

IN THE
Supreme Court of the United States

EXPRESS SCRIPTS, INC., ET AL.,
Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

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

**MOTION TO EXPEDITE CONSIDERATION OF
PETITION FOR WRIT OF CERTIORARI**

BRIAN D. BOONE
MATTHEW P. HOOKER
ALSTON & BIRD LLP
1120 South Tyron Street
Suite 300
Charlotte, NC 28203
(704) 444-1000

D. ANDREW HATCHETT
ALSTON & BIRD LLP
1201 W. Peachtree Street
Suite 4900
Atlanta, GA 30309
(404) 881-7000

CHRISTOPHER G. MICHEL
Counsel of Record
MICHAEL J. LYLE
JONATHAN G. COOPER
ALEX VAN DYKE
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
1300 I Street, NW, 9th Fl.
Washington, D.C. 20005
(202) 538-8308
christophermichel@
quinnemanuel.com

LISA M. GEARY
COURTNEY DAUKAS
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 Fifth Ave.
New York, NY 10016
(212) 849-7000

CORPORATE DISCLOSURE STATEMENT

Petitioner Express Scripts Pharmacy, Inc. certifies that it is a wholly owned subsidiary of Medco Health Solutions, Inc., which is a wholly owned subsidiary of Evernorth Health, Inc. Petitioner ESI Mail Pharmacy Service, Inc. certifies that it is a wholly owned subsidiary of Petitioner Express Scripts, Inc., which certifies that it is a wholly owned subsidiary of Evernorth Health, Inc. All interests in Evernorth Health, Inc. are held by The Cigna Group, a publicly traded company. The Cigna Group has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner OptumRx, Inc. states that UnitedHealth Group Incorporated is its ultimate parent. UnitedHealth Group Incorporated is publicly traded on the New York Stock Exchange, and no publicly traded entity owns 10% or more of UnitedHealth Group Incorporated's stock.

In accordance with Supreme Court Rule 21, petitioners respectfully move for expedited consideration of their petition for a writ of certiorari, which was filed on September 16, 2025, and docketed on September 18, 2025. The petition seeks review of a square circuit conflict on the availability of a stay pending appeal in the important context of federal officer removal. Expedited treatment of the petition is appropriate to avoid a potential question of mootness if the court of appeals issues its mandate in the underlying appeal, arguably depriving the stay issue of continuing significance in this case.

Petitioners request that the Court direct respondent to respond to the petition in 20 days—the period that elapsed between the denial of rehearing by the court below and the docketing of the petition. At a minimum, the Court should require respondent to respond to the petition within the 30-day period prescribed by Rule 15.3, without granting an extension of time. Respondent opposes this motion.

BACKGROUND

This petition arises from a suit filed in California Superior Court by respondent the Los Angeles County Counsel, on behalf of and in the name of the People of the State of California. Pet. App. 4a–5a. The suit asserts a claim for public nuisance against petitioners Express Scripts Inc., ESI Mail Pharmacy Service, Inc., Express Scripts Pharmacy, Inc., and OptumRx., Inc. in connection with their work administering pharmacy benefit programs and operating mail-order pharmacies for both federal and non-federal clients. *Id.* Relying on their conduct on behalf of federal-agency clients,

petitioners removed the suit to federal court under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). Pet. App. 5a.

The County moved to remand, and the district court granted that motion based on the County’s purported disclaimer of reliance on petitioners’ work for federal clients. Pet. App. 19a. Petitioners asked the district court to stay its remand order pending their appeal under 28 U.S.C. § 1447(d), which authorizes an immediate appeal of remand orders in cases removed under the federal officer removal statute. *See BP p.l.c. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 235–36 (2021). Petitioners contended that a mandatory stay was required under the reasoning of *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), in which this Court held that a similar statutorily authorized appeal regarding the proper forum for a suit requires a mandatory stay pending appeal. *Id.* at 738 (requiring a mandatory stay where Congress authorized an interlocutory appeal of the denial of a motion to compel arbitration). The district court denied the stay request under the discretionary stay factors without discussing *Coinbase* or petitioners’ argument for an automatic stay. Pet. App. 30a–31a.

Petitioners timely appealed the denial of a stay and the remand order. Because a Ninth Circuit motions panel had recently denied an automatic stay in a similar case, petitioners combined their stay request with their appeal of the remand order and asked the Ninth Circuit merits panel to resolve the issues separately, with a resolution of the “recurring” stay question first. Pet. App. 3a–4a n.1. On June 2, 2025, the merits panel did so, issuing a published opinion addressing only the stay issue. *Id.* In that decision, the panel rejected petitioners’ argument that an automatic stay is required by the

reasoning of *Coinbase*—a position that the panel acknowledged squarely conflicts with the Fourth Circuit’s published decision in *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (4th Cir. 2025), which held that the reasoning of *Coinbase* requires an automatic stay in materially identical circumstances. *Id.* at 272; *see* Pet. App. 3a–4a & n.2. The panel stated that it would issue a separate later decision on petitioners’ appeal of the remand order. *Id.* at 3a n.1.

Petitioners promptly sought rehearing of the Ninth Circuit’s decision denying an automatic stay. The court called for a response but denied rehearing on August 29, 2025. Pet. App. 32a–33a. Petitioners filed their petition for a writ of certiorari 18 days later, on September 16, 2025. The petition was docketed on September 18, 2025. Under Rule 15.3, a response is due in 30 days, on October 18, 2025.

On September 8, 2025, the Ninth Circuit issued a published decision affirming the district court’s remand order. 2025 WL 2586648. That decision acknowledges a separate circuit conflict on whether a plaintiff in respondent’s position can effectively defeat removal through a purported disclaimer. *Id.* at *13 (discussing *Maryland v. 3M Co.*, 130 F.4th 380 (4th Cir. 2025)). Petitioners intend to seek panel and en banc rehearing of that decision and, if necessary, a stay of the mandate pending a petition for a writ of certiorari. Fed. R. App. P. 41. An abeyance of the appeal on the remand issue may also be warranted pending this Court’s decision in *Chevron USA, Inc. v. Plaquemines Parish*, No. 24-813 (cert. granted June 16, 2025), which addresses similar questions and could provide guidance relevant to their proper resolution. Indeed, the Second Circuit recently held a case almost identical to this one in abeyance pending this Court’s

resolution of *Plaquemines. County of Westchester v. Express Scripts, Inc.*, No. 24-1639, ECF 116.1 (2d Cir. Aug. 28, 2025).

ARGUMENT

Respondent argued below that the question presented by the petition—whether an automatic stay is required in appeals from remand orders issued in cases removed under the federal officer removal statute—would become moot when the Ninth Circuit merits panel issued its decision on petitioner’s appeal of the remand order. Resp. C.A. Reh’g Opp. 5. That is incorrect. An appeal does not conclude, and thus a request for a stay pending appeal cannot become moot, until the court of appeals issues its mandate returning jurisdiction to the district court. *See* Fed. R. App. P. 41(c), 1998 Adv. Comm. Note (“A court of appeals’ judgment or order is not final until issuance of the mandate.”); *Price v. Dunn*, 587 U.S. 999, 1004 (2019) (Thomas, J., concurring in denial of certiorari) (collecting additional authorities for that understanding).

As explained above, the Ninth Circuit has not issued its mandate on petitioners’ appeal of the remand order. And given that petitioners plan to seek rehearing of the panel’s decision and, if necessary, a stay of the mandate pending a petition for a writ of certiorari, the mandate is not likely to issue for a considerable period of time. That time could be even longer if the Ninth Circuit or this Court holds the appeal on the remand issue in abeyance pending this Court’s resolution of the overlapping questions in *Plaquemines*, as the Second Circuit recently did in *County of Westchester*.

In addition, either the Ninth Circuit or this Court could hold or recall issuance of the mandate to enable this Court to consider the pending petition on whether an

automatic stay is required. *Cf. Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1008 n.1 (9th Cir. 2023) (discussing the Ninth Circuit’s abeyance of the merits decision in *Coinbase* pending this Court’s review of the stay issue). And even if the mandate were issued, the automatic-stay issue would still be reviewable because it is “capable of repetition, yet evading review,” *FCC v. Consumers’ Rsch.*, 145 S. Ct. 2482, 2496 n.1 (2025) (citation omitted), given the timing complications inherent in stay-related litigation.

Nevertheless, to avoid potential jurisdictional complexity—and because continuing litigation of this case simultaneously in both state and federal courts “waste[s] scarce resources,” *Coinbase*, 599 U.S. at 743—petitioners respectfully request that the Court consider the petition on an expedited basis. Specifically, petitioners propose that the Court direct respondent to respond to the petition in 20 days—the period that elapsed between the Ninth Circuit’s denial of rehearing and the docketing of the petition. At a minimum, the Court should require respondent to respond to the petition within the 30-day period prescribed by Rule 15.3, without granting an extension of time. Petitioners are prepared to file an expedited reply brief and to brief the merits on any expedited schedule that the Court deems appropriate.

CONCLUSION

The Court should expedite consideration of the petition for a writ of certiorari.

Respectfully submitted,

BRIAN D. BOONE
MATTHEW P. HOOKER
ALSTON & BIRD LLP
1120 South Tyron Street
Suite 300
Charlotte, NC 28203
(704) 444-1000

D. ANDREW HATCHETT
ALSTON & BIRD LLP
1201 W. Peachtree Street
Suite 4900
Atlanta, GA 30309
(404) 881-7000

CHRISTOPHER G. MICHEL
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MICHAEL J. LYLE
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ALEX VAN DYKE
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
1300 I Street, NW, 9th Fl.
Washington, D.C. 20005
(202) 538-8308
christophermichel@
quinnemanuel.com

LISA M. GEARY
COURTNEY DAUKAS
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 Fifth Ave.
New York, NY 10016
(212) 849-7000

Counsel for Petitioners

September 18, 2025