No. 25-327

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**

## REPLY BRIEF FOR PETITIONERS


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## INTRODUCTION

Respondent (the "County") does not dispute that the question presented is doctrinally and practically significant, frequently recurring, and subject to deep judicial disagreement. *See* Chamber of Commerce Amicus Br. 13 (describing the Ninth Circuit's "patent misreading" of the law and the "disturbing practical ramifications of the panel's decision"). The County makes a half-hearted attempt to deny the existence of a circuit split based on what it admits is merely a "factual distinction." Opp. 4. But the County does not contend that the *legal* reasoning of the decision below can be squared with that of the Fourth Circuit in *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265 (2025). It could hardly argue otherwise: The Ninth Circuit itself acknowledged the conflict on the question presented, Pet. App. 4a n.2, as have other courts and commentators. That recognized division in authority on an important question of federal law provides a paradigmatic basis for this Court's review. Sup. Ct. R. 10(a); *see* Chamber Br. 3 ("The Ninth Circuit's decision creates an important circuit split.").

The County's merits arguments only reinforce the grounds for certiorari. Its lead contention—that the "entire case" is not involved in an appeal that will decide the forum in which "the case belongs"—contradicts this Court's analysis in *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741 (2023). And the County's reliance on the usual relationship between federal and state courts is fundamentally misplaced in the context of the federal officer removal statute, which exists to protect federal officers and those acting under them from "local prejudice" and "interference by hostile

state courts." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 148, 150 (2007) (citations omitted).

Finally, the County's purported vehicle concerns highlight the petition's strengths. Petitioners asked the Ninth Circuit "to issue an automatic stay" pending appeal, and it responded with a precedential decision cleanly presenting the question. Pet. App. 3a. Any prospect of that question becoming moot was effectively eliminated when the Ninth Circuit held petitioners' underlying appeal in abeyance pending this Court's resolution of *Chevron USA, Inc. v. Plaquemines Parish*, No. 24-813 (set for argument on Jan. 12, 2026). *See* Supp. App., *infra*, 1a. If the Court grants review in this case in January 2026, it will be decided on roughly the same timeline as *Plaquemines*, virtually ensuring that the question will *not* become moot—a feature unlikely to exist in other cases presenting the same issue.

In short, this petition provides an optimal vehicle to resolve a recognized division on an important and recurring question of federal law that could otherwise evade review. This Court should grant certiorari.

## I. THE COUNTY FAILS TO REFUTE THE ACKNOWLEDGED CIRCUIT CONFLICT

In *Martinsville*, the Fourth Circuit held that the automatic-stay principle applied in *Coinbase* is not "limited to orders compelling arbitration" but applies "just as forcefully" to remand-order appeals under 28 U.S.C. § 1447(d). 128 F.4th at 270. In the decision below, the Ninth Circuit held that the *Coinbase* principle is "limit[ed] to the arbitration context," noted its disagreement with the Fourth Circuit on "this question," and adopted the *Martinsville* dissent

as its own. Pet. App. 4a n.2, 7a, 17a–18a. That is a clear circuit conflict. As courts and commentators have recognized, there is a square circuit "split on whether *Coinbase* requires courts to grant an automatic stay pending an interlocutory appeal of remand orders where the case was originally removed under the [federal] officer removal statute." *Horton v. Gen. Elec. Co.*, 2025 WL 3215907, at *3 (W.D. Ky. Nov. 18, 2025); *see* O'Connor's Federal Rules: Civil Trials ch. 4-B § 9 (2026 ed.) ("The circuits disagree [on this question]."); *see also* Pet. 14–15 (collecting cases reaching results on both sides of the conflict).

The County briefly suggests that there is no circuit conflict because of a "factual distinction" between this case and *Martinsville*: the remand order here was mailed before the notice of appeal was filed while the remand order in *Martinsville* was mailed after. Opp. 4. But the County identifies no reason why that factual distinction would reconcile the conflicting legal rules adopted by the two circuits. That is presumably why, as the County concedes, "neither the Ninth Circuit in the case under review, nor the dissent in *Martinsville*, relied on this temporal distinction." Opp. 5.[1]

The consequences of applying the County's distinction underscore why it cannot matter. If the availability of a stay turned on whether the remand order was mailed before the notice of appeal was filed,

[1] The County also suggests that *Martinsville* did not require considering whether a federal court can enter a stay despite "pending state court legal proceedings." Opp. 7; *see* Opp. 16 n.5. That is wrong; the *Martinsville* district court *did* "mail[] the remand order" to the state court, and the Fourth Circuit still ordered an automatic stay pending appeal. 128 F.4th at 268.

a court could arbitrarily—even accidentally—deprive a defendant of a stay simply by mailing the remand order immediately after granting the remand motion, before the defendant has any chance to file a notice of appeal.[2] The County does not try to defend that "illogical" result, which confirms that the timing "distinction doesn't furnish the silver bullet" it wishes. *Kansas v. Pfizer, Inc.*, 2025 WL 1548507, at *3 n.2 (D. Kan. May 30, 2025); *see id.* (refusing to allow "a clerk's efficiency to affect a party's substantial right").

The County does not otherwise dispute the need to review the circuit conflict. It acknowledges that other circuits have addressed the issue and does not advise further percolation. Opp. 6 n.2. Instead it contends that "if any case was wrongly decided, it was the Fourth Circuit ruling in *Martinsville*, not the decision below." *Id.* That is a question for this Court to resolve.

## II. THE COUNTY IS WRONG ON THE MERITS

Unable to refute the circuit conflict, the County devotes most of its opposition to attempting to defend the Ninth Circuit's decision. Opp. 6–19. The flaws in the County's arguments only reinforce the need for the Court's intervention.

As explained in *Martinsville* and the petition, *Coinbase*'s logic applies fully here: An appeal regarding whether a suit should proceed in federal or state court—like an appeal regarding whether a suit should proceed in federal court or arbitration—necessarily involves "the entire case." *Coinbase*, 599 U.S. at 741 (citing *Griggs v. Provident Consumer*

[2] That is what happened in this case. *See* C.A. E.R. 10–11, 13.

*Disc. Co.*, 459 U.S. 56, 58 (1982)). And Congress's creation of a right to appeal a remand order in a federal officer removal case—like its creation of a right to appeal the denial of a motion to compel arbitration—requires an automatic stay pending appeal to avoid effectively "nullify[ing]" the statutory appellate right. *Id.*; *see* Pet. 17–18; *Martinsville*, 128 F.4th at 269–70.

The County contests the first premise, contending that the "entire case" is not involved in this appeal because the "only question is whether the correct forum is a state or federal court"—not, as in *Coinbase*, whether litigation should "take place in a court of law." Opp. 7–8, 10. The Ninth Circuit did not embrace that distinction, and the County provides no basis for limiting *Coinbase* or the background *Griggs* principle to appeals involving a court versus non-court forum. Indeed, *Griggs* itself involved the question whether two *courts* could "attempt to assert jurisdiction over a case simultaneously." 459 U.S. at 58.

The other contexts in which the County concedes the *Griggs* principle applies (*e.g.*, appeals on double-jeopardy or immunity grounds) likewise do not involve a choice between a court and non-court forum. Opp. 9. What those contexts and this one have in common is that "whether 'the litigation may go forward in the district court is precisely what the court of appeals must decide.'" *Coinbase*, 599 U.S. at 741 (citation omitted). In each context, the right to appeal "would be largely nullified" without a stay because the appellant would face proceedings in the assertedly improper forum while the appeal to decide the proper forum unfolds. *Id.* at 743. The County has no answer to that "common sense" understanding. *Id.* Nor does

it even attempt to address this Court's explanation that Congress created the appellate right in Section 1447(d) "to allow appellate review *before* a district court may remand a case to state court," *BP p.l.c. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 236 (2021) (emphasis added)—an objective that is irreconcilable with the County's position that state-court proceedings occur in tandem with the appeal.

The County next contends that an automatic stay is unnecessary in federal officer removal appeals because "there is no meaningful distinction between litigation in state and federal courts." Opp. 12. That assertion would surprise Congress, which has for more than 200 years enacted statutes allowing federal officers and those acting under them to remove suits to federal court precisely to avoid "local prejudice" and "interference by hostile state courts." *Watson*, 551 U.S. at 148, 150 (citations omitted); *see Tennessee v. Davis*, 100 U.S. 257, 262–63 (1879); Pet. 5–7; Chamber Br. 4–9. The County bases its position on cases involving constitutional due process and related protections, Opp. 12–14, but it does not cite a single case involving the federal officer removal statute.

The County seeks to minimize the costs of forcing federal officers and those acting under them to litigate in state court by noting that "adverse rulings by the state court would be subject to reconsideration and revision" if the case were "returned to federal court." Opp. 14. The federal officer removal statute exists, however, to protect defendants not only from final judgments in state court but also from "harassing litigation" in that potentially hostile forum. *Mayor & Alderman of City of Nashville v. Cooper*, 73 U.S. 247, 253 (1867); *see* Pet. 24; Chamber Br. 1–3. Indeed, the

County concedes that Congress enacted the 2011 amendments to "shield federal officers" and those acting under them from *state-court discovery*, not just merits adjudication. Opp. 18 n.8. The County's opposition to an automatic stay ensures that such defendants will face state-court discovery while their appeal is pending, resulting in burdens ranging from settlement pressure to "paraly[sis]" of federal operations. *Watson*, 551 U.S. at 149 (citation omitted); *see* Chamber Br. 13–19. The County's enthusiasm to impose such harms should be a bright red flag that it is pursuing the very approach that Congress legislated to avoid.

Finally, the County suggests that applying an automatic-stay rule would implicate the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), and the Anti-Injunction Act ("AIA"), 28 U.S.C. § 2283. Opp. 15–19. That contention rests on foundational misunderstandings of those principles and federal officer removal. As the County's cited cases illustrate, *Younger*'s judge-made abstention doctrine applies when a state-court defendant files a *separate* federal-court suit seeking to enjoin ongoing state proceedings. *See, e.g.*, *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607 (1975). *Younger* abstention does not apply when a state-court defendant removes a *single* suit from state to federal court under express statutory authority. *See, e.g.*, *Village of DePue v. Exxon Mobil Corp.*, 537 F.3d 775, 783–84 (7th Cir. 2008) (collecting decisions rejecting application of *Younger* to removal); 17B Charles Alan Wright et al., *Federal Practice and Procedure* § 4254 (3d ed. 2025) (Wright & Miller) (same). Moreover, *Younger*'s "Our Federalism" premise, 401 U.S. at 44, is a fundamental misfit for the

federal officer removal statute, which "is an incident of federal supremacy," *Willingham v. Morgan*, 395 U.S. 402, 405 (1969).

*Younger* is equally inapplicable when a remand order in a federal officer removal case is appealed under Section 1447(d). Federal courts of appeals have uniformly held—and the County appears to accept—that remand of a case removed under Section 1447(d) to state court does not preclude a federal appellate court from retrieving the case from state court if it concludes that remand was erroneous. *See* Pet. 16 (collecting cases). If clawing a remanded case back to federal court despite ongoing state-court proceedings is not barred by *Younger*, the lesser step of staying the remand order is not barred either. *See Plaquemines Parish v. Chevron USA, Inc.*, 84 F.4th 362, 367 (5th Cir. 2023). Indeed, the County conceded in the Ninth Circuit and maintains here that federal courts "have the discretionary power to enter a stay pending appeal" even after a remand to state court if the defendant meets the standard of *Nken v. Holder*, 556 U.S. 418 (2009). Resp. C.A. Br. 27; *see* Opp. 11 n.4. That position is irreconcilable with the County's assertion that *Younger* bars a federal court from issuing a stay when there are ongoing state-court proceedings following a remand.

The County's invocation of the AIA fails for similar reasons. Like *Younger* abstention, the AIA "does not apply to an action after it has been removed from state court to federal court." 17A Wright & Miller § 4222 (3d ed. 2025). Indeed, this Court has long treated "legislation providing for removal of litigation from state to federal courts" as exempt from the AIA's restrictions. *Mitchum v. Foster*, 407 U.S. 225, 234, 237

(1972). The County suggests no logical reason why the same principles would not apply equally to Section 1447(d). *See* Pet. 16. In addition, the AIA expressly permits a federal court to grant an injunction "where necessary in aid of its jurisdiction." 28 U.S.C. § 2283. That provision independently authorizes a stay in a Section 1447(d) appeal. *See BP*, 593 U.S. at 236.

## III. THE COUNTY'S PURPORTED VEHICLE CONCERNS ARE MISPLACED

The County does not contest many of the central grounds for certiorari identified in the petition. It does not dispute that the question presented is exceptionally important, frequently recurring, and subject to deep judicial disagreement even beyond the Fourth and Ninth Circuit decisions. Pet. 14–15, 25–30. Nor does it dispute that the answer to the question in this case will apply equally to cases removed by federal executive officers, Members of Congress, and federal judges. Pet. 5–6. Resolving the question presented would determine, for example, whether a federal immigration agent sued in Massachusetts or a federal environmental official sued in Alabama can obtain an automatic stay of a remand order or instead must litigate in a potentially hostile state court throughout the pendency of an appeal. Pet. 27–28.

While not contesting those points, the County raises two purported vehicle problems, Opp. 19–21, both of which actually underscore *strengths* of the petition as a candidate for this Court's review.

*First*, the County asserts that petitioners "never sought a stay pending appeal in the Ninth Circuit." Opp. 19. That is a baffling claim, as the Ninth Circuit recognized that petitioners "ask[ed it] to issue an

automatic stay of the district court's" remand order "'before deciding the merits of this appeal.'" Pet. App. 3a. The County may mean that petitioners did not seek an emergency stay from the Ninth Circuit. But as explained by the petition and the Ninth Circuit, petitioners' approach was perfectly permissible. Pet. 9–10; Pet. App. 3a–4a n.1. If anything, presenting the issue to the merits panel made this case a *better* vehicle for review, because it allowed the Ninth Circuit to receive full briefing, hear oral argument, and issue a published decision rather than have a motions panel issue an expedited summary order—as the County concedes usually occurs. *See* Opp. 6 n.2.

*Second*, the County contends that the petition is a poor vehicle because the question presented is likely to become moot before this Court can resolve it. Opp. 20–21. That is wrong. As the County acknowledges, the Ninth Circuit recently ordered the underlying appeal held in abeyance until this Court decides *Plaquemines* and directed the parties to file a joint status report two weeks after that decision. Opp. 20–21; *see* Supp. App., *infra*, 1a. After that abeyance lifts, a decision in the underlying appeal will not become final until the Ninth Circuit resolves petitioners' pending en banc petition and, if necessary, a motion to stay the mandate. Pet. 29.

If the Court were to grant certiorari in this case in January 2026, it could be argued in April and decided around roughly the same time as *Plaquemines*. The Ninth Circuit's abeyance and the further proceedings that would follow thus essentially ensure that the question presented will *not* become moot if the Court grants review and hears argument this Term. And the Ninth Circuit or this Court could issue a further

abeyance or stay of the underlying appeal to ensure that this Court has time to decide the question presented—as the Ninth Circuit did in *Coinbase*. *Id.* Far from creating a vehicle problem, the posture of this case makes it a uniquely compelling vehicle to resolve an important and recurring question that will often otherwise evade this Court's review.

## CONCLUSION

The petition should be granted.

Respectfully submitted,

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December 23, 2025

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**SUPPLEMENTAL APPENDIX**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[FILED: OCT 27, 2025]

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No. 24-1972

D.C. No. 2:23-cv-08570-SPG-PD
Central District of California, Los Angeles

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

*Plaintiff - Appellee*,

v.

EXPRESS SCRIPTS, INC.; *et al.*,

*Defendants - Appellants*,

and

EXPRESS SCRIPTS ADMINISTRATORS, LLC; *et al.*,

*Defendants*.

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ORDER

Before: MURGUIA, Chief Judge, and SANCHEZ and H.A. THOMAS, Circuit Judges.

Proceedings in this case shall be held in abeyance pending the Supreme Court's decision in *Chevron USA v. Plaquemines Par.*, No. 24-813. Within 14 days of the Supreme Court's decision, the parties shall file a joint status report.