

IN THE
SUPREME COURT OF THE UNITED STATES

EXPRESS SCRIPTS, INC. ET AL.,
Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA,
Acting by and through Los Angeles County Counsel Dawyn R. Harrison,
Respondent.

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

**RESPONDENT'S OPPOSITION TO MOTION TO EXPEDITE
CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI**

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September 26, 2025

Counsel for Respondents

Respondent, The People of California, acting by and through Los Angeles County Counsel Dawyn R. Harrison, in accordance with Supreme Court Rule 21, submits this short response to the motion of Petitioners Express Scripts, Inc., *et al.*, to expedite consideration of their petition for writ of certiorari. There is no justification whatsoever for expedited consideration of this petition for writ of certiorari and, therefore, Petitioners' motion for expedited consideration should be denied.¹

DISCUSSION

Respondent, the People of California, has no doubt that every party that files a petition for writ of certiorari before this Court believes that their petition, uniquely, is both the most important and the most urgent matter pending before this Court. But that is rarely, if ever, true, and it is most certainly not true in this particular case. There is no justification, whatsoever, for expedited consideration of Petitioners' petition and this Court should proceed to consider the petition in the normal course.

First, by Petitioners' own admission, there is no urgency to consideration of the pending petition for writ of certiorari. Petitioners posit that the petition might

¹ It is Respondent's present inclination simply to waive any response to the petition for writ of certiorari, but Respondent should not be forced to decide that question on an expedited basis nor, as the motion would apparently require, be deprived of the choice whether to waive an initial response to the petition pending guidance from this Court.

become moot if the Court fails to act on it swiftly, if the Ninth Circuit issues its mandate on its merits ruling affirming the district court's order remanding this case to state court. Motion at 5. But Petitioner then immediately argues both that "the mandate is not likely to issue for a considerable period of time," *id.*, and, in any event, that the issue would not become moot under the "capable of repetition, yet evading review" doctrine. *Id.* at 6.

Whether or not issuance of the Ninth Circuit's mandate would moot the petition, there is no reason for expedited consideration. This Court resolves live cases and controversies. If the issue raised in the petition is likely to become moot—at least for this case—without this Court's intervention, that is a reason to deny certiorari, not a justification for expedited consideration of the appeal. Conversely, if Petitioners are correct that issuance of the mandate will not moot the pending cert. petition, then that provides an alternative basis for denying expedited review and considering the petition in the normal course. In neither case is there a reason to review the petition on an accelerated schedule.

Nor is this a case where the importance of the issue is so great that an expedited grant of certiorari is called for. As Petitioners at least implicitly acknowledge, the issue raised in the petition is whether a motion to stay pending appeal from a remand order issued in a case removed under the federal officer removal statute, 28 U.S.C. 1442(a)(1), is subject to an automatic stay under

Coinbase, Inc. v. Bielski, 599 U.S. 736 (2023), or must be considered pursuant to the discretionary stay factors articulated in *Nken v. Holder*, 556 U.S. 418 (2009). (Or, put differently, the issue is whether a stay pending appeal should be mandatory even where the *Nken* factors for a discretionary stay have not been, and cannot be, satisfied.) Moreover, as Petitioners are compelled to concede, albeit indirectly, Motion at 3, they never asked the Ninth Circuit for a stay pending appeal. As a result, state court proceedings have been ongoing ever since their notice of appeal of the remand order was filed. If the issue was not urgent enough for Petitioners to seek a stay pending appeal in the court of appeals, there cannot be a justification for expedited consideration of a petition for writ of certiorari raising precisely the same issue before this Court.

CONCLUSION

There is simply no justification whatsoever for accelerated consideration of Petitioners' petition, and this Court should therefore deny the motion to expedite.

Dated: September 26, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 26, 2025, three (3) copies of RESPONDENT'S OPPOSITION TO MOTION TO EXPEDITE CONSIDERATION OF PETITION FOR WRIT OF CERTIORARI in the above-captioned case were served, as required by U.S. Supreme Court Rule 29.5(c), on the following:

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