S.C. §§ 233(g) and (h) extends to the acts or omissions that are the subject of this civil action." Then, on July 23, 2024, 15 days after receiving notice of the petition, the Attorney General notified the state court that CentroMed "was not deemed to be a [PHS] employee for purposes of the acts or omissions giving rise to the suit and that this action therefore [was] not subject to the provisions of 42 U.S.C. § 233," so it would not intervene.

Nonetheless, CentroMed removed 37 days after it was served, arguing that it was entitled to a federal forum under both 42 U.S.C. § 233 and 28 U.S.C. § 1442. Gonzalez promptly filed a motion to remand, contending that the district court lacked jurisdiction because CentroMed did not have a right to remove on either basis. The United States, as a non-party, also urged the district court to remand.

The district court granted Gonzalez's motion to remand. The district court concluded that CentroMed had no right to remove under § 233(*l*)(2) because the Attorney General timely appeared in state court, and its removal under § 1442(a)(1) was untimely. CentroMed promptly appealed.

II. Jurisdiction & Standard of Review

Though the parties do not discuss jurisdiction at length, we have "an independent obligation to assess the basis for subject matter jurisdiction before wielding the judicial power of the United States." *La.*

Indep. Pharmacies Ass'n v. Express Scripts, Inc., 41 F.4th 473, 478 (5th Cir. 2022) (citations omitted). With that in mind, we turn to jurisdiction.

To be sure, orders remanding a case to state court are ordinarily unreviewable. 28 U.S.C. § 1447(d). However, that rule notes that a removal under § 1442 is reviewable.

With respect to § 233, we can review because the district court effectively concluded that CentroMed was unable to avail itself of immunity under § 233. In *Hui*, the Supreme Court approved the Ninth Circuit's conclusion in a similar context that "district court orders denying absolute immunity constitute 'final decisions' for purposes of 28 U.S.C. § 1291." 559 U.S. at 804 n.4 (citation omitted). Accordingly, a district court's effective denial of § 233 immunity is subject to appellate review.

As for the standard of review, we review de novo issues of subject matter jurisdiction and issues related to "the propriety of removal." *Oviedo v. Hallbauer*, 655 F.3d 419, 422 (5th Cir. 2011).

III. Discussion

CentroMed contends on appeal that its removal was proper under both § 233 and § 1442. In its view, the district court was wrong to conclude that CentroMed was unable to remove under § 233(*l*)(2) and that its removal under § 1442(a)(1) was untimely. Gonzalez and the United States, as amicus curiae, disagree and argue that the district court was correct to remand. We start with § 233 and end with § 1442.

A. Removal under 42 U.S.C. § 233

The relevant issue with respect to § 233 is whether CentroMed was entitled to remove under § 233(*l*)(2). The parties and the United States each take different views of how § 233 operates and dispute when § 233(*l*)(2) permits a defendant to remove.

CentroMed argues on appeal that because the Attorney General did not appear or remove as required, it was permitted to do so under § 233(*l*)(2). We disagree in all respects. In reaching this conclusion, we explain that the Attorney General complied with § 233(*l*)(1) and removal was accordingly inappropriate under § 233(*l*)(2).

1. The Attorney General's notice complied with § 233(l)(1)

We must first determine what § 233(*l*)(1) required of the Attorney General. Although § 233 "is hardly a model of clarity," *Blumberger v. Tilley*, 115 F.4th 1113, 1126 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 2818 (2025), its text explains exactly what the Attorney General must tell the state court.

Start with § 233(*l*)(1)'s text. If a lawsuit is filed in state court against a deemed PHS employee seeking damages described in subsection (a):[3]

[3] In relevant part, § 233(a) explains that the remedy against the United States set out in 28 U.S.C. §§ 1346(b) and 2672 "for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions . . . by any . . . employee of the [PHS] while acting within the scope

> the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h), that such entity . . . is deemed to be an employee of the [PHS] for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding.[4]

42 U.S.C. § 233(*l*)(1).

The key issue here concerns what § 233(*l*)(1) requires the Attorney General to tell the state court. CentroMed argues that the Attorney General needs only to inform the state court as to whether the health center had been deemed a PHS employee for the given year. The text belies this assertion.

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of his . . . employment, shall be exclusive of any other civil action or proceeding . . . ." 42 U.S.C. § 233(a).

[4] The statute further clarifies that "[s]uch advice shall be deemed to satisfy the provisions of subsection (c) that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility." 42 U.S.C. § 233(*l*)(1). Subsection (c) clarifies that when the Attorney General certifies that "the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed . . . ." *Id.* § 233(c). Accordingly, an answer in the affirmative from the Attorney General requires removal.

"The task of statutory interpretation begins and, if possible, ends with the language of the statute." *United States v. Lauderdale Cnty.*, 914 F.3d 960, 964 (5th Cir. 2019) (citation omitted). "When the language is plain, we must enforce the statute's plain meaning, unless absurd." *Id.* (citation modified). The statute's language is clear.

While the entity needs to have been deemed an employee of the PHS for the year, that fact is necessary but not sufficient. 42 U.S.C. § 233(*l*)(1). The statute goes on to explain that the Attorney General is to notify the state court if the health center is deemed to be a PHS employee "with respect to the actions or omissions that are the subject of such civil action or proceeding." *Id.* A health center is deemed to be a PHS employee only with respect to actions for damages "resulting from the performance of medical, surgical, dental, or related functions." *Id.* § 233(a). So, § 233(*l*)(1) asks the Attorney General to notify the state court as to whether the defendant was deemed to be a PHS employee during the relevant time period *and* whether the complaint arises from the performance of services listed in § 233(a).[5] *Id.*

[5] This is what § 233(*l*)(1) requires at a minimum. This case does not concern other issues that may be presented by the statute's "acts or omissions" language. *See, e.g.*, *Blumberger v. Tilley*, 115 F.4th at 1145 (Desai, J., dissenting in part) (discussing that, although the majority opinion concluded that "acts or omissions" refers "to whether the conduct alleged in the lawsuit involves 'medical, surgical, dental, or related functions,'" that language should extend to the other components of § 233 coverage such as whether the employee was "providing services that relate to the health center's grant-funded activities; treating the health

§ 233(*l*)(1); *see also Blumberger*, 115 F.4th at 1130 (reaching this conclusion). The statute calls for a case-specific deeming determination.

Here, the Attorney General's notice satisfied § 233(*l*)(1). Contrary to CentroMed's assertions on appeal, the record obviates any issues related to the timing of the Attorney General's notice.[6] Further, though the Attorney General initially informed the

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center's patients unless certain criteria are met; and acting within the scope of their employment"). Because these other issues are not presented here, we need not reach them.

[6] CentroMed also takes issue with the timing of the Attorney General's notice to the state court. Not all circuit courts to address this issue have agreed on what the Attorney General must do within 15 days. *Compare Allen v. Christenberry*, 327 F.3d 1290, 1295 (11th Cir. 2003) (Attorney General may appear within 15 days and state that the case-specific deeming determination has yet to be made), *and Doe v. Centerville Clinics Inc.*, No. 23-2738, 2024 WL 3666164, at *2 (3d Cir. Aug. 6, 2024) (same), *cert. denied*, 145 S. Ct. 1427 (2025), *reh'g denied*, 145 S. Ct. 2726 (2025), *with Blumberger*, 115 F.4th at 1133 (Attorney General must appear and give the required advice within 15 days). But we need not wade into this debate. Although CentroMed has argued that the Attorney General's supplemental notice informing the state court of the case-specific deeming determination occurred outside the 15-day time period, the record demonstrates otherwise. CentroMed's assertion otherwise relies on a copy of the notice that bears a generic document stamp. As the United States explained in a letter to the court, the stamp on which CentroMed relies does not appear to have been applied by the state-court clerk's office. Instead, the state-court docket clarifies that the notice was filed on July 23, 2024, and a file stamped copy of the notice appears in the record, clarifying that the Attorney General's supplemental notice was filed on July 23, 2024—within 15 days of the Attorney General's notice of the action.

state court that HHS had not yet made the case-specific deeming determination, the record clarifies that, via a subsequent notice filed 15 days after receiving notice of the petition, the Attorney General notified the state court that it would not intervene because CentroMed "was not deemed to be a [PHS] employee for purposes of the acts or omissions giving rise to the suit and that this action therefore [was] not subject to the provisions of 42 U.S.C. § 233." The Attorney General explained that the United States had determined that the claims resulting from a criminal data breach did not fall within § 233(a)'s scope because the claims were not for medical malpractice of the type that the statute is intended to cover. The Attorney General's reply in the negative is precisely the sort of case-specific deeming determination that § 233(*l*)(1) requires.

We conclude that the Attorney General's negative reply complied with and satisfied § 233(*l*)(1), and the Attorney General was not required to agree that this action can be removed.

2. CentroMed was not permitted to remove under § 233(l)(2)

We must now determine whether CentroMed was permitted to remove this action under § 233(*l*)(2).

The statute explains that "[i]f the Attorney General fails to appear in State court within the time period prescribed under paragraph (1)"—15 days—"upon petition of any entity . . ., the civil action or proceeding shall be removed." 42 U.S.C. § 233(*l*)(2).

This text makes plain that removal is permitted only when the Attorney General does not appear as the statute requires.[7]

CentroMed cannot demonstrate that its removal was proper under § 233(*l*)(2). CentroMed's arguments in support of removal all depend on its contention that the Attorney General, for one reason or another, failed to comply with § 233. But as noted above, the Attorney General complied with § 233(*l*)(1). The Attorney General provided the notice required by § 233(*l*)(1) within the required time frame. As a result, CentroMed was not permitted to remove under § 233(*l*)(2).

Because the text is clear, the presumption that executive determinations are subject to judicial review is inapplicable. The "strong presumption" "that executive determinations generally are subject to judicial review" applies "when a statutory provision is reasonably susceptible to divergent interpretation." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020) (citation modified). But here, the statute's text is clear. Congress intended that the case-specific deeming determination be made by HHS and the Attorney General. A difference in opinion about that determination does not qualify as grounds for

[7] The Attorney General's appearance and negative reply here plainly prevented CentroMed's removal. As noted above, because the Attorney General appeared and notified the state court of the case-specific deeming determination within 15 days, we need not resolve any issues related to whether the Attorney General's appearance alone prevents removal under § 233(*l*)(2).

removal. *See El Rio Santa Cruz Neighborhood Health Ctr., Inc. v. U.S. Dep't of Health & Hum. Servs.*, 396 F.3d 1265, 1271 (D.C. Cir. 2005) ("A review of the removal remedy under the FSHCAA indicates Congress almost certainly did not intend for the FSHCAA removal provisions of § 233(*l*)(2) to provide a review procedure for a negative deeming determination by the Secretary.").[8]

* * *

CentroMed did not have a right to remove under § 233(*l*)(2) because, within 15 days of receiving notice, the Attorney General appeared in state court and advised the court that CentroMed was not "deemed to be an employee of the [PHS] for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding." 42 U.S.C. § 233(*l*)(1); *id.* § 233(*l*)(2). Accordingly, the district court did not err by concluding that CentroMed's removal under § 233(*l*)(2) was improper.

B. Removal under 28 U.S.C. § 1442

CentroMed next asserts that its removal was proper under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). CentroMed contends that its

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[8] As an alternative argument, both Gonzalez and the United States contend that this action does not fall into § 233(a)'s scope. As a result, they say that the action is inappropriate on § 233 grounds, necessitating remand. But we need not reach this question because we conclude that CentroMed was not entitled to remove this action under § 233(*l*)(2).

removal was timely because it removed the case within 30 days after the Attorney General filed its first notice in state court. We disagree.

The § 1446(b)(1) standard is appropriate, requiring removal within 30 days of receipt of the pleading, because the petition "affirmatively reveal[ed] on [its] face the information [CentroMed] needed to invoke federal-officer removal." *Parish of Plaquemines v. Chevron USA, Inc.*, 7 F.4th 362, 368–69 (5th Cir. 2021); *see also Morgan*, 879 F.3d at 607. The petition clearly alleged that CentroMed failed to protect its patients' personal information during the time when CentroMed had been deemed a PHS employee.[9]

Under § 1446(b)(1), CentroMed's removal was untimely. Instead of removing within 30 days, CentroMed removed this action 37 days after it was served with the petition. That was too late. Accordingly, the district court properly determined that CentroMed's removal under the federal officer removal statute was untimely.[10]

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[9] This conclusion is supported by the fact that the Attorney General's state-court filings do not support removal under § 1446(b)(3) because "no aspect of" the removal theory "would have only become apparent" at that time, *Decatur Hosp. Auth. v. Aetna Health, Inc.*, 854 F.3d 292, 297 (5th Cir. 2017), and the filing did not "result from the voluntary act of [the] *plaintiff." Parish of Plaquemines*, 7 F.4th at 373 (citation modified).

[10] Gonzalez and the United States both alternatively contend that removal under 28 U.S.C. § 1442(a)(1) was substantively improper. Because we conclude that CentroMed's removal was untimely, we need not reach these alternative arguments.

IV. Conclusion

For the reasons discussed above, we AFFIRM the district court's order of remand.

APPENDIX B

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

ARTURO GONZALEZ, **individually, and on behalf of all others similarly situated,**

Plaintiffs,

v.

CIVIL NO. SA-24-CV-00852-OLG

EL CENTRO DEL BARRIO D/B/A CENTROMED,

Defendant.

[DATE STAMP]
FILED FEBRUARY 06, 2025
CLERK, U. S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: NM
DEPUTY

ORDER

Before the Court is Plaintiff's Motion to Remand Case to State Court. (*See* Dkt. No. 5). After careful consideration of the Motion, Defendant's Response (Dkt. No. 13), Plaintiff's Reply (Dkt. No. 17), the record, and applicable law, the Court finds that the Motion will be granted.

I. BACKGROUND

Plaintiff initially filed this action in state court on May 28, 2024, alleging claims arising under Texas state law. (*See* Dkt. No. 5-1 at 1, 8–29). Plaintiff's petition does not allege any federal claims. (*See id*. at 22–29). On June 26, 2024, Plaintiff served the petition. (*See* Dkt. No. 5-2 at 1). On July 8, 2024, Defendant received correspondence from Health and Human Services (HHS) requesting that Defendant provide additional information for a coverage determination. (*See* Dkt. Nos. 1 at 17; 1-3 at 1–3). On the same day, HHS notified the United States Attorney for the Western District of Texas of the action. (*See* Dkt. No. 7 at 2). On July 12, 2024, the United States Attorney filed a notice pursuant to 42 U.S.C. § 233(*l*)(1) advising the state court that the United States was considering whether Defendant's acts or omissions fell within the scope of 42 U.S.C. § 233(a). (Dkt. No. 1-2 at 41–42). On July 23, 2024, the United States Attorney filed a second notice advising the state court that Defendant was not deemed to be a Public Health Service (PHS) employee entitled to the provisions of 42 U.S.C. § 233. (*See* Dkt. No. 1-2 at 44).

On August 2, 2024, Defendant filed a Notice of Removal. (Dkt. No. 1). In its removal notice, Defendant claims removal is proper under the Federally Supported Health Centers Assistance Act (42 U.S.C. § 233), Federal Officer Removal Statute (28

U.S.C. § 1442), and Class Action Fairness Act (28 U.S.C. § 1332(d)). (*See* Dkt. No. 1 at 1, 4–10). On August 30, 2024, Plaintiff moved to remand the case. (Dkt. No. 5). The United States filed a notice advising the Court that Defendant's removal was procedurally improper. (*See* Dkt. No. 7). Defendant has filed its response in opposition to Plaintiff's motion to remand. (Dkt. No. 13). The United States filed a supplemental memorandum to its notice. (Dkt. No. 16). Plaintiff has filed a reply to Defendant's response. (Dkt. No. 17).

II. LEGAL STANDARD

Federal district courts "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A defendant may remove any civil action filed in state court to federal court if the federal court has original jurisdiction over the action. *See* 28 U.S.C. § 1441(a). Under 28 U.S.C. § 1447(c), a plaintiff can remand the case to state court based on a procedural or jurisdictional defect. *See* 28 U.S.C. § 1447(c) ("A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a).").

III. DISCUSSION

A. Removal Was Procedurally Improper Under 42 U.S.C. § 233

The Federally Supported Health Centers Assistance Act (FSHCAA) provides that a claim against the United States is the exclusive remedy for damages resulting from the performance of medical functions by any PHS employee acting within the scope of their employment. *See* 42 U.S.C. § 233(a); *see also Hui v. Castaneda,* 559 U.S. 799, 806 (2010) ("Section 233(a) grants absolute immunity to PHS officers and employees for actions arising out of the performance of medical or related functions within the scope of their employment"). To be covered under the FSHCAA, the defendant seeking immunity must be deemed a PHS employee by the Secretary. *See* 42 U.S.C. § 233(g)(l)(A). Additionally, § 233 affords two removal mechanisms to bring a state court action into federal court. *See* 42 U.S.C. §§ 233(c), (*l*). The Court finds that neither procedural mechanism was met to justify removal in this case.

1. Attorney General Certification Under 42 U.S.C. § 233(c)

Section 233(c) provides that a civil action filed in state court must be removed by the Attorney General[1] "[u]pon certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose." 42 U.S.C. § 233(c). Removal under this provision is mandatory at any time before trial. *Id.*

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[1] The Court recognizes that "[t]he United States Attorney for the district where the civil action or proceeding is brought . . . is authorized to make the statutory certification" on behalf of the Attorney General. *See* 28 C.F.R. § 15.4(b).

Defendant could not remove the case under § 233(c) because the United States Attorney did not certify that Defendant was a PHS employee acting within the scope of employment at the time the alleged data breach occurred. (*See* Dkt. No. 1-2 at 41–42, 44). In the United States' first designation notice, the United States Attorney advised that Defendant was "deemed" to be a PHS employee. (*See id.* at 41). The United States Attorney did not certify in its first designation notice that Defendant was a PHS employee acting within the scope of employment during the acts or omissions which gave rise to the action. (*See id.* at 42) (reserving the right to determine whether the alleged acts fell within the scope of §§ 233(a), (c)). Eleven days after filing its first designation notice, the United States Attorney unequivocally denied Defendant's status as a PHS employee "for purposes of the acts or omissions giving rise to the suit." (*See id.* at 44). Thus, Defendant's removal under § 233(c) was improper because the United States Attorney neither certified Defendant's PHS employee status under § 233 nor removed the case. *See* 42 U.S.C. § 233(c) ("Upon a certification by the Attorney General . . . such civil action . . . shall be removed . . . by the Attorney General . . . .").

2. Attorney General Appearance Under 42 U.S.C. § 233(*l*)

Within fifteen days of receiving notice of a civil action against a § 233 entity in state court, the Attorney General must make an appearance in the state court and "advise such court as to whether the Secretary has determined . . . such entity . . . is deemed to be an employee of the Public Health Service . . . *with respect to the actions or omissions* that are the subject of such civil action or proceeding." 42 U.S.C. § 233(*l*)(1) (emphasis added). If the Attorney General fails to appear within the time prescribed, then a defendant is permitted to remove the action. *See* 42 U.S.C. § 233(*l*)(2).

Removal is not proper if the Attorney General timely appears and advises that no determination has been made regarding a defendant's § 233 status. *See Allen v. Christenberry,* 327 F.3d 1290, 1295 (11th Cir. 2003) (finding removal improper because the United States Attorney timely advised the state court that "no decision has been reached yet"). Section 233(*l*) also does not permit removal if the Attorney General timely appears and asserts that the defendant is not covered. *See El Rio Santa Cruz Neighborhood Health Ctr., Inc. v. U.S. Dep't of Health & Hum. Servs.,* 396 F.3d 1265, 1271 (D.C. Cir. 2005) ("Congress almost certainly did not intend for the FSHCAA removal provisions of § 233(*l*)(2) to provide a review procedure for a negative deeming determination by the Secretary.").

On June 28, 2024, HHS received notice of the action filed against Defendant. (*See* Dkt. No. 7 at 2). On July 8, 2024, the United States Attorney for the Western District of Texas was notified of the action. (*See id.*) Four days later, the United States Attorney appeared in the state court and advised that no determination had been made regarding whether Defendant's acts fell within the scope of § 233(a) and Defendant's employment status under § 233(c). (*See* Dkt. No. 1-2 at 41–42). Because the United States Attorney appeared in state court within fifteen days of receiving notice of the action, Defendant's removal under § 233(*l*)(2) was procedurally improper.

Defendant asserts that removal was proper under § 233(*l*)(2) because the "United States did not 'properly appear' within 15 days of receiving notice of the state court action." (*See* Dkt. No. 13 at 3). Defendant bases its argument on the fact that the United States' notices were deficient under § 233(*l*)(1), thus, affording Defendant the right to remove under § 233(*l*)(2). (*See id.* at 3–5). Defendant argues that the United States' first designation notice did not adequately advise the state court of Defendant's PHS status pursuant to § 233(*l*)(1). (*See id.* at 3–4). Additionally, Defendant contends that the United States's second designation notice was untimely and failed to report the Secretary's determination regarding whether Defendant was a PHS employee for purposes of the acts or omissions at issue. (*See id.* at 4).

The Court finds Defendant's argument unavailing. The plain language of § 233(*l*)(2) states that the Attorney General need only appear in state court within fifteen days after receiving notice of the action. 42 U.S.C. § 233(*l*)(2); *see United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) ("[W]here . . . the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms."' (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917))). The United States Attorney's timely advisement to the state court that a § 233 determination is under review conforms with the statute both practically and textually.[2] *See Doe v. Centerville Clinics Inc.*, No. 23–2738, 2024 WL 3666164, at *2 (3d Cir. Aug. 6, 2024) (interpreting § 233(*l*)(2) by its plain meaning).

Here, the United States Attorney timely appeared and advised the state court that a determination as to Defendant's § 233 status had not been finalized. (*See* Dkt. No. 1-4 at 1–2); *see also Allen v. Christenberry*, 327 F.3d 1290, 1295 (11th Cir. 2003). By appearing in state court four days after receiving notice of the action from HHS and advising the court that a final determination had not been reached, the United States Attorney precluded Defendant from removing the case under § 233(*l*)(2).

[2] The Court acknowledges the practical importance of the Attorney General's certification as to a defendant's PHS status determination under § 233. The rationale espoused by courts in other jurisdictions emphasizes this importance and the Attorney General's role in reviewing and removing actions under § 233. *See Sherman by & through Sherman v. Sinha*, 843 F. App'x 870, 873 (9th Cir. 2021) ("Providing the Attorney General with the opportunity to consider the issue is a prerequisite to federal jurisdiction."); *Blumberger v. Tilley,* 115 F.4th 1113, 1144 (9th Cir. 2024) (Desai, J., dissenting in part) ("If the Attorney General must step in and remove every medical malpractice case when the defendant is employed by a deemed PHS entity, then what is the point of subsections (c) or (*l*)(1)?").

Thus, the Court finds that Defendant's removal was procedurally improper under § 233(*l*)(2).

B. Removal Was Untimely Under 28 U.S.C. § 1446(b)

Plaintiff also asserts that Defendant's removal under 28 U.S.C. §§ 1442(a)(1) and 1332(d) was improper because Defendant is not a general officer or agency of the United States, did not act under any officer or agency of the United States, did not timely remove the action to federal court, and the home state mandatory abstention provision prevents removal under the Class Action Fairness Act (CAFA). (*See* Dkt. No. 5 at 11–14). Defendant contends that removal was proper under §§ 1442(a)(1) and 1332(d) because Defendant acted under a general officer of the United States—HHS—and removed the action within thirty days upon learning it was a "deemed employee." (*See* Dkt. No. 13 at 7–10). As explained below, Defendant failed to timely remove the pursuant to 28 U.S.C. § 1446(b). The Court, therefore, does not consider the merits of the parties' substantive arguments concerning §§ 1442(a)(1) and 1332(d).

Courts can apply a two-step test to determine whether a defendant has timely removed a case under § 1446(b). *See Chapman v. Powermatic, Inc.,* 969 F.2d 160, 161 (5th Cir. 1992). First, if a case's removability is apparent on the face of the initial pleading, "then notice of removal must be filed within thirty days from the receipt of the initial pleading by the defendant." *Id*. Second, if a case's removability is not apparent on the face of the initial pleading, "then notice of removal must be filed within thirty days from the receipt of an amended pleading, motion, order, or other paper from which the defendant can ascertain that the case is removable." *Id.*

In the context of a § 1442 removal, the Fifth Circuit has affirmed that the thirty-day window for removal may begin to run on the date a defendant is served the petition. *See Decatur Hosp. Auth. v. Aetna Health, Inc.*, 854 F.3d 292, 297 (5th Cir. 2017) (affirming remand because the defendant filed its notice of removal more than thirty days after it received service of the petition). Similarly, courts recognize that the thirty-day removal period under § 1446(b)(1) is triggered where a plaintiff's initial pleading affirmatively reveals on its face that the damages sought exceed the minimum jurisdictional amount of the federal court. *See Mumfrey v. CVS Pharmacy, Inc.*, 719 F.3d 392, 400 (5th Cir. 2013) ("[T]he thirty-day clock is not triggered unless the initial pleading 'affirmatively reveals on its face' that the [plaintiff]] sought damages exceeding the jurisdictional amount." (quoting *Chapman v. Powermatic, Inc.*, 969 F.2d 160, 163 (5th Cir. 1992))); *Safranek v. USAA Cas. Ins. Co.*, 525 F. Supp. 3d 707, 714–15 (M.D. La. 2021) (determining service of the original petition did not trigger the thirty-day removal period for a CAFA action because the petition did not allege damages greater than $75,000).

Plaintiff's petition does not contain any federal claims that would justify removal. (*See* Dkt. No. 5-1 at 8–29). However, Plaintiff's petition specifically alleges damages greater than $1,000,000. (*See id.* at 3). Plaintiff served the petition on June 26, 2024. (*See* Dkt. No. 5-2 at 1). Defendant filed its Notice of Removal on August 2, 2024, and claimed removal was proper pursuant to §§ 1442(a)(1) and 1332(d). (*See* Dkt. No. 1 at 1, 5–10). Thirty-seven days elapsed from the time Plaintiff served the petition on Defendant to Defendant's removal of the case to this Court. As a result, Defendant was untimely in removing the case.

Nonetheless, Defendant contends that removal was timely because it removed the action after receiving the United States' designation notices. (*See* Dkt. No. 13 at 7–8). Defendant's argument is misguided and does not save Defendant from § 1446 (b). The United States' first designation notice, filed on July 12, 2024, provided Defendant with information already known to it[3] that CentroMed was "deemed" to be an "employee of the Public Health Service." (*See* Dkt. No. 1-2 at 41). On July 23, 2024, the United States filed a second designation notice apprising Defendant that it was "not deemed to be a Public Health Service employee for purposes of the acts or omissions giving rise to the suit." (Dkt. No. 1-2 at 44).

[3] In its Notice of Removal, Defendant admits that "CentroMed's deemed status . . . has [been] held continuously for more than a decade." (Dkt. No. 1 at 2).

Although § 1446(b)(1) applies to this case and bars removal,[4] removal under § 1446(b)(3) would also be improper because the case's removability did not change. Defendant's unaltered status as a PHS employee from its receipt of Plaintiff's original petition to the United States' first designation notice-did not affect the apparent removability of the case. *Cf. Decatur Hosp. Auth. v. Aetna Health Inc.,* No. 4:15-922-CV-922-A, 2016 WL 950950, at *3 (N.D. Tex. Mar. 7, 2016) (finding an improper basis for removal because the interrogatories provided the same information identified in the initial pleading), *aff'd,* 854 F.3d 292 (5th Cir. 2017). Additionally, the second designation notice did not reset the removal clock, but rather, it advised Defendant of the case's non-removability under 42 U.S.C. § 233. (*See* Dkt. No. 1-2 at 2). Even if the designation notices constitute "other paper" under § 1446(b)(3), the Court is still inclined to determine that the case's removability did not change because Plaintiff did not file the notices or disclose new information that would permit removal. *See* S.*W.S. Erectors, Inc. v. Infax, Inc.,* 72 F.3d

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[4] *See Vielma v. ACC Holding, Inc.*, No. EP-12-CV-501-KC, 2013 WL 3367494, at *7 (W.D. Tex. Apr. 16, 2013) (concluding 28 U.S.C. § 1446(b)(1) controls the timeliness of removal where the initial pleading identifies the case's immediate removability); *Shastry v. U.S. Bank Nat'l as Tr. to Wachovia Bank Nat'l Ass'n,* No. 3:18-CV-2090-G-BN, 2018 WL 7075133, at *5 (N.D. Tex. Dec. 6, 2018) ("Section 1446(b)(3) does not authorize a second bite at the apple where a case was initially removable and a defendant fails to timely remove during Section 1446(b)(1)'s removal period"), *report and recommendation adopted*, No. 3:l8-CV-2090-G (BN), 2019 WL 247233 (N.D. Tex. Jan. 17, 2019).

489,494 (5th Cir. 1996) (claiming the "other paper" language within 28 U.S.C. § 1446(b)(3) requires a "voluntary act by the plaintiff" (citing *Gaitor v. Peninsular & Occidental* S.S. *Co.,* 287 F.2d 252, 254 (5th Cir. 1961))).

Pursuant to 28 U.S.C. § 1446(b)(1), Defendant was required to remove the action to federal court within thirty days of service of the petition. *See* 28 U.S.C. §§ 1446(b)(1), 1453(b); *Decatur Hosp. Auth. v. Aetna Health, Inc.,* 854 F.3d 292, 297 (5th Cir. 2017). Because Defendant did not do so, the Court finds that removal under §§ 1442(a)(1) and 1332(d) was untimely.

IV. CONCLUSION

It is therefore **ORDERED** that Plaintiff's Motion to Remand Case to State Court (Dkt. No. 5) is **GRANTED,** and this case is **REMANDED** to the 225th Judicial District Court of Bexar County, Texas.

This case is **CLOSED.**

It is so **ORDERED.**

SIGNED this 6 day of February 2025.

ORLANDO L. GARCIA
United States District Judge

APPENDIX C

[DATE STAMP]
RECEIVED
JUL 30 2024
ADMINISTRATION

CAUSE NO. 2024CI11266

ARTURO GONZALEZ, individually and on behalf of all others similarly situated,
Plaintiff,

v.

IN THE DISTRICT COURT OF BEXAR COUNTY, TEXAS 225TH JUDICIAL DISTRICT

EL CENTRO DEL BARRIO d/b/a CentroMed,
Defendant.

SUPPLEMENTAL NOTICE OF THE UNITED STATES UNDER 42 U.S.C. § 233(*l*)(1)

Nonparty the United States of America provides the following supplemental notice pursuant to 42 U.S.C. § 233(*l*)(1).

1. On July 12, 2024, the United States Attorney for the Western District of Texas, acting

pursuant to 42 U.S.C. § 233(*l*)(1), timely appeared in this Court within 15 days after being notified of the civil action filed there. Upon making this appearance, the United States Attorney advised this Court that, having been recently notified of the suit, the United States had not yet determined whether Defendant El Centro del Barrio d/b/a CentroMed was deemed to be a Public Health Service employee for purposes of the acts or omissions giving rise to the suit.

2. The United States hereby advises this Court that it has now determined that El Centro del Barrio was not deemed to be a Public Health Service employee for purposes of the acts or omissions giving rise to the suit and that this action therefore is not subject to the provisions of 42 U.S.C. § 233. Accordingly, the United States will not intervene in this action or move to substitute itself in El Centro del Barrio's stead as the party defendant. Plaintiffs' claims, which allege harms resulting from a criminal data breach, are neither claims for "personal injury, including death" within the meaning of 42 U.S.C. § 233(a), nor claims for medical malpractice of the kind that the Federally Supported Health Centers Assistance Act is intended to cover.

Dated: July 23, 2024. Respectfully submitted,

Jaime Esparza
United States Attorney

By: /s/ Robert D. Green

Robert D. Green
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Attorneys for the United States

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the foregoing Supplemental Notice of the United States Under 42 U.S.C. § 233(*l*)(1) was served on all parties through the electronic filing platform and was also sent by first-class mail on July 23, 2024, to the following:

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Attorney for Defendant

/s/ Robert D. Green
Robert D. Green
Assistant United States
Attorney

APPENDIX D

[DATE STAMP]
FILED
7/12/2024 3:14 PM
Gloria A. Martinez
Bexar County District Court Clerk
Accepted by Wilna Williams
Bexar County – 225th District Court

CAUSE NO. 2024CI11266

ARTURO GONZALEZ, individually and on behalf of all others similarly situated,
Plaintiff,

v.

IN THE DISTRICT COURT
OF BEXAR COUNTY, TEXAS
225TH JUDICIAL DISTRICT

EL CENTRO DEL BARRIO d/b/a CentroMed,
Defendant.

NOTICE OF THE UNITED STATES UNDER 42 U.S.C. § 233(*l*)(1)

Nonparty the United States of America provides the following notice pursuant to 42 U.S.C. § 233(*l*)(1).

1. The U.S. Department of Health and Human Services (HHS) notified this office on July 8, 2024, of

this state court action against defendant El Centro Del Barrio, d/b/a CentroMed (CentroMed), a public or non-profit private entity receiving federal funds under section 254b of Title 42 pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g)–(n) (FSHCAA) within the meaning of 42 U.S.C. § 233(g)(4).

2. Pursuant to 42 U.S.C. § 233(*l*)(1), the United States is appearing for the limited purpose of notifying the Court as to whether the Secretary of HHS has advised that CentroMed has been "deemed" to be an "employee of the Public Health Service" with respect to the actions or omissions that are the subject of this civil action.

3. At present, HHS has advised only that CentroMed has been "deemed" to be an "employee of the Public Health Service." HHS has not yet provided its report as to whether the deemed status of CentroMed under 42 U.S.C. §§ 233(g) and (h) extends to the acts or omissions that are the subject of this civil action. *See* 42 U.S.C. § 233(*l*)(1). *See* 28 C.F.R. § 15.3; *see also* 60 Fed. Reg. 22,530, 22,531 (May 8, 1995).

4. Once HHS has completed its review and provided its report, the United States Attorney, as the U.S. Attorney General's delegate, will determine whether the acts alleged fall within the scope of 42 U.S.C. § 233(a), the applicable provisions of the FSHCAA, and were otherwise within the scope of

CentroMed's "deemed" employment. *See* 42 U.S.C. § 233(c); 28 C.F.R. § 15.4(b); 60 Fed. Reg. at 22,531. The United States Attorney has not yet been provided with sufficient information to make that determination. If the above-named defendant is so determined to have been a deemed employee of the Public Health Service for purposes of the acts or omissions giving rise to this suit, and was acting within the scope of its deemed employment, it is anticipated that this action will be removed to federal court pursuant to 28 U.S.C. § 233(c).

Dated: July 12, 2024. Respectfully submitted,

Jaime Esparza
United States Attorney

By: /s/ Robert D. Green
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Attorneys for the United States

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the foregoing Notice of the United States Under 42 U.S.C. § 233(*l*)(1) was served on all parties through the electronic filing platform and was also sent by first-class mail on July 12, 2024, to the following:

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Attorneys for Plaintiff
and the Proposed Class

/s/ Robert D. Green
Robert D. Green
Assistant United States
Attorney

APPENDIX E

United States Court of Appeals for the Fifth Circuit

[DATE STAMP]
United States Court of Appeals
Fifth Circuit
FILED
March 20, 2026
Lyle W. Cayce
Clerk

No. 25-50092

ARTURO GONZALEZ,

Plaintiff—Appellee,

versus

EL CENTRO DEL BARRIO, *doing business as* CENTROMED,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:24-CV-852

ON PETITION FOR REHEARING EN BANC

Before Haynes, Duncan, and Ramirez, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 40 and 5TH CIR. R. 40), the petition for rehearing en banc is DENIED.

APPENDIX F

42 U.S.C. § 233

Civil actions or proceedings against commissioned officers or employees

(a) Exclusiveness of remedy

The remedy against the United States provided by sections 1346(b) and 2672 of Title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of Title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of pleading and process to United States attorney, Attorney General, and Secretary

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal to United States district court; procedure; proceeding upon removal deemed a tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claim by Attorney General

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of Title 28 and with the same effect.

(e) Assault or battery

For purposes of this section, the provisions of section 2680(h) of Title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of Title 28, for such damage or injury.

(g) Exclusivity of remedy against United States for entities deemed Public Health Service employees; coverage for services furnished to individuals other than center patients; application process; subrogation of medical malpractice claims; applicable period; entity and contractor defined

(1)

(A) For purposes of this section and subject to the approval by the Secretary of an application under subparagraph (D), an entity described in paragraph (4), and any officer, governing board member, or employee of such an entity, and any contractor of such an entity who is a physician or other licensed or certified health care practitioner (subject to paragraph (5)), shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer was made under subsection (k)(3) (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, governing board member, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a).

(B) The deeming of any entity or officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section shall apply with respect to services provided–

(i) to all patients of the entity, and

(ii) subject to subparagraph (C), to individuals who are not patients of the entity.

(C) Subparagraph (B)(ii) applies to services provided to individuals who are not patients of an entity if the Secretary determines, after reviewing an application submitted under subparagraph (D), that the provision of the services to such individuals–

(i) benefits patients of the entity and general populations that could be served by the entity through community-wide intervention efforts within the communities served by such entity;

(ii) facilitates the provision of services to patients of the entity; or

(iii) are otherwise required under an employment contract (or similar arrangement) between the entity and an officer, governing board member, employee, or contractor of the entity.

(D) The Secretary may not under subparagraph (A) deem an entity or an officer, governing board member, employee, or contractor of the entity to be an employee of the Public Health Service for purposes of this section, and may not apply such deeming to services described in subparagraph (B)(ii), unless the entity has submitted an application for such deeming to the Secretary in such form and such manner as the Secretary shall prescribe. The application shall contain detailed information, along with supporting documentation, to verify that the entity, and the officer, governing board member, employee, or contractor of the entity, as the case may be, meets the requirements of subparagraphs (B) and (C) of this paragraph and that the entity meets the requirements of paragraphs (1) through (4) of subsection (h).

(E) The Secretary shall make a determination of whether an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section within 30 days after the receipt of an application under subparagraph (D). The determination of the Secretary that an entity or an officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section shall apply for the period specified by the Secretary under subparagraph (A).

(F) Once the Secretary makes a determination that an entity or an officer, governing board member, employee, or contractor of an entity is deemed to be an employee of the Public Health Service for purposes of this section, the determination shall be final and binding upon the Secretary and the Attorney General and other parties to any civil action or proceeding. Except as provided in subsection (i), the Secretary and the Attorney General may not determine that the provision of services which are the subject of such a determination are not covered under this section.

(G) In the case of an entity described in paragraph (4) that has not submitted an application under subparagraph (D):

(i) The Secretary may not consider the entity in making estimates under subsection (k)(1).

(ii) This section does not affect any authority of the entity to purchase medical malpractice liability insurance coverage with Federal funds provided to the entity under section 254b, 254b, or 256a of this title.

(H) In the case of an entity described in paragraph (4) for which an application under subparagraph (D) is in effect, the entity may, through notifying the Secretary in writing, elect to terminate the applicability of this subsection to the entity. With respect to such election by the entity:

(i) The election is effective upon the expiration of the 30-day period beginning on the date on which the entity submits such notification.

(ii) Upon taking effect, the election terminates the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity.

(iii) Upon the effective date for the election, clauses (i) and (ii) of subparagraph (G) apply to the entity to the same extent and in the same manner as such clauses apply to an entity that has not submitted an application under subparagraph (D).

(iv) If after making the election the entity submits an application under subparagraph (D), the election does not preclude the Secretary from approving the application (and thereby restoring the applicability of this subsection to the entity and each officer, governing board member, employee, and contractor of the entity, subject to the provisions of this subsection and the subsequent provisions of this section).

(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993.

(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under section 254b of this title.

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if–

(A) the individual normally performs on average at least 32 ½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs an average of less than 32 ½ hours of services per week for the entity for the period of the contract, the individual is a licensed or certified provider of services in the fields of family practice, general internal medicine, general pediatrics, or obstetrics and gynecology.

(h) Qualifications for designation as Public Health Service employee

The Secretary may not approve an application under subsection (g)(1)(D) unless the Secretary determines that the entity–

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) will fully cooperate with the Attorney General in providing information relating to an estimate described under subsection (k).

(i) Authority of Attorney General to exclude health care professionals from coverage

(1) Notwithstanding subsection (g)(1), the Attorney General, in consultation with the Secretary, may on the record determine, after notice and opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual–

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1);

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this chapter; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

(j) Remedy for denial of hospital admitting privileges to certain health care providers

In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4), section 254h(e) of this title shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

(k) Estimate of annual claims by Attorney General; criteria; establishment of fund; transfer of funds to Treasury accounts

(1)

(A) For each fiscal year, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of Title 28 from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) and of officers, employees, or contractors (subject to subsection (g)(5)) of such entities.

(B) The estimate under subparagraph (A) shall take into account–

(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) or by officers, employees, or contractors (subject to subsection (g)(5)) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of Title 28, and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each fiscal year, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g), but not to exceed a total of $10,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254b and 256a of this title.

(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) and of officers, governing board members, employees, or contractors (subject to subsection (g)(5)) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

(l) Timely response to filing of action or proceeding

(1) If a civil action or proceeding is filed in a State court against any entity described in subsection (g)(4) or any officer, governing board member, employee, or any contractor of such an entity for damages described in subsection (a), the Attorney General, within 15 days after being notified of such filing, shall make an appearance in such court and advise such court as to whether the Secretary has determined under subsections (g) and (h), that such entity, officer, governing board member, employee, or contractor of the entity is deemed to be an employee of the Public Health Service for purposes of this section with respect to the actions or omissions that are the subject of such civil action or proceeding. Such advice shall be deemed to satisfy the provisions of subsection (c) that the Attorney General certify that an entity, officer, governing board member, employee, or contractor of the entity was acting within the scope of their employment or responsibility.

(2) If the Attorney General fails to appear in State court within the time period prescribed under paragraph (1), upon petition of any entity or officer, governing board member, employee, or contractor of the entity named, the civil action or proceeding shall be removed to the appropriate United States district court. The civil action or proceeding shall be stayed in such court until such court conducts a hearing, and makes a determination, as to the appropriate forum or procedure for the assertion of the claim for damages described in subsection (a) and issues an order consistent with such determination.

(m) Application of coverage to managed care plans

(1) An entity or officer, governing board member, employee, or contractor of an entity described in subsection (g)(1) shall, for purposes of this section, be deemed to be an employee of the Public Health Service with respect to services provided to individuals who are enrollees of a managed care plan if the entity contracts with such managed care plan for the provision of services.

(2) Each managed care plan which enters into a contract with an entity described in subsection (g)(4) shall deem the entity and any officer, governing board member, employee, or contractor of the entity as meeting whatever malpractice coverage requirements such plan may require of contracting providers for a calendar year if such entity or officer, governing board member, employee, or contractor of the entity has been deemed to be an employee of the Public Health Service for purposes of this section for such calendar year. Any plan which is found by the Secretary on the record, after notice and an opportunity for a full and fair hearing, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under titles XVIII or XIX of the Social Security Act.

(3) For purposes of this subsection, the term "managed care plan" shall mean health maintenance organizations and similar entities that contract at-risk with payors for the provision of health services or plan enrollees and which contract with providers (such as entities described in subsection (g)(4)) for the delivery of such services to plan enrollees.

(n) Report on risk exposure of covered entities

(1) Not later than one year after December 26, 1995, the Comptroller General of the United States shall submit to the Congress a report on the following:

(A) The medical malpractice liability claims experience of entities that have been deemed to be employees for purposes of this section.

(B) The risk exposure of such entities.

(C) The value of private sector risk-management services, and the value of risk-management services and procedures required as a condition of receiving a grant under section 254b, 254b, or 256a of this title.

(D) A comparison of the costs and the benefits to taxpayers of maintaining medical malpractice liability coverage for such entities pursuant to this section, taking into account–

(i) a comparison of the costs of premiums paid by such entities for private medical malpractice liability insurance with the cost of coverage pursuant to this section; and

(ii) an analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of such entities.

(2) The report under paragraph (1) shall include the following:

(A) A comparison of–

(i) an estimate of the aggregate amounts that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) would have directly or indirectly paid in premiums to obtain medical malpractice liability insurance coverage if this section were not in effect; with

(ii) the aggregate amounts by which the grants received by such entities under this chapter were reduced pursuant to subsection (k)(2).

(B) A comparison of–

(i) an estimate of the amount of privately offered such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) purchased during the three-year period beginning on January 1, 1993; with

(ii) an estimate of the amount of such insurance that such entities (together with the officers, governing board members, employees, and contractors of such entities who have been deemed to be employees for purposes of this section) will purchase after December 26, 1995.

(C) An estimate of the medical malpractice liability loss history of such entities for the 10-year period preceding October 1, 1996, including but not limited to the following:

(i) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by the Federal Government pursuant to deeming entities as employees for purposes of this section.

(ii) Claims that have been paid and that are estimated to be paid, and legal expenses to handle such claims that have been paid and that are estimated to be paid, by private medical malpractice liability insurance.

(D) An analysis of whether the cost of premiums for private medical malpractice liability insurance coverage is consistent with the liability claims experience of entities that have been deemed as employees for purposes of this section.

(3) In preparing the report under paragraph (1), the Comptroller General of the United States shall consult with public and private entities with expertise on the matters with which the report is concerned.

28 U.S.C. § 1442(a)(1)

Federal Officers Or Agencies Sued Or Prosecuted

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

> **(1)** The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

28 U.S.C. § 1446(a)–(b)

Procedure for removal of civil actions

(a) Generally. —

A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) Requirements; generally. —

(1) The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

(2)

(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.