No. _____

In the Supreme Court of the United States

CITY OF BRUNSWICK,

Petitioner,

v.

HONEYWELL INTERNATIONAL, INC., ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case concerns a frequently recurring scenario: A defendant removes a state case to federal court on a federal-officer-removal theory. The district court rejects that theory and remands the case to state court. The defendant appeals the remand order under 28 U.S.C. §1447(d).

The First, Second, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits have held that a stay pending appeal is discretionary. The Fourth and Eleventh Circuits have held that a stay pending appeal is automatic.

The question presented is:

Whether an appeal from a remand order under 28 U.S.C. §1447(d) triggers an automatic stay, barring the state court from proceeding with the case.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is the City of Brunswick, Georgia, by and through its Mayor and Board of Commissioners—the plaintiff-appellee below.

Respondents are Honeywell International, Inc. (NASDAQ: HON) and Georgia Power Company (a subsidiary of Southern Company, NYSE: SO)—the defendants-appellants below.

RELATED PROCEEDINGS

City of Brunswick v. *Honeywell International, Inc.*, No. 23-13200 (11th Cir. Aug. 3, 2026) (reversing remand order)

City of Brunswick v. *Honeywell International, Inc.*, No. 2:22-cv-00132 (S.D. Ga. Sept. 1, 2023) (granting motion to remand)

City of Brunswick v. *Honeywell International, Inc.*, No. CE22-01086 (Ga. Super. Ct.)

City of Brunswick v. *Honeywell International, Inc.*, No. 2:24-cv-00129 (S.D. Ga.)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner City of Brunswick respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-36a) was designated for publication and is available at 2026 WL 2224648. The order and opinion of the district court (App. 37a-59a) is unreported but available at 2023 WL 5671290.

JURISDICTION

The Eleventh Circuit entered judgment on August 3, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The relevant provisions are reproduced in the appendix. App. 60a-72a.

* * *

INTRODUCTION

This case presents a square, acknowledged conflict over an important question concerning the relationship between state and federal courts: When a party appeals an order remanding a case to state court under 28 U.S.C. §1447(d), does federal law impose an automatic stay pending appeal such that the state court cannot proceed?

The Eleventh Circuit's decision below answered yes, expressly deepening a circuit split. It "h[e]ld that the appeal of a motion to remand under § 1447(d) triggers an automatic stay of all district court proceedings," and "any subsequent state court proceedings are rendered void." App. 15a-16a. It sided with the Fourth Circuit, whose "analysis closely track[ed]" the Eleventh Circuit's own. App. 14a. It rejected the Ninth Circuit's extended analysis of "the same automatic stay question." App. 14a-15a n.9. And it reached that outcome despite the Ninth Circuit's observation that "[a]ll other circuits where this question has been raised" (besides the Fourth, and now the Eleventh) have come out the other way. *Ibid.* (quoting *California ex rel. Harrison* v. *Express Scripts, Inc.*, 139 F.4th 763, 766 (9th Cir. 2025), cert. denied, No. 25-327 (Jan. 12, 2026)).

Further percolation is pointless: The arguments have been extensively aired, and there is no realistic prospect of either side reversing course. Allowing the split to persist is also untenable. Federal procedure should not vary by geography. Nor should different states face different levels of federal intrusion in their judicial proceedings. And uncertainty in the remaining circuits invites gamesmanship and turmoil.

The question is important and recurring. It arises in every 28 U.S.C. §1447(d) appeal. Courts and litigants need to know what rule governs a stay. And leaving state courts guessing as to whether a federal court will retroactively "void" their work via an automatic stay—as the Eleventh Circuit did here—is particularly damaging. App. 9a. This Court has repeatedly granted review to decide the availability of stays pending appeal in other contexts. The issue now vexes courts in the state-court-remand context, with over a dozen courts reaching conflicting results in the past few years alone. This Court's guidance is needed.

This is an unusually strong vehicle. Often, the stay question arises in emergency motions, decided in summary orders and proceeding separately from the merits of the appeals. But here, the Eleventh Circuit resolved the question presented squarely and dispositively—with no complications from any emergency posture or dual-track appellate proceedings.

Review is especially warranted because the Eleventh Circuit's decision is wrong. It invents a mandatory federal-court bar on state-court proceedings. And it purports to "render[ ] void" everything the state court had done—even though "[n]o party in this case requested a stay in federal court." App. 9a, 13a n.8. Nothing authorizes that remarkable intrusion on state sovereignty. The Eleventh Circuit identified no statutory authority for its automatic-stay rule. Instead, it extended a judge-made "background principle" that warranted a stay in the materially different context of arbitration appeals. *Coinbase, Inc.* v. *Bielski*, 599 U.S. 736, 740 (2023); see *Griggs* v. *Provident Consumer Disc. Co.*, 459 U.S. 56 (1982). But *Coinbase* and *Griggs* nowhere address, let alone mandate, federal interference with state-court proceedings. Instead, the usual rule applies here: Stays pending appeal are discretionary, not available as a matter of right.

As it now stands, defendants in some states—but not others—can unilaterally strip a state court of jurisdiction simply by filing a notice of appeal (in a case the district court already determined was improperly removed). The Ninth Circuit concluded that this result offends core principles of federalism and comity—yet the Fourth and Eleventh Circuits have now endorsed it. This Court should resolve the conflict over this important, purely legal question, and this case is an excellent vehicle for doing so. The petition should be granted.

STATEMENT OF THE CASE

A. Legal Background

A defendant in state court can remove a case to federal court by filing a notice of removal in the federal district court. 28 U.S.C. §1446(a); see, *e.g.*, §1441. The district court then determines whether removal was proper or whether the case should instead be remanded to state court. §1447(c).

Only certain district-court remand orders are appealable. See 14C *Wright & Miller's Federal Practice & Procedure* §3740 (rev. 4th ed. 2026) (cataloging appealable remand orders). Section 1447(d) contains one such path for appellate review, providing that remand orders "shall be reviewable by appeal or otherwise" in cases "removed pursuant to section 1442 or 1443." §1447(d).

Section 1442 is the federal-officer-removal statute, permitting removal by, *inter alia*, "any officer . . . of the United States" "or any person acting under that officer" "for or relating to any act under color of such office." §1442(a)(1). Like any other "removal practice[ ]," federal-officer removal "implicate[s] questions of comity between federal and state authorities." *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230, 242 (2021). Since the Founding, "Congress has, subject to few exceptions, manifested a desire" to keep state courts "free from interference by federal courts." *Younger* v. *Harris*, 401 U.S. 37, 43 (1971). Federal courts therefore must "scrupulously confine their own jurisdiction," *Healy* v. *Ratta*, 292 U.S. 263, 270 (1934), lest they infringe on the "legitimate activities" of state courts, *Younger*, 401 U.S. at 44-45.

B. Proceedings Below

1. In 2022, the City brought this suit in Georgia state court, asserting state tort claims arising from respondents' release of toxic chemicals onto City property. App. 38a. Respondents removed the action, invoking (among other jurisdictional theories) federal-officer removal under §1442. App. 40a. According to respondents, they were "acting under" federal officers when remediating contamination under a court order obtained by the Environmental Protection Agency (EPA). App. 2a-5a.

The district court remanded to state court. App. 37a-59a. Rejecting respondents' federal-officer-removal theory, it held that respondents could not have "'acted under'" a federal officer because the EPA did not "'require[ ]'" respondents "'to cause [the] pollution,'" and the EPA merely "supervising" respondents' remediation efforts "is not sufficient to demonstrate they acted under a federal officer." App. 44a-46a. The district court also rejected respondents' other federal-jurisdiction theories. App. 46a-58a. The district court accordingly granted the City's motion to remand; it also directed the clerk to remand the case to the state court, terminate all pending motions, and close the case. App. 59a. Pursuant to §1447(c), a "certified copy of the order of remand" was "mailed by the clerk to the clerk of the State court," which docketed it. §1447(c); see App. 6a, 16a n.10.

2. Respondents then appealed the remand order to the Eleventh Circuit under §1447(d). App. 6a. "No party in this case requested a stay in federal court." App. 13a n.8.

The litigation proceeded in the state court (which initially imposed a stay but lifted it a few months later). App. 6a. All parties participated fully in the state-court proceedings, with respondents filing answers and motions to dismiss, and the City amending its complaint twice. *Ibid.*[1]

3. On appeal from the remand order, the Eleventh Circuit reversed. At the outset, the Eleventh Circuit held that "the appeal of a motion to remand under § 1447(d) triggers an automatic stay of all district court proceedings—including the remand order—pending resolution of

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[1] After the second amended complaint, respondents filed a new notice of removal. The district court stayed that new case pending this appeal. See Order, *City of Brunswick* v. *Honeywell Int'l, Inc.*, No. 2:24-cv-00129, Dkt. 22 (S.D. Ga. Jan. 7, 2025).

the appeal," so "any subsequent state court proceedings are rendered void." App. 15a-16a.

The court rested that holding on "the *Griggs* principle"—that a notice of appeal "'divests the district court of its control over'" the "'aspects of the case'" on appeal. App. 10a-11a; see *Griggs*, 459 U.S. at 58. In *Coinbase*, this Court held that the *Griggs* principle triggers an automatic stay pending an appeal from the denial of a motion to compel arbitration. 599 U.S. at 744. The Eleventh Circuit acknowledged that "neither the Supreme Court nor [the Eleventh Circuit] ha[d] previously applied the *Griggs* principle to appeals of remand orders concerning federal officer removal." App. 10a-11a. But it nonetheless extended *Coinbase* and *Griggs* to that new context. *Ibid.*

The court of appeals gave three reasons for its holding. App. 12a-13a. *First*, the court observed that §1447(d), like the Federal Arbitration Act provision at issue in *Coinbase*, lacks "'non-stay'" language. App. 12a. *Second*, the court concluded that "the entire case is essentially involved in the appeal" when deciding whether the litigation belongs in state or federal court. *Ibid.* (internal quotation marks omitted). *Third*, the court cited a "very real possibility of undermining appellate review" without a stay. App. 13a.

The court also considered that "the district court had already mailed the remand order to the state court when the defendants filed their notice of appeal." App. 16a-18a. It ultimately found that event "irrelevant," concluding that the "*Griggs* principle operated to stay the remand order even though it had already been mailed." App. 16a.

The Eleventh Circuit explained that its automatic-stay holding aligned with the Fourth Circuit's decision on "the same question in the context of federal officer removal," "in an analysis closely tracking" the Eleventh Circuit's own. App. 13a-14a (citing *City of Martinsville* v. *Express Scripts, Inc.*, 128 F.4th 265, 268 (4th Cir. 2025)). But the Eleventh Circuit recognized that the Ninth Circuit reached the opposite conclusion on "the same automatic stay question in the federal officer removal context." App. 14a-15a n.9 (citing *California*, 139 F.4th at 768). The Eleventh Circuit examined "the Ninth Circuit's reasoning" but was "unpersuaded." *Ibid.*

The court of appeals treated the automatic-stay question as a threshold matter of appellate jurisdiction. Whether it had "jurisdiction over this appeal" turned on whether subsequent state-court proceedings had "moot[ed] this appeal." App. 8a. Because the court concluded that the "appeal triggered an automatic stay, such that the state court proceedings are rendered void," it held the appeal was not moot. App. 8a-9a; see App. 3a ("[W]e have jurisdiction to review the district court's remand order, notwithstanding the parties' subsequent litigation activities in state court, because the remand order was automatically stayed upon the defendants' notice of appeal."); App. 18a-19a.

"Having concluded that [it had] jurisdiction," the court of appeals then "turn[ed] to the merits of this appeal" and held that respondents were entitled to federal-officer removal. App. 19a-36a.

REASONS FOR GRANTING THE PETITION

I. The decision below cements a square and intractable circuit conflict.

The decision below entrenches an acknowledged conflict over an important question of federal procedure. The Ninth Circuit has held, in a thorough published opinion, that a §1447(d) appeal does not trigger an automatic stay. *California ex rel. Harrison* v. *Express Scripts, Inc.*, 139 F.4th 763, 765-73 (9th Cir. 2025), cert. denied, No. 25-327 (Jan. 12, 2026). The First, Second, Fifth, Seventh, Tenth, and D.C. Circuits have taken the same view. See *id.* at 766 n.2; *infra* 13-14. But the Eleventh Circuit in this case joined the Fourth Circuit in disagreeing. Both courts have now issued published opinions squarely holding the opposite. App. 1a-36a; *City of Martinsville* v. *Express Scripts, Inc.*, 128 F.4th 265, 268 (4th Cir. 2025). The issue has likewise generated conflicting decisions in district courts.

The conflict could not be clearer. The cases all arise in the exact same context: §1447(d) appeals over federal-officer removal. Courts and commentators alike have recognized the split.[2] The issues have crystallized, with opinions on each side confronting and rejecting the opposing

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[2] *E.g.*, App. 13a-15a & n.9; *California*, 139 F.4th at 766 n.2; *Horton* v. *Gen. Elec. Co.*, 817 F. Supp. 3d 455, 460 (W.D. Ky. 2025) ("Courts are split on whether *Coinbase* [v. *Bielski*, 599 U.S. 736 (2023)] requires courts to grant an automatic stay pending an interlocutory appeal of remand orders where the case was originally removed under the officer removal statute."); *O'Connor's Federal Rules: Civil Trials* §9.2 (2026 ed.) ("The circuits disagree on whether the Supreme Court opinion in *Coinbase* . . . extends to the federal-officer removal context . . . .").

analysis. The remaining circuits are left to simply pick sides. This Court's intervention is urgently warranted.

1. a. Settled law in the Ninth Circuit squarely conflicts with the decision below. In *California*, the Ninth Circuit confronted the identical question presented here, yet held the opposite: Stays pending appeal "in the federal officer removal context" remain "discretionary," not automatic. 139 F.4th at 766. It thus "disagree[d]" that "*Coinbase, Inc.* [v. *Bielski*, 599 U.S. 736 (2023)] should be extended to automatically stay litigation during the appeals of remand orders in the federal officer removal context." *Id.* at 767.

California arose in the same posture as this case: It involved a state court lawsuit removed to federal court under the federal-officer-removal statute. 139 F.4th at 766-67. The plaintiff moved to remand, and the district court granted the motion. *Ibid.* The district court then executed the remand order by mailing the certified order to the state court. See *California ex rel. Harrison* v. *Express Scripts Inc.*, No. 2:23-cv-08570, Dkts. 51, 52 (C.D. Cal.). Afterwards, the defendant appealed under 28 U.S.C. §1447(d). 139 F.4th at 767. That all mirrors this case. App. 5a-6a; see *supra* 5-6.

Those similarities did not produce the same outcome. In *California*, after the defendant moved to stay the remand order pending appeal, the district court denied the stay using a discretionary analysis and rejected the argument that *Coinbase* required an automatic stay. *Ibid.* The Ninth Circuit affirmed, holding that a stay pending appeal is not automatic, but discretionary as set forth in *Nken* v. *Holder*, 556 U.S. 418 (2009). 139 F.4th at 773.

The Ninth Circuit rested that holding on an analysis directly contrary to that of the decision below. The Ninth Circuit examined the argument (adopted by the Fourth Circuit and the decision below) that "an automatic stay of all proceedings is warranted under *Coinbase*'s application of the *Griggs* principle." 139 F.4th at 767. But the Ninth Circuit rejected that view on several grounds—which the Eleventh Circuit considered but deemed "unpersua[sive]" in the decision below. Compare *California*, 139 F.4th at 767-72, with App. 14a-15a n.9.

First, while the Eleventh Circuit believed *Coinbase* applies "regardless of the type of case," App. 14a-15a n.9, the Ninth Circuit concluded that *Coinbase*'s reasoning and holding are limited to "the arbitration context," *California*, 139 F.4th at 768. The Ninth Circuit observed that the issues and briefing in *Coinbase* "concerned only stays in the context of arbitration" and nearly "every paragraph of the . . . opinion specifically references 'arbitrability' or the provisions of the FAA." *Ibid.*

Second, the Ninth Circuit explained that the state-court-removal context presents federalism and comity concerns absent from *Coinbase*. *Id.* at 768-69. Unlike arbitration, a removal case "involves another sovereign": the state. *Id.* at 768. "Automatic stays" would "exacerbate federal infringement on state courts' rights," while "discretion" allows courts to account for "important factors" and "craft case-specific solutions." *Id.* at 768-69. The Ninth Circuit thus held that "federalism concerns" preclude an automatic stay in this context. *Id.* at 768. Contra App. 14a-15a n.9 (adopting automatic-stay rule notwithstanding any "federalism concern").

Third, the Ninth Circuit rejected the argument—which carried the day in the decision below—that in a §1447(d) appeal, "the entire case is essentially involved in the appeal, and therefore an automatic stay of all proceedings is warranted under *Coinbase*'s application of the *Griggs* principle." *California*, 139 F.4th at 767; see App. 11a. Instead, the Ninth Circuit explained that "the question on appeal" is "a narrow venue question of whether the case belongs in state or federal court." 139 F.4th at 771. That further distinguished *Coinbase*: Having "to continue litigation in state court for a brief period pending appeal [on that narrow question] does not cause defendants to 'irretrievably lo[se]' any benefits of the type lost when being wrongfully forced to arbitrate." *Id.* at 770 (quoting *Coinbase*, 599 U.S. at 743). And for the same reason, the post-remand state-court proceedings "do not implicate the *Griggs* principle, which addresses the 'danger a district court and a court of appeals would be simultaneously analyzing the same judgment.'" *Id.* at 771 (quoting *Griggs* v. *Provident Consumer Disc. Co.*, 459 U.S. 56, 59 (1982)).

Fourth, the Ninth Circuit emphasized that an automatic-stay rule would "encourage gamesmanship by defendants." *Id.* at 771-72. Defendants could "delay discovery" simply by raising and appealing a meritless federal-officer theory. *Ibid.* "[A]dopting an automatic stay rule in the federal officer context" would thus "frustrate principles of judicial economy." *Ibid.*

The Ninth Circuit recognized that its holding took sides in a circuit split. Observing that the Fourth Circuit had been "the first . . . circuit in the country to have extended *Coinbase*'s logic to the federal officer removal context," the Ninth Circuit declined to follow that path. *Id.* at 766 n.2 (citing *Martinsville*, 128 F.4th 265). Instead, the Ninth Circuit aligned itself with the Fourth Circuit dissent. *Id.* at 773 ("*Coinbase* does not constitute a general withdrawal of the discretion that courts have exercised for centuries—rather, it merely represents a carve-out in favor of arbitration." (quoting *Martinsville*, 128 F.4th at 275 (Wynn, J., dissenting))). And the Ninth Circuit recognized that it was reaching "the same conclusion" as all "other circuits where this question has been raised, besides the Fourth"—and now, the Eleventh. *Id.* at 766 n.2.

b. As the Ninth Circuit recognized, its holding aligns with the weight of circuit-court authority: Other circuits to address stays pending federal-officer-removal appeals—even after *Coinbase*—have held that stays are discretionary, not automatic. *Ibid.* The Fourth Circuit acknowledged that consensus as well. *Martinsville*, 128 F.4th at 270 n.4.

The Fifth Circuit—in a published opinion considering a stay in this exact context (pending appeal of a remand order in a federal-officer-removal case)—did not impose an automatic stay. *Plaquemines Par.* v. *Chevron USA, Inc.*, 84 F.4th 362, 373-78 (5th Cir. 2023). Instead, despite acknowledging *Coinbase*, *id.* at 376, it applied the discretionary *Nken* factors. *Id.* at 373-78. And it found a stay unwarranted, concluding that the "defendants have fallen well short of meeting their burden to show that a stay pending appeal is justified in the circumstances of this case." *Id.* at 367.

The First, Second, Seventh, Tenth, and D.C. Circuits have likewise rejected an automatic-stay rule in this context. Each of those courts has exercised discretion to deny stays in federal-officer-removal appeals—often rejecting express arguments that *Coinbase* requires an automatic stay. Those decisions came in unpublished orders, as is typical for rulings on emergency stay motions. See *Gov't of P.R.* v. *Express Scripts, Inc.*, 119 F.4th 174, 184 n.3 (1st Cir. 2024) (noting the court denied a stay); Emergency Mot. to Stay Pending Appeal 7-10, *id.*, No. 23-1613 (1st Cir. Aug. 1, 2023) (arguing *Coinbase* requires an automatic stay); *County of Westchester* v. *Express Scripts, Inc.*, No. 24-1639, Dkt. 72.1 (2d Cir. Sept. 6, 2024) ("Appellants are not entitled to an automatic stay pending appeal under *Coinbase*."); *City of Chicago* v. *BP p.l.c.*, No. 25-1916, Dkt. 73 (7th Cir. Aug. 1, 2025) (denying motion to stay); Mot. to Stay Execution of Remand Order Pending Appeal 8-11, *id.*, Dkt. 48-1 (7th Cir. July 3, 2025) (arguing *Coinbase* requires an automatic stay); Order, *Lopez* v. *Cantex Health Care Centers II, LLC*, No. 23-2038, Dkt. 96 (10th Cir. Sept. 5, 2023) ("This court evaluates the traditional stay factors in deciding whether to stay the district court's order."); Order, *In re Clark*, No. 23-7073 (D.C. Cir. Oct. 26, 2023) (denying stay under *Nken* standard and rejecting argument that the "remand order has been automatically stayed pending appeal").

In those post-*Coinbase* cases, the First, Second, Fifth, Seventh, Tenth, and D.C. Circuits applied the opposite rule, with the opposite outcome, from the decision below. The decision below requires *granting* stays *automatically*. These circuits *denied* stays *discretionarily*.

2. a. The Fourth Circuit disagrees with those circuits. *Martinsville*, 128 F.4th at 267-72. In *Martinsville*, the Fourth Circuit faced the same context: a §1447(d) appeal from a federal-officer-removal remand order. *Id.* at 268. And a divided panel of that court held the opposite: *Coinbase*'s automatic-stay rule "applies to appeals under the federal-officer-removal statute." *Id.* at 272.

In direct contrast to the Ninth Circuit, the Fourth Circuit concluded that the principles underlying *Coinbase* apply "just as forcefully" in the federal-officer-removal context as "in *Coinbase* itself." *Id.* at 270. Specifically, the court found "[n]othing in § 1447(d)" that "overrides the background *Griggs* principle." *Ibid.* And the court saw parallels between "a motion to compel arbitration" and "a remand order," characterizing both as addressing "[w]hich forum will hear the case." *Ibid.* It held that a stay therefore happens "automatically," and "the lower court loses dominion over not just the remand order but most everything else in the case." *Id.* at 270, 272 n.6.

Judge Wynn dissented. *Id.* at 272-75. He urged that the majority had "disingenuously extend[ed] the narrow holding on arbitrability appeals in *Coinbase* to broadly abrogate the well-settled holding in *Nken v. Holder* that district courts have discretion over whether to impose a stay." *Id.* at 272. Tracing that tradition back to the Judiciary Act of 1789, Judge Wynn concluded that "*Coinbase* nowhere, as the majority claims, discarded two centuries of practice and established what is tantamount to a generally applicable substantive Canon in Favor of Automatic Stays." *Id.* at 273-74. Instead, *Coinbase* "merely represents a carve-out in favor of arbitration." *Id.* at 275. That position failed to command a majority in the Fourth

Circuit; it became the unanimous holding of the Ninth. See *California*, 139 F.4th at 773.

b. The Eleventh Circuit's decision below entrenched the split. App. 13a-15a & n.9; *supra* 6-8. It recognized the divide in circuit authority. App. 13a-15a & n.9. It expressly sided with the Fourth Circuit's "analysis closely tracking" its own on "the same question." App. 13a-14a. And it directly acknowledged and rejected the opposing rationales laid out by the Ninth Circuit, again on "the same automatic stay question." App. 14a-15a n.9.

The decision below even closed the only conceivable gap remaining between the Fourth and Ninth Circuits' decisions. In opposing certiorari in *California*, the respondent contended the split was not square because the Fourth Circuit had not addressed precisely the same situation as the Ninth Circuit: In the Ninth Circuit case, but not the Fourth Circuit case, the remand order was mailed to the state court *before* the notice of appeal was filed. Br. in Opp. 4-5, *Express Scripts, Inc.* v. *California*, No. 25-327 (U.S. Dec. 9, 2025). But that exact scenario is presented here: The remand order "had already been mailed" "when the defendants filed their notice of appeal." App. 16a. The Eleventh Circuit explicitly considered that timing. *Ibid.* Yet it sided with the Fourth Circuit against the Ninth Circuit anyway, cementing the split. *Ibid.*

3. Widespread division also exists among district courts. District courts have expressly acknowledged the circuit split. See, *e.g.*, *Utah* v. *Express Scripts, Inc.*, No. 25-CV-00088, 2026 WL 891851, at *15 (D. Utah Mar. 31, 2026) (identifying the split but recognizing that "more circuit courts" have held "that appealable remand

orders are subject only to a discretionary stay, notwithstanding *Coinbase*"), appeal filed, No. 26-4035 (10th Cir. Apr. 2, 2026); *Horton* v. *Gen. Elec. Co.*, 817 F. Supp. 3d 455, 460 (W.D. Ky. 2025) ("Courts are 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 officer removal statute."). Courts are now just choosing sides. Compare, *e.g.*, *Utah*, 2026 WL 891851, at *15 (finding the Ninth Circuit's view "more persuasive"); *Horton*, 817 F. Supp. 3d at 460 ("declin[ing] to follow the Fourth Circuit in expanding *Coinbase* beyond the context of arbitration"); *Illinois* v. *3M Co.*, No. 4:25-CV-04189-SLD-RLH, 2025 WL 3470040, at *2 (C.D. Ill. Dec. 3, 2025) (finding "the Ninth Circuit's reasoning in [*California*] to be more persuasive"), with *Kansas* v. *Pfizer, Inc.*, No. 24-1128, 2025 WL 1548507, at *3 (D. Kan. May 30, 2025) (stay is mandatory under *Coinbase* in federal-officer-removal context); *Arkansas ex rel. Griffin* v. *Optum, Inc.*, No. 24-CV-00701, 2024 WL 6991679, at *5 (E.D. Ark. Dec. 31, 2024) (same).[3]

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[3] Confusion reigns at the appellate level as well. The Eleventh Circuit, before it reversed course in the decision below, had refused an automatic stay pending a §1447(d) appeal. *Georgia* v. *Clark*, No. 23-13368, Dkt. 26 (11th Cir. Dec. 21, 2023) ("[Appellant] is not entitled to an automatic stay under . . . *Coinbase*.").

The Third Circuit has also repeatedly taken the same view as the First, Second, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits: It has applied a discretionary standard to deny stays pending §1447(d) appeals, rejecting arguments for an automatic stay under *Coinbase*. See Order, *Att'y Gen. of N.J.* v. *Dow Chem. Co.*, No. 24-1753, Dkt. 24 (3d Cir. July 24, 2024) ("[A] stay of state court proceedings pending appeal is DENIED."); Mot. for Stay Pending Appeal 10-13, *id.*,

II. The question presented is important and warrants review in this case.

1. The split warrants resolution without delay. The circuits will not agree on their own. Precedential opinions on each side have considered and repudiated the opposing rationales; neither faction will reverse course. Rehearing *en banc* in the Ninth Circuit failed without a single judge requesting a vote. Order, *California*, *supra*, No. 24-1972, Dkt. 81 (9th Cir. Aug. 29, 2025). And in the circuits that have adopted the automatic-stay rule, reversal is procedurally implausible: It would require emergency *en banc* action, outrunning the merits of the appeal, to overrule existing precedent and lift the automatic stay before it expires. There is simply no realistic chance that percolation will heal the split.

Nor do the issues need more development. Multiple opinions on each side have thoroughly aired the arguments. The issue is discrete and purely legal, and only a

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Dkt. 22-1 (3d Cir. July 10, 2024) (arguing that "*Coinbase v. Bielski* mandates a stay" (capitalization altered)); Order, *M&T Bank* v. *Arsenis*, No. 24-1723, Dkt. 14 (3d Cir. Nov. 6, 2024); Order, *Doe* v. *Centerville Clinics Inc.*, No. 23-2738, Dkt. 25 (3d Cir. Dec. 21, 2023).

Yet a different Third Circuit panel has seemingly embraced the automatic-stay rationale, concluding that a §1447(d) "notice of appeal deprive[d] the District Court of jurisdiction to take action until the appeal is resolved." Order, *Pappagallo* v. *Redco Corp.*, No. 25-2693, Dkt. 77 (3d Cir. Oct. 20, 2025).

That confusion underscores the need for this Court's review. The question presented warrants a definitive answer from this Court, not inconsistent, expedited adjudication by district courts and appellate motions panels.

handful of statutes and precedents are at issue. The matter is ready for this Court's resolution now.

Delay would be harmful. Federal law should not treat courts of different states differently, automatically divesting some but not others of authority pending §1447(d) appeals. Yet until this Court intervenes, California courts are "empowered to craft case-specific solutions . . . when they receive remanded cases," *California*, 139 F.4th at 769, while Georgia courts' proceedings are "disregard[ed]" as "'void *ab initio*,'" App. 18a.

And the longer the question lingers, the greater the potential fallout. Every relevant state-court proceeding that goes forward risks being retroactively "voided" by a springing automatic stay (if a federal court later adopts the Fourth and Eleventh Circuits' rule). Those cases—and the potential harms—will accumulate until this Court acts.

The present uncertainty also invites gamesmanship. In circuits where the question remains open, defendants get two bites at the apple: After a district court remands a case, the defendant can simultaneously notice an appeal *and* take its chances in state court. If state proceedings go well, it can dismiss its appeal. If not, it can contend that the state proceedings were "'void *ab initio*.'" App. 18a. After all, the Fourth and Eleventh Circuits' automatic stay applies even if the defendant never requested it. App. 13a n.8; *Martinsville*, 128 F.4th at 269-70. The Court should end that opportunity for abuse by resolving the question now.

Prolonging the uncertainty would also leave courts to confront the question under the worst possible circumstances. The question presented usually arises in emergency motions for stays pending appeal. Courts deciding such motions need a clear answer, rather than having to weigh competing rationales from conflicting circuits on a truncated timeline. This Court itself could face the question in an application for interim relief, requiring a choice between the usual *Nken* stay standard and an automatic-stay rule in an emergency posture. See, *e.g.*, *BP p.l.c.* v. *Mayor & City Council of Baltimore*, No. 19A368 (U.S. Oct. 22, 2019) (denying application for stay pending appeal of remand order under §1447(d)). This important question warrants plenary consideration and a definitive resolution now.

2. The consequential, recurring nature of the question presented reinforces the need for review.

This case addresses multiple areas this Court has frequently recognized as worthy of review. The Court has repeatedly granted review to decide the availability of stays pending appeal. See *Coinbase*, 599 U.S. 736; *Nken*, 556 U.S. 418; *Hilton* v. *Braunskill*, 481 U.S. 770 (1987). Likewise, the Court has intervened time and again to provide clarity regarding §1447(d) appeals. *E.g.*, *BP p.l.c.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230 (2021); *Carlsbad Tech., Inc.* v. *HIF Bio, Inc.*, 556 U.S. 635 (2009); *Powerex Corp.* v. *Reliant Energy Servs., Inc.*, 551 U.S. 224 (2007); *Osborn* v. *Haley*, 549 U.S. 225 (2007); *Kircher* v. *Putnam Funds Tr.*, 547 U.S. 633 (2006); *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706 (1996); *Things Remembered, Inc.* v. *Petrarca*, 516 U.S. 124 (1995); *Thermtron Prods., Inc.* v. *Hermansdorfer*, 423 U.S. 336 (1976). So too with federal-officer removal. *E.g.*, *Chevron USA Inc.* v. *Plaquemines Par.*, 146 S. Ct. 1052 (2026); *Watson* v. *Philip Morris Cos.*, 551 U.S. 142 (2007).

The question presented here affects every single §1447(d) appeal. Over a dozen courts have decided the stay question in just the past few years. *Supra* 10-17 & n.3. And the issue lurks even in cases where no party raises it, because under the Fourth and Eleventh Circuits' rule, the stay is "self-executing" "whether or not the parties ask." *Martinsville*, 128 F.4th at 269; see App. 13a n.8. Cases implicating the issue will continue to proliferate, given the frequency with which private corporations now assert federal-officer removal—including in mass tort, environmental, and opioid litigation. See Zachary D. Clopton, *Catch and Kill Jurisdiction*, 121 Mich. L. Rev. 171, 198 (2022) ("Recently, private defendants have offered ever-expanding notions of federal officer removal to gain access to federal courts.").

The question presented is also fundamentally important to the judicial system. "A stay is an 'intrusion into the ordinary processes of administration and judicial review.'" *Nken*, 556 U.S. at 427 (citation omitted). Even more so, an *automatic* stay impairs courts' "traditional equipment for the administration of justice." *Ibid.* (citation omitted). The Fourth and Eleventh Circuits' rule jeopardizes "the discretion that courts have exercised for centuries." *Martinsville*, 128 F.4th at 275 (Wynn, J., dissenting).

The stay question here also strikes at the relationship between federal and state courts. At stake is whether federal law, via a judge-made "background principle," handcuffs state courts and renders their proceedings "void." App. 14a-15a & n.9. Federal courts should not so intrude on state courts without this Court's review.

The practical consequences are considerable. An automatic-stay rule halts a case for months or years. The appeal in this case, for example, consumed three years. Delay risks lost evidence and faded memories. Injured parties endure continued hardship and mounting financial pressure, and all sides face prolonged uncertainty. Trial courts are powerless, even to grant emergency relief in the face of irreparable harm. Most perversely, proceedings are frozen even against defendants with no basis at all for asserting federal-officer removal. See *Gov't of P.R.*, 119 F.4th at 185 ("[I]f a single defendant properly removes under §1442, the entire action, with all defendants, must be removed to federal court."). And all those harms result from a federal-officer theory weak enough to be rejected by the district court.

Martinsville vividly illustrates the problem. There, the City of Martinsville—in a suit responding to the opioid epidemic—successfully defeated federal-officer removal in district court. *City of Martinsville* v. *Purdue Pharma, L.P.*, No. 24-CV-00002, 2024 WL 4218847, at *1 (W.D. Va. Sept. 16, 2024). By that time, the City had already "been waiting about six years for its case to proceed," and the district court found a stay pending appeal unwarranted under the traditional factors. *Id.* at *14-15. "Such additional delay in an already lengthy litigation process can raise concerns about a loss of memories or evidence," the court explained. *Ibid.* Nevertheless, the Fourth Circuit imposed an automatic stay, freezing the case as the appeal wore on. *Martinsville*, 128 F.4th at 272. But the Fourth

Circuit ultimately affirmed, agreeing that the case belonged in state court all along. *City of Martinsville* v. *Express Scripts, Inc.*, No. 24-1912, 2025 WL 1039624, at *1 (4th Cir. Apr. 8, 2025). Indeed, in *Martinsville*, the federal-officer-removal theory was so weak the Fourth Circuit affirmed without oral argument. *Ibid.* Yet simply by asserting and appealing a federal-officer theory, a few defendants delayed the entire state-court case—and the City's attempts to secure relief for the opioid crisis—for over a year. See Notice of Removal, *Martinsville*, *supra*, No. 4:24-CV-00002, Dkt. 1 (W.D. Va. Jan. 17, 2024); *id.*, Dkt. 65 (W.D. Va. May 1, 2025) (finally remanding the case after appeal).

Left unchecked, the automatic-stay rule of the Fourth and Eleventh Circuits will fuel widespread delay tactics. See *California*, 139 F.4th at 771-72 (warning against "gamesmanship by defendants that would frustrate principles of judicial economy"). Under an automatic-stay rule, dubious removals to federal court and accompanying mandatory stays of state-court proceedings will become routine—further disrupting the administration of justice and generating friction between state and federal courts.

And the impact extends beyond federal-officer-removal cases. The reasoning of the Fourth and Eleventh Circuits seemingly reaches all appeals from remand orders, whether or not they arise under §1447(d) or concern federal-officer removal. Cf., *e.g.*, *Thermtron*, 423 U.S. at 345-52 (allowing appeals of remand orders besides those expressly authorized by §1447(d)). Worse, by unmooring *Coinbase* from the arbitration context, the Fourth and Eleventh Circuits' decisions threaten to eviscerate the traditional discretionary-stay standard in myriad other settings. See *Martinsville*, 128 F.4th at 270 (suggesting automatic-stay rule applies to any appeal concerning "[w]hich forum will hear the case"); *id.* at 274 (Wynn, J., dissenting) (observing that panel majority's reasoning would apply automatic stay "to every interlocutory appeal of a dispositive issue"). This Court's review is warranted before the consequences multiply.

3. This case is an ideal vehicle and avoids common defects in other cases raising the question presented.

First, the Eleventh Circuit issued a comprehensive, precedential opinion squarely deciding the question presented as a pure issue of law. Typically, stays pending appeal are sought in emergency motions and decided in summary orders. But here, the Eleventh Circuit reached a clear, considered decision adopting an automatic-stay rule.

Second, the choice between automatic and discretionary stays is dispositive here. The stay in this case could not have been granted discretionarily, because "[n]o party in this case requested a stay in federal court." App. 13a n.8. A stay thus could apply only if it were "automatic." *Ibid.*

Third, the question presented arises here as a threshold, jurisdictional issue. The Eleventh Circuit's automatic-stay holding was dispositive of its "jurisdiction to review this appeal."[4] App. 8a; see App. 3a, 18a-19a. The

[4] The automatic-stay holding was dispositive of appellate jurisdiction because it was the Eleventh Circuit's sole ground for overcoming one mootness objection. App. 18a ("For this reason, the

question presented is thus the single key question at the outset of the Eleventh Circuit's decision—on which courts have an "independent obligation" to act—ensuring that no predicate issues or preservation disputes pose an obstacle to reaching the question. See *Arbaugh* v. *Y&H Corp.*, 546 U.S. 500, 514 (2006).

That the stay question goes to appellate jurisdiction here also ensures it is not mooted by a decision on the underlying merits of the appeal—a prominent vehicle issue in other cases. See, *e.g.*, Conditional Motion to Expedite Consideration of Joint Petition for a Writ of Certiorari 2, *Coinbase*, *supra*, No. 22-105 (July 29, 2022) ("The issue presented by Coinbase's joint petition for certiorari will become moot once the Ninth Circuit issues its decisions on Coinbase's underlying arbitrability appeals . . . ."); Suggestion of Mootness, *Coinbase*, *supra*, No. 22-105 (Mar. 1, 2023); Br. in Opp. 20-21 & n.10, *California*, *supra*.

Finally—curing the main defect asserted when certiorari was previously sought on this question—this case's posture mirrors that of the Ninth Circuit case. See Br. in Opp. 4-5, *California*, *supra*. As noted above, the chief argument against certiorari in *California* was that the timing of the notice of appeal formed "a critically important factual distinction" between cases on each side of the split. *Ibid.*; see *supra* 16. This case, however, is on all fours with

City's argument that its amended complaints in state court mooted this appeal fails."). The Eleventh Circuit considered no alternative bases for deciding that jurisdictional issue (unlike a separate threshold objection, which the court did reject on another ground, see App. 18a n.12). Thus, only because of its automatic-stay holding did the Eleventh Circuit reach its (incorrect) resolution of the federal-officer-removal merits. App. 3a, 8a, 18a-19a.

the Ninth Circuit case on the opposite side of the split: The "district court had already mailed the remand order to the state court when the defendants filed their notice of appeal." App. 16a; see Br. in Opp. 4-5, *California*, *supra*. This case thus presents the split as squarely as possible, and the Court should resolve it now.

III. The decision below is wrong.

This Court has long held that a stay pending appeal "is not a matter of right." *Nken*, 556 U.S. at 433 (quoting *Virginian Ry. Co.* v. *United States*, 272 U.S. 658, 672 (1926)). Yet the Eleventh Circuit held the opposite here, entitling defendants to a stay as of right—even if they failed to request it. App. 13a n.8; see also *Martinsville*, 128 F.4th at 269-70 (imposing "self-executing" stay "whether or not the parties ask").

There is no basis for that departure from the longstanding default rule that stays are "'an exercise of judicial discretion,'" requiring "[t]he party requesting a stay" to carry its burden of justifying it. *Nken*, 556 U.S. at 433-34 (quoting *Virginian Ry. Co.*, 272 U.S. at 672). The Eleventh Circuit relied on *Coinbase*, which recognized an exception to the usual discretionary-stay rule in one context: "while [an] interlocutory appeal on arbitrability is ongoing." 599 U.S. at 740. That exception does not extend to the state-court-remand context, as the Ninth Circuit and the Fourth Circuit dissent correctly explained.

1. To begin, "[f]ederalism concerns—namely the limited jurisdiction of federal courts and the need to respect the jurisdiction of state courts—distinguish

federal officer removal from the arbitration context." *California*, 139 F.4th at 768. Nothing in *Coinbase* authorizes "federal infringement on state courts' rights." *Id.* at 769.

Unlike in *Coinbase*, a stay pending appeal here operates not just on federal trial courts, but also on courts of "another sovereign." *Id.* at 768. Under the Eleventh Circuit's rule, federal law automatically barred Georgia's courts from proceeding with the case—and "rendered void" the state court's work. App. 9a, 16a.

That is a significant intrusion on the states. When a defendant pursues a weak removal theory and the district court rejects it, an automatic stay pending appeal "deprive[s] state courts of jurisdiction over cases that should rightfully be heard in their fora, in violation of comity principles." *California*, 139 F.4th at 768. And that is not a contrived scenario. It is the heartland application of the automatic-stay rule, which—unlike a discretionary regime—imposes a stay even when the defendant cannot make the traditional stay showing (including likelihood of success on the merits).

Such an intrusion on state courts contravenes basic limits on federal power, which require federal courts to "scrupulously confine their own jurisdiction" and give "due regard for the rightful independence of state governments." *California*, 139 F.4th at 769 (citation and alterations omitted); see *Healy* v. *Ratta*, 292 U.S. 263, 270 (1934). "[T]he normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *California*, 139 F.4th at 769 (quoting *Younger* v. *Harris*, 401 U.S. 37, 45 (1971)); see also 28 U.S.C. §2283 (Anti-Injunction Act). That is doubly true when no party even asks for such an injunction.

Coinbase nowhere creates federal power to so intrude on state courts. *Coinbase* rests on a judge-made "background principle" governing federal courts: A notice of appeal "'divests the district court of its control over those aspects of the case involved in the appeal.'" 599 U.S. at 740 (quoting *Griggs*, 459 U.S. at 58). But that principle, even where it applies, says nothing about state courts. Here, the Eleventh Circuit's holding did not divest *the district court* of any control; the district court did nothing at all after the notice of appeal was filed. Instead, the Eleventh Circuit divested the *Georgia court* of authority to proceed with the case. *Griggs* supplies no federal power to do that.

2. *Coinbase*'s core logic also does not translate here. "[T]he unique aspects of arbitration that automatic stays help to preserve are not at issue in the federal officer removal context." *California*, 139 F.4th at 768; see *Martinsville*, 128 F.4th at 274-75 (Wynn, J., dissenting).

A right to arbitrate is a right to avoid litigation. An arbitrability appeal thus asks whether the suit should be litigated or not. Accordingly, *Coinbase* reasoned that "[b]ecause the question on appeal is whether the case belongs in arbitration or instead in the district court, the entire case is essentially 'involved in the appeal.'" 599 U.S. at 741 (quoting *Griggs*, 459 U.S. at 58). If "pre-trial and trial proceedings" moved forward, "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost." *Id.* at 743. Arbitration is thus "analogous" to "qualified immunity" and "double jeopardy"—other rights to avoid suit entirely. *Id.* at 746.

Removal is different. A right to remove to federal court is not a right to avoid litigation. Whether or not removal is proper, the case is subject to litigation regardless. So the question in a removal appeal is not (as in *Coinbase*) whether the case should be litigated. It is instead separable from the other aspects of the case—"such as whether the claims have merit, whether the parties are entitled to the discovery they seek, and so on." *California*, 139 F.4th at 771. "Proceedings on those questions would not interfere with the appellate court's review of the remand order, nor risk inconsistent judgments." *Ibid.* The state court will never consider the question before the federal appellate court: whether the district court should have remanded the case.

And litigating in one court versus another does not inherently cause the "irretrievabl[e] los[s]" of the benefits sought on appeal. *Coinbase*, 599 U.S. at 743. "[P]ermitting early stage litigation in state court would not preclude a defendant from returning to federal court post-appeal" or necessarily destroy the benefits of a federal forum. *California*, 139 F.4th at 771. In many cases, progress can be made on matters where the forum makes no difference. See, *e.g.*, *Leroy* v. *Hume*, 563 F. Supp. 3d 22, 30 (E.D.N.Y. 2021) ("Any subsequent discovery obtained in state court will be relevant to the case's adjudication even if the case is subsequently [returned] to federal court."). In other cases, where benefits might be lost, a court could impose a discretionary stay. *Coinbase* was different: It rested on benefits of arbitration that cannot be recovered once litigation occurs. 599 U.S. at 743. Such "fundamental differences . . . do not exist as between litigation in state versus federal courts"—"each provide forums for litigation with roughly similar levels of efficiency, expense, and comprehensive discovery mechanisms." *California*, 139 F.4th at 770. By contrast, "arbitration is a fundamentally different form of dispute resolution than litigation," and that foundational element of *Coinbase*'s reasoning is missing here. *Id.* at 769.

Under the Fourth and Eleventh Circuits' logic—applying *Coinbase* just because the appeal concerns whether the suit should proceed in district court—the *Coinbase* automatic-stay rule is limitless. It would "apply to every interlocutory appeal of a dispositive issue" because every such appeal decides whether a case belongs in district court. *Martinsville*, 128 F.4th at 274 (Wynn, J., dissenting). Yet *Coinbase* refused to go that far. In the face of the dissenting Justices' warning that a stay rule would be "destabilizing" if applied to "any appeal over the proper forum," "any interlocutory appeal on a dispositive issue," or—as here—an appeal over "federal-court jurisdiction," the *Coinbase* majority did not extend the automatic stay to those contexts. 599 U.S. at 760-61 (Jackson, J., dissenting). Instead, this Court's holding was limited to the "sole question" of whether an automatic stay applies to an "appeal on arbitrability." 599 U.S. at 740.

3. The court of appeals' contrary reasoning lacks merit. It first observed that §1447(d) "includes no express 'non-stay' language" that would overcome "the background *Griggs* principle." App. 12a. But that assumes *Griggs* would require a stay here in the first place—a false premise for the reasons just explained. See *supra* 26-30.

The court of appeals next asserted that "the entire case is essentially 'involved in the appeal'" of a remand order. App. 12a-13a. But the question of venue is separate from other questions in the case, like what discovery is appropriate. See *supra* 29; *California*, 139 F.4th at 771. And nothing in *Griggs* prohibits state courts from proceeding on those other matters.

The court of appeals also expressed concern that there is a "very real possibility" appellate review might sometimes be "nullif[ied]" without a stay. App. 13a. But appellate courts regularly review remand orders in cases where no stay was in effect (as the First, Second, Third, Fifth, Seventh, Ninth, Tenth, and D.C. Circuits have done). See *supra* 10-14, 17 n.3. This Court itself has done so after denying a stay pending appeal. See *BP p.l.c.* v. *Mayor & City Council of Baltimore*, No. 19A368 (U.S. Oct. 22, 2019) (denying stay of remand order pending appeal); *BP*, 593 U.S. 230 (deciding appeal of that remand order). The Eleventh Circuit identified particular scenarios that might favor a stay in *some* cases, yet it imposed a stay in *all* cases. App. 13a. The case-specific concerns the court of appeals identified are exactly what the usual discretionary-stay rule addresses. Under that rule, judges can fashion an appropriate stay "dependent upon the circumstances of the particular case." *Nken*, 556 U.S. at 434 (citation omitted).

Finally, the court of appeals concluded its analysis by opining that "the *Griggs* principle operated to stay the remand order even though it had already been mailed" to the state court when the notice of appeal was filed. App. 16a-18a. That, too, is mistaken. The court of appeals acknowledged that under §1447(c), once the order is mailed "to the clerk of the State court," the "State court may thereupon proceed with such case." App. 16a n.10 (quoting §1447(c)). Yet the court of appeals held that the subsequent notice of appeal somehow activated federal power to stop the state proceedings. App. 16a-18a. The court of appeals identified nothing in *Griggs* or *Coinbase*—rules of federal court *inaction*—that would reach out and stop the state court's proceedings after the remand had already been effectuated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1, 2026

APPENDICES

APPENDICES

APPENDIX A

FOR PUBLICATION

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-13200

CITY OF BRUNSWICK,
by and through its Mayor and
Board of Commissioners,

Plaintiff-Appellee,

versus

HONEYWELL INTERNATIONAL, INC.
f.k.a. Allied Chemical Corporation,
f.k.a. Allied Signal, Inc.,
THE GEORGIA POWER COMPANY,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 2:22-cv-00132-JRH-BWC

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

BRANCH, Circuit Judge:

Congress has charged the Environmental Protection Agency ("EPA") with identifying sites affected by pollution and undertaking necessary remediation efforts or delegating those efforts to third parties. One such site surrounds the City of Brunswick, Georgia. The City sued Honeywell International, Inc., and the Georgia Power Company in Georgia state court asserting that both defendants were liable under state tort law for pollution emanating from that site. The defendants removed the case to federal court, arguing, among various grounds for removal, that federal officer jurisdiction under 28 U.S.C. § 1442(a)(1)[1] applied, because all the remediation efforts the defendants had undertaken at the site were controlled and delegated by EPA, a federal agency. The district court rejected this argument and remanded the case to state court.

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[1] The federal officer removal statute provides as follows:

> (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. § 1442(a)(1).

While this appeal of the remand order was pending, the Supreme Court further delineated the contours of the federal officer removal test. *See Chevron USA Inc. v. Plaquemines Parish*, 608 U.S. ----, 146 S. Ct. 1052 (2026). With the benefit of oral argument and supplemental briefing, we hold that federal officer removal was proper in this case because the defendants' alleged liability arises out of their obligations under an EPA-mandated consent decree to remediate the plant site, an action that EPA would otherwise have to perform itself.[2]

But first, we consider our jurisdiction to hear the appeal. We conclude that we have jurisdiction to review the district court's remand order, notwithstanding the parties' subsequent litigation activities in state court, because the remand order was automatically stayed upon the defendants' notice of appeal. Accordingly, we reverse the district court's remand order.

I. Background

A. Factual Background

Georgia Power, an electric utility incorporated in Georgia, purchased plots of land ("the Plant Site") in the Brunswick area in 1937 and the following years. Georgia Power used the Plant Site to generate electric power and store petroleum products. As a result of these operations, hazardous substances, including polychlorinated byphenals (PCBs), were released on the Plant Site and into the environment.

In the mid-1950s, a corporation that later became Honeywell acquired the Plant Site and additional land in the

[2] Because we decide the removal issue on the federal officer removal ground, we do not reach the defendants' other grounds for removal.

area from Georgia Power. Honeywell built and operated a chlor-alkali facility at the Plant Site to produce chlorine gas, hydrogen gas, and caustic solution. These operations led to further disposal of hazardous substances, including mercury and PCBs, within the Plant Site. Honeywell operated the Plant Site until 1979, when Honeywell sold it to another corporation, although Honeywell remained involved in the plant's operations until the plant ceased activity in 1994. Honeywell later reacquired the Plant Site.

In 1995, the defendants entered into an Administrative Order on Consent with EPA, agreeing to undertake a remedial investigation and feasibility study at the Plant Site under EPA's oversight and subject to EPA's approval. EPA subsequently added the Plant Site to the National Priorities List, a "prioritized list of contaminated sites for cleanup, commonly known as Superfund sites" under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). *See Atl. Richfield Co. v. Christian*, 590 U.S. 1, 6 (2020) (citing 42 U.S.C. § 9605).[3] A few years later, EPA began to mandate remediation actions, such as ordering "Honeywell to remove one foot of soil from thirteen acres of the marsh and sediment in creeks in front of the old Honeywell trash dump."

Following extensive investigation activities and additional remedial work on the Plant Site, in 2015 EPA issued a Record of Decision (EPA's official cleanup plan pursuant to CERCLA) selecting remedial actions to be implemented at the Plant Site. The defendants then entered into

[3] Once a contaminated site is designated a Superfund site, "EPA may clean [the site] itself or compel responsible parties to perform the cleanup." *Atl. Richfield*, 590 U.S. at 6 (citing 42 U.S.C. §§ 9604, 9606, 9615).

a consent decree with EPA, incorporating that Record of Decision, to implement the EPA-selected remedial actions subject to EPA's oversight and control.

B. Procedural Background

The City initially filed suit in the Superior Court of Glynn County, Georgia, on October 20, 2022. The suit alleged continuing nuisance and continuing trespass under Georgia law for the defendants' failure to adequately remediate the pollutants emanating from the defendants' land and affecting the City's property. The City alleged that "Honeywell's activities at the Plant Site caused and continue to cause toxic mercury and PCBs to be spilled, discharged and deposited into the Turtle River, its tributaries, surrounding marshlands and onto property of the City of Brunswick." These pollutants, it alleged, entered the City's property "in amounts, concentrations and combinations that are harmful to health, safety and welfare of the citizens of the City of Brunswick, and to animals, birds and aquatic life." According to the City, "[d]efendants' continuing failure and refusal to permanently remove their pollution from property of the City of Brunswick[] unreasonably and substantially interferes with the City's right to exclude others and the pollutants of others from its property" and with "the City's use and enjoyment of its property." The City therefore alleged that the defendants were "liable for all . . . remediation costs and damages" related to the hazardous waste on City property.

The defendants timely removed the case to the United States District Court for the Southern District of Georgia based on three distinct grounds for subject-matter jurisdiction: (1) federal officer removal under 28 U.S.C. § 1442; (2) federal question jurisdiction under 28 U.S.C. § 1331;

and (3) diversity jurisdiction under 28 U.S.C. § 1332(a), asserting that Georgia Power had been fraudulently joined to defeat diversity. The City subsequently moved to remand the case back to state court.

The district court granted the City's motion for remand, rejecting each of the defendants' asserted grounds for removal. As relevant to this appeal, the court concluded that the defendants were not "acting under" a federal officer when they allegedly released pollutants into the waters and marshlands around the City's property, and that EPA's supervision of the defendants' remediation efforts was not enough to show otherwise, thus federal officer removal was not warranted.[4] The district court instructed the Clerk to "REMAND this case to the Superior Court of Glynn County, Georgia" and to "CLOSE this case" on September 1, 2023, and the district court's remand order was docketed in state court on September 6, 2023. The defendants timely appealed the district court's order on September 25 and 26, 2023.

After the district court issued its remand order and we docketed the defendants' appeal, the parties continued litigating this case in state court. Glynn County Superior Court received a certified copy of the order remanding the case on September 6, 2023, and reasserted jurisdiction over the matter. The superior court initially stayed the proceedings pending appeal, but later granted the City's motion to withdraw the stay in April 2024. Both Honeywell and Georgia Power filed answers and motions to dismiss the City's complaint in the state court proceedings. As litigation continued, the City amended its complaint twice.

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[4] The district court also rejected the defendants' reliance on federal question and diversity jurisdiction.

Meanwhile, the City filed a motion to dismiss this appeal, arguing that the defendants had waived their right to appeal the remand order by substantially litigating the case in state court.[5] Upon being notified of the City's amended complaints in state court, we ordered supplemental briefing on the question of whether the City's amended complaints had any effect on our jurisdiction over the appeal.

After that supplemental briefing, and after oral argument was held, we requested further briefing on whether we should stay the appeal pending the Supreme Court's decision in *Plaquemines Parish*, 146 S. Ct. 1052, which considered the proper test for federal officer removal. Additionally, we requested briefing on whether *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), required an automatic stay of district court proceedings once the defendants had filed notices of appeal, such that the district court's remand order was without effect. The parties briefed the *Coinbase* issue as it relates to federal officer removal and agreed that we should stay the appeal pending *Plaquemines Parish*, which we did. After the Supreme Court issued its opinion in *Plaquemines Parish*, we lifted the stay and requested and received supplemental briefs from the parties addressing the effect of that opinion on this appeal. We now consider this appeal in the light of all the parties' briefing on the relevant issues.

II. Standard of Review

We review questions of subject matter jurisdiction *de novo*. *Wilson v. Hearos, LLC*, 128 F.4th 1254, 1259 (11th Cir. 2025). We also review a district court's remand order

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[5] We carried this motion with the case.

de novo. *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1161 (11th Cir. 2006).

III. Discussion

This appeal requires us to address two distinct questions: (1) whether we have jurisdiction to review the defendants' appeal and (2) whether the defendants properly removed this case to federal court. We answer both questions in the affirmative.

A. We have jurisdiction to review this appeal

Because the parties litigated this case in state court after the district court's remand, the City disputes our jurisdiction over this appeal. First, the City argues that we should dismiss the appeal because the defendants sought "resolution in their favor" in state court upon remand and thus "waived their right to proceed in federal district court" (elsewhere, "waived removal jurisdiction"). Second, the City contends that its decision to amend the underlying complaint in state court moots this appeal because the initial complaint—the subject of this appeal—no longer governs the case following the City's amended complaints in state court. The defendants respond that they did not waive their right to appeal by litigating in state court because they had no other option once the state court lifted its stay pending appeal. They further argue that the City's amended complaints did not divest us of jurisdiction because, among other things, 28 U.S.C. § 1447 provides for appeal as of right following remand orders in cases involving federal officer removal. We agree with the defendants that we have subject matter jurisdiction to review the remand order, holding that the defendants' timely appeal triggered an automatic stay, such that the state court proceedings are rendered void for our purposes.[6]

The federal officer removal statute allows for the removal from state court to federal court of any "civil action or criminal prosecution" against "any officer (or any person acting under that officer) of the United States or of any agency thereof . . . for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1).[7] If a district court determines that removal was improper, it may order the case remanded to state court. *See id.* § 1447(c). Generally, we lack jurisdiction to review remand orders. *See id.* § 1447(d) ("An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise . . . ."). But § 1447(d) specially allows appeals in cases involving federal officer removal under § 1442, providing that remand orders "*shall* be reviewable by appeal or otherwise." *Id.* (emphasis added); *see Thomas v. Phoebe Putney Health Sys.*, 972 F.3d 1195, 1200–01 & n.4 (11th Cir. 2020).

Additionally, every appeal implicates the "*Griggs* principle": "An appeal, including an interlocutory appeal, 'divests the district court of its control over those aspects of the case involved in the appeal.'" *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). In *Coinbase*, the

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[6] Because we hold that the notice of appeal automatically stayed the remand order, the amended complaints filed in the post-remand state court proceedings have no legal effect in this Court. We therefore reject Honeywell's argument that we may look to the second amended complaint filed in the state court when analyzing the merits of the removal itself.

[7] We will discuss the merits of the defendants' federal officer removal argument pursuant to § 1442 in a later section.

Supreme Court applied this "longstanding tenet of American procedure" in the context of a motion to compel arbitration, concluding that "the *Griggs* rule requires that a district court stay its proceedings while the interlocutory appeal on the question of arbitrability is ongoing." *Id.* at 740, 744. The question before us is whether the *Griggs* principle requires the automatic stay of all district court proceedings during appeals of remand orders in federal officer removal cases.

The defendants argue that *Coinbase*'s application of *Griggs* applies to appeals of remand orders under the federal officer removal statute, because appeals divest the district court of control over the aspects of the case involved in the appeal, and appeals regarding federal officer removal, as do appeals of arbitrability, involve the entire case. The City, on the other hand, contends that *Coinbase*'s reasoning was narrow and turned on the fact that discovery would not be available in arbitration, while in this context parties would engage in discovery in both federal and state court. We conclude that, under the *Griggs* principle as applied in *Coinbase*, the defendants' notice of appeal stayed the entirety of the district court's proceedings and divested the district court of jurisdiction to remand the case, rendering the subsequent state court proceedings without legal effect.

To begin, *Griggs* explained that "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." 459 U.S. at 58. This principle grew from the general understanding that "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." *Id.* While neither the Supreme Court nor this Court have previously applied the *Griggs* principle to appeals of remand orders concerning federal officer removal, in *Coinbase* the Supreme Court applied *Griggs* to determine that a notice of appeal of arbitrability automatically stayed all district court proceedings. 599 U.S. at 741. The Court's reasoning in *Coinbase* demonstrates that *Griggs* calls for an automatic stay in this context as well.

At issue in *Coinbase* was the appeal of the district court's denial of a motion to compel arbitration. *Id.* Congress had provided, by statute, for immediate appeal of a district court's denial of such motions, but the statutory provision did not explicitly call for an automatic stay of district court proceedings upon appeal. *Id.* at 740. The Court determined, nonetheless, that the "*Griggs* principle resolve[d] th[e] case." *Id.* at 741. *Griggs* held that an appeal divested the district court of jurisdiction over "those aspects of the case involved in the appeal." 459 U.S. at 58. Because the appeal in *Coinbase* would decide "whether the case belongs in arbitration or instead in the district court," the Court found that "the entire case [wa]s essentially 'involved in the appeal.'" 599 U.S. at 741 (quoting *Griggs*, 459 U.S. at 58)). And Congress did not need to explicitly require a stay in the statutory text of the Federal Arbitration Act because, "absent contrary indications, the background *Griggs* principle already require[d] an automatic stay." *Id.* at 743–44. The Court observed that when Congress does not want the *Griggs* principle to apply, it "typically says so" expressly, pointing to a litany of "statutory 'non-stay' provisions" where Congress had clearly chosen to "authorize an interlocutory appeal, but *not* to automatically stay district court proceedings pending that appeal."

Id. at 744 (emphasis in original); *see id.* at 744 n.6 (collecting statutes with express "non-stay" provisions).

In support of its conclusion, the Court cited circuit decisions "in the analogous contexts of qualified immunity and double jeopardy" and of other interlocutory appeals that had similarly held that district court proceedings were automatically stayed for the pendency of the appeal. *Id.* at 742–43. The Court further pointed out that this "common practice reflects common sense": "continuation of proceedings in the district court largely defeats the point of the appeal" and functionally "nullified" Congress's choice to provide an interlocutory appeal of such orders. *Id.* (quotation omitted). Without a stay, the benefits of arbitration, such as avoiding extensive discovery, could be lost and parties could be forced to settle while awaiting the appellate court's decision. *Id.* at 743. Thus, the Court concluded that the district court "was required to stay its proceedings" once Coinbase appealed its order. *Id.* at 747.

The *Coinbase* Court's reasoning clearly supports requiring an automatic stay of all district court proceedings in this case. First, the Court presented the *Griggs* principle as a "rule" that required its conclusion that appeals of arbitrability decisions automatically stayed underlying proceedings—a rule that operated in the background of statutory grants of appellate review, unless Congress clearly indicated otherwise. *Id.* at 743–44. The provision granting review in this case, § 1447(d), includes no express "non-stay" language, so *Coinbase* indicates that the background *Griggs* principle applies.

Second, just as an appeal of a motion to compel arbitration decides the forum in which proceedings will continue, the appeal of a remand order decides "whether the case belongs in [state court] or instead in the district court." *Id.* at 741. In both contexts, "the entire case is essentially 'involved in the appeal.'" *Id.* (quoting *Griggs*, 459 U.S. at 58).

And third, *Coinbase*'s concern about nullifying Congress's grant of appellate review also applies here: the City's own mootness arguments demonstrate the very real possibility of undermining appellate review in federal officer removal cases absent an automatic stay. Unless the district court or state court grants a discretionary stay pending appeal, it is likely that state court proceedings during the appeal would require the defendants to engage in litigation in state court—the very action the City contends moots this appeal—or that the plaintiff would amend its complaint—the grounds for the City's other mootness argument— in order to avoid a possible reversal on appeal. Recognizing an automatic stay in this context preserves Congress's choice to grant appellate review of decisions denying federal officer removal.

For these three reasons, it necessarily follows from *Coinbase* that the *Griggs* rule requires an automatic stay of all district court proceedings pending appeal of a remand order in the context of federal officer removal.[8]

We are not alone in concluding that *Griggs* and *Coinbase* require an automatic stay in this context. The Fourth Circuit recently considered the same question in the context of federal officer removal and determined that "[u]nder a fair[] reading of *Coinbase*, the district court was automatically stayed from mailing the remand order." *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 268 (4th Cir. 2025). The court distilled from *Coinbase* three

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[8] No party in this case requested a stay in federal court, but *Coinbase* is clear that the stay is "automatic." *See, e.g.*, 599 U.S. at 742.

principles it believed resolved the question: First, when the question on appeal is "the whole ballgame" (such as whether the district court or the arbitrator should act as factfinder), the appeal divests the district court of "control over more or less the whole case," otherwise the appeal would be pointless. *Id.* at 269. Second, an automatic stay is, as its name implies, self-executing, so a district court must "immediately . . . halt all proceedings covered by the *Griggs* principle when a proper notice of appeal is docketed, whether or not the parties ask it to." *Id.* at 269–70. And third, "because *Griggs* identifies a background principle," Congress need not affirmatively include an automatic stay provision (although it can certainly create exceptions to the general principle); "the default rule is that an appeal automatically stays all aspects of the case involved in the appeal." *Id.* at 270. Based on these principles—applied in an analysis closely tracking our discussion above—the Fourth Circuit concluded it was "clear that the *Griggs* principle applies just as forcefully here as it did in *Coinbase* itself." *Id.*[9]

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[9] The Ninth Circuit, considering the same automatic stay question in the federal officer removal context, limited *Coinbase* to the arbitration context. *California v. Express Scripts, Inc.*, 139 F.4th 763, 768 (9th Cir. 2025), *cert. denied*, 146 S. Ct. 1507 (2026) (mem.). The court pointed out that federal officer removal from state court presents "unique federalism issues" not present in the arbitration context and highlighted that "a stay is an 'intrusion into the ordinary processes of administration and judicial review.'" *Id.* (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). According to the Ninth Circuit, a stay in a case involving an improper removal might "infringe upon the rights of state courts" to hear "cases that should rightfully be heard in their fora, in violation of comity principles." *Id.* at 769. Thus, the Ninth Circuit determined that stays in this context should be discretionary rather than automatic. *Id.*

Relying, then, on the *Griggs* principle as explained in *Coinbase*, we hold that the appeal of a motion to remand under § 1447(d) triggers an automatic stay of all district court proceedings—including the remand order—pending

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Federalism and comity with state courts are certainly important principles. *See, e.g.*, *Leonard v. Ala. State Bd. of Pharmacy*, 61 F.4th 902, 907 (11th Cir. 2023). But the *Griggs* principle is a rule of federal appellate procedure that stays only federal district court proceedings. And, in any event, Congress struck a balance when it explicitly allowed defendants to appeal remand orders in the federal officer removal context—an exception from the non-appealability of most remand orders. *See* 28 U.S.C. § 1447(c), (d). It did so without including an express non-stay provision, as it has done elsewhere. *See Coinbase*, 599 U.S. at 744. So a free-floating federalism concern cannot overcome Congress's decision to provide a meaningful appeal of decisions denying federal officer removal.

The Ninth Circuit also asserted that the "unique features of arbitration" demonstrate why the *Coinbase* Court would conclude that an automatic stay was warranted in that context, and that the same concerns did not attach in the federal officer removal context. *California*, 139 F.4th at 770. But as we discussed above, *Coinbase* stated the *Griggs* rule as a clear background principle—regardless of the type of case—that "divests the district court of its control over those aspects of the case involved in the appeal." 599 U.S. at 740 (quotations omitted). And in appeals of both arbitrability decisions and federal officer removal denials, the question on appeal is "whether the case should be litigated in the district court"; in both contexts, "the entire case is essentially involved in the appeal." *Id.* at 741 (quotations omitted). The Ninth Circuit also asserted that "[a]ll other circuits where this question has been raised, besides the Fourth Circuit, appear to have reached the same conclusion." *California*, 139 F.4th at 766 n.2. But it cites no published circuit decisions analyzing the *Coinbase* issue in this context and refusing to apply it.

For these reasons, we are unpersuaded by the Ninth Circuit's reasoning and conclude that *Coinbase* does indeed counsel application of the *Griggs* principle in the federal officer removal context.

resolution of the appeal. *See Coinbase*, 599 U.S. at 740. Thus, any subsequent state court proceedings are rendered void for our purposes. *See Maseda v. Honda Motor Co., Ltd.*, 861 F.2d 1248, 1254–55 (11th Cir. 1988) (noting that "after removal," "[a]ny subsequent proceedings in state court on the case are void *ab initio*"); *cf. Lee v. U.S. Bank Nat'l Ass'n*, 102 F.4th 1177, 1180 (11th Cir. 2024) (observing that, in the bankruptcy context, "actions taken in violation of the automatic stay are void and without effect," including foreclosure actions in state court (quotations omitted)).

It is irrelevant to our conclusion that, in this case, the district court had already mailed the remand order to the state court when the defendants filed their notice of appeal.[10] The *Griggs* principle operated to stay the remand order even though it had already been mailed. Congress explicitly provided that "an order remanding a case to the State court from which it was removed" pursuant to federal officer removal "shall be reviewable by appeal or otherwise."[11] 28 U.S.C. § 1447(d). The administrative task of

[10] Section 1447(c), which applies to removals generally, requires the district court clerk to mail a "certified copy of the order of remand . . . to the clerk of the State court," at which time the "State court may thereupon proceed with such case." 28 U.S.C. § 1447(c). While the district court docket does not indicate exactly when the remand order was mailed in this case, it does include the court's remand order, dated September 1, 2023, instructing the Clerk to "REMAND this case to the Superior Court of Glynn County, Georgia" and to "CLOSE this case." The docket further reflects that the Clerk entered judgment and closed the case that same day. The Superior Court docket shows that the district court's remand order was docketed on September 6, 2023. The defendants' timely notices of appeal followed on September 25 and 26, 2023.

[11] This "or otherwise" language has been interpreted to mean that the district court retains jurisdiction to "review . . . vacate or reinstate"

mailing the remand order to the state court cannot operate to prevent the very opportunity for review Congress explicitly provided in federal officer removal cases. Such would be the case if the district court lost jurisdiction over a case to the state court as soon as it mailed a remand order whenever it did so before the defendants filed notices of appeal. Other circuits have agreed that the mailing of a reviewable remand order does not divest the district court of jurisdiction. *See Plaquemines Parish v. Chevron USA, Inc.*, 84 F.4th 362, 371–72 (5th Cir. 2023) (holding that a district court had jurisdiction to issue a discretionary stay of a reviewable remand order even after the order was mailed); *Shapiro v. Logistec USA, Inc.*, 412 F.3d 307, 312 (2d Cir. 2005) (holding that, unlike unreviewable remand orders, which divest the district court of jurisdiction when the order is mailed, "the mailing of [a reviewable] remand order to the state court does not strip the federal court of jurisdiction"); *Hudson United Bank v. LiTenda Mortg. Corp.*, 142 F.3d 151, 158 (3d Cir. 1998) (concluding that "the mailing of a remand order does not divest a district court of jurisdiction to entertain a motion for reconsideration" in cases involving reviewable remand orders).

Because the district court retains jurisdiction to reconsider or amend reviewable remand orders after such orders are mailed, the *Griggs* principle acted to stay the district court's reviewable remand order in this case when the

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reviewable remand orders. *Plaquemines Parish v. Chevron USA, Inc.*, 84 F.4th 362, 371–72 (5th Cir. 2023) (quoting *In re Shell Oil Co.*, 631 F.2d 1156, 1158 (5th Cir. 1980)); *see Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*) (holding that all decisions from the Fifth Circuit Court of Appeals issued before the close of business on September 30, 1981, are "binding as precedent in the Eleventh Circuit").

defendants filed notices of appeal, even though the order had already been mailed. And, again, because the remand order was stayed, the subsequent state court proceedings were "void *ab initio*" for our purposes. *See Maseda*, 861 F.2d at 1254–55. We therefore disregard both the City's amended complaints in state court and the defendants' litigation activity there. For this reason, the City's argument that its amended complaints in state court mooted this appeal fails, and we deny the City's motion to dismiss this appeal.[12]

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[12] The City's motion to dismiss fails for another reason. The City argues that the defendants waived any right they had to proceed in federal court when they "s[ought] resolution on the merits in their favor" in state court after remand. Specifically, the City points to the defendants' respective answers to the complaint, motions to dismiss, and participation in a hearing on pending motions. The City argues that by seeking relief in state court, the defendants have consented to the state court's jurisdiction.

True, a defendant with valid grounds for removal can nonetheless waive the right to remove by "taking some substantial offensive or defensive action in the state court action indicating a willingness to litigate in that tribunal *before* filing a notice of removal with the federal court." *Yusefzadeh v. Nelson, Mullins, Riley & Scarborough, LLP*, 365 F.3d 1244, 1246 (11th Cir. 2004) (emphasis added) (quotations omitted). In this case, though, the City points only to actions the defendants took *after* the district court remanded the case to state court. As previously recounted, the state court initially stayed the proceedings pending this appeal after the district court remanded the case. The City, however, asked the court to withdraw the stay, which the court ultimately did. At that point, the defendants had no choice but to participate in the state court litigation proceedings. The City has not identified any case of this Court where such post-remand activities in state court waived defendants' otherwise-meritorious appeal of a remand order.

Thus, the defendants' litigation activity in state court post-remand, necessitated by the City's request to lift the stay pending appeal, does

Having concluded that we have jurisdiction, we now turn to the merits of this appeal.

B. The defendants may remove this case pursuant to the federal officer removal statute

The defendants argue that this action is removable pursuant to 28 U.S.C. § 1442(a)(1), which governs federal officer removal, because the defendants' remediation activities were performed under the authority of EPA, and the remediation is the subject of the City's claims. The City responds that federal officer removal is inappropriate because the defendants are merely regulated parties, not government employees or contractors serving as *de facto* federal agents. We conclude that the defendants are entitled to remove the action to federal court under § 1442(a)(1).

The federal officer removal statute allows for the removal from state court to federal court of any action against "any officer (*or any person acting under that officer*) of the United States or of any agency thereof . . . for or relating to any act under color of such office." 28 U.S.C. § 1442(a)(1) (emphasis added). The statute has been "liberally construed" in favor of a federal forum, *Watson v. Philip Morris Co.*, 551 U.S. 142, 147 (2007), and "defendants enjoy much broader removal rights under the federal officer removal statute than they do under the general removal statute," *Leite v. Crane Co.*, 749 F.3d 1117, 1122

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not waive their right to remove or to appeal the district court's remand order. *See R.R. Street & Co. v. Transp. Ins. Co.*, 656 F.3d 966, 973 (9th Cir. 2011) (concluding parties did not waive their right to appeal a remand order when they "merely sought to preserve their claims in state court pending the outcome of th[e] appeal").

(9th Cir. 2014); *see also Florida v. Cohen*, 887 F.2d 1451, 1453 (11th Cir. 1989) ("This statute is an incident of federal supremacy and is designed to provide federal officials with a federal forum in which to raise defenses arising from their official duties.").

Because the defendants are not themselves federal officers, they must satisfy a three-pronged test to show that removal is proper: they must (1) "show that [they are persons] within the meaning of the statute who acted under a federal officer," *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1142 (11th Cir. 2017); (2) show that the suit is "for or relating to any act under color of such office"—*i.e.*, establish that the actions taken under federal control are "closely connected" to the plaintiff's claims, *Plaquemines Parish*, 146 S. Ct. at 1057, 1060 (quotations omitted); and (3) "assert a colorable federal defense," *id.* at 1057–58 (quotations omitted). *See* 28 U.S.C. § 1442(a)(1).

The defendants, as the parties seeking removal, bear the burden of proof.[13] *See Georgia v. Meadows*, 88 F.4th 1331, 1348 (11th Cir. 2023). Importantly, at the removal stage of litigation, courts "credit the [defendant's] theory of the case for purposes of [all] elements of [the court's] jurisdictional inquiry," *Jefferson County v. Acker*, 527 U.S. 423, 432 (1999), and we subject the defendant's allegations in support of removal to "the same liberal rules . .

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[13] Because the removing party bears the burden of proof, we may consider evidence attached to the removal petition along with post-petition evidence to establish facts relevant to jurisdiction that existed at the time of removal. *See Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 946, 949 (11th Cir. 2000). We therefore may rely on the documents the defendants attached to their notice of removal, which include the defendants' consent decree with EPA and other documents related to the defendants' relationship with EPA.

. that are applied to other matters of pleading," *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 87 (2014) (quotations omitted). *See Baker v. Atl. Richfield Co.*, 962 F.3d 937, 941 (7th Cir. 2020) (noting that removal allegations need only be "facially plausible"); *Agyin v. Razmzan*, 986 F.3d 168, 175 (2d Cir. 2021) ("Not only must the words of § 1442 be construed broadly but a court also must credit [the] [d]efendants' theory of the case when evaluating the relationship between the defendants' actions and the federal officer." (quotations omitted)).

1. The defendants were persons "acting under" EPA when they undertook to remediate the pollution emanating from the Plant Site[14]

The defendants satisfy the first prong of the federal officer removal test because they acted under EPA when remediating the pollution on and around the Plant Site. The Supreme Court has explained that the relationship between the officer or agency and the private entity "acting under" the agency "typically involves subjection, guidance, or control." *Watson*, 551 U.S. at 151 (quotations omitted). In addition, the "private person's 'acting under' must involve an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior." *Id.* at 152 (emphasis in original). "In other words, the private person must help federal officers fulfill a basic governmental task that the government otherwise would have had to perform." *Caver*, 845 F.3d at 1143. At the same time, this help or assistance must involve more than "simply *complying* with the law." *Watson*, 551 U.S. at 152 (emphasis in original).

[14] The parties do not dispute that the defendants qualify as persons within the meaning of the statute. *See Caver*, 845 F.3d at 1142.

> A private firm's compliance (or noncompliance) with federal laws, rules, and regulations does not by itself fall within the scope of the statutory phrase "acting under" a federal "official." And that is so even if the regulation is highly detailed and even if the private firm's activities are highly supervised and monitored.

Id. at 153.

The City does not dispute that the defendants are subject to EPA's guidance and control of their remediation efforts. It argues, however, that the defendants are not assisting EPA with its own governmental task but simply complying with EPA regulation. We disagree.

Two cases illustrate the distinction between "acting under" and mere compliance. First, in *Watson* the Supreme Court determined that Philip Morris, a tobacco company, was not "acting under" the Federal Trade Commission ("FTC") when it advertised "light" cigarettes that indicated "lower tar and nicotine levels than those present in other cigarettes." *Id.* at 146. Philip Morris argued that it was "acting under" the FTC because the plaintiffs were essentially challenging the FTC-imposed method of testing cigarettes when the plaintiffs argued that Philip Morris's cigarettes were more potent than its advertising suggested. *Id.* The Court disagreed, concluding that Philip Morris was not "perform[ing] a job that," otherwise, "the Government itself would have had to perform," *id.* at 154, nor did the FTC's regulation and supervision of Philip Morris's testing constitute "a delegation of authority," *id.* at 157. Instead, the "FTC/Philip Morris relationship" was a "usual regulator/regulated relationship," which did not "bring[] Philip Morris within the terms of the [federal officer removal] statute."[15] *Id.* at 157; *see also Schleider v. GVDB Operations, LLC*, 121 F.4th 149, 159 (11th Cir. 2024) (concluding that an assisted living home complying with federal COVID-19 orders could not remove a case to federal court because, "aside from allegedly complying with 'orders' and 'instructions' from the Secretary and HHS, Defendants ha[d] failed to show that they helped or assisted a federal agency to perform its duties or tasks" (alterations adopted)).

Next, in *Caver* we came to the opposite conclusion and determined that a company "acted under" a federal agency when considering the relationship between a rural electric cooperative and the U.S. Department of Agriculture Rural Utilities Services ("RUS"). 845 F.3d at 1143–44. We first noted that RUS highly regulated the defendant, "demonstrat[ing] the close and extensive relationship between [the defendant] and RUS" and the "significant level of control" RUS exercised over the defendant. *Id.* at 1143. But, as *Watson* made clear, even significant regulation, standing alone, would not be enough for removal to be proper. *Id.* at 1142. Our analysis therefore proceeded to determine that the relationship between the government and the defendant went beyond regulation: rural electric cooperatives functioned as "instrumentalities of the United States" that existed to carry out the government's

[15] The *Watson* Court offered other examples of "help[]" or "assist[ance]" that demonstrated compliance rather than "'acting under' a federal official who is giving an order or enforcing the law": "[t]axpayers who fill out complex federal tax forms, airline passengers who obey federal regulations prohibiting smoking, [and] for that matter well-behaved federal prisoners." 551 U.S. at 152.

objective of "bringing electricity to sparsely populated rural areas that would not otherwise receive electricity." *Id.* at 1143. Because the defendant "assist[ed] the RUS by performing a job that, in the absence of a contract with a private firm, the Government itself would have had to perform," we concluded that it was "acting under" RUS and thus met the first prong of the federal officer removal test. *Id.* at 1144 (alteration adopted) (quotations omitted).

Watson and *Caver* provide the framework for our decision in this case. Does EPA simply regulate the defendants, requiring them to comply with its directives, or are the defendants' remediation efforts assisting EPA by performing a task that EPA would otherwise have to perform? CERCLA's text and the consent decree answer this question: CERCLA makes EPA responsible for the remediation efforts on the Plant Site, a responsibility it can, and did, delegate to the defendants when it required them to undertake various remediation actions and entered a consent decree with the defendants calling for further remediation. *See Atl. Richfield*, 590 U.S. at 6.

Congress enacted CERCLA, 42 U.S.C. § 9601 *et seq.*, also known as the "Superfund statute," to address "the serious environmental and health risks posed by industrial pollution." *Burlington N. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599, 602 (2009). CERCLA provides "a comprehensive scheme for the cleanup of hazardous waste sites." *Broward Gardens Tenants Ass'n v. EPA*, 311 F.3d 1066, 1071 (11th Cir. 2002). CERCLA "directs EPA to compile and annually revise a prioritized list of contaminated sites for cleanup, commonly known as Superfund sites." *Atl. Richfield*, 590 U.S. at 6 (citing 42 U.S.C. § 9605). EPA, wielding authority delegated by the President, must either "clean those sites itself or compel responsible parties to perform the cleanup." *Id.* (citing 42 U.S.C. §§ 9604, 9606, 9615).

The statute and implementing regulations require EPA to develop a cleanup plan that includes "a remedial investigation and feasibility study to assess the contamination and evaluate cleanup options" (which EPA will perform or order a private party to conduct) and "extensive public consultation," including public notice and comment and "substantial and meaningful involvement by each State" in the choice of a cleanup plan. *Id.* at 7 (quotation omitted) (first citing 40 C.F.R. § 300.430 (2019); and then citing 42 U.S.C. §§ 9613(k), 9617, 9621(f)(1)). Once the feasibility study begins, "'no potentially responsible party may undertake any remedial action' at the site without EPA approval." *Id.* (quoting 42 U.S.C. § 9622(e)(6)).

Each of these steps has taken place in this case, and EPA has tasked the defendants with the responsibilities EPA would otherwise have had to accomplish itself. EPA ordered the defendants to undertake a remedial investigation and feasibility study in 1995 and shortly thereafter placed the Plant Site on the CERCLA National Priorities List. Rather than "clean th[e] site[] itself," EPA chose to compel the defendants "to perform the cleanup." *See Atl. Richfield*, 590 U.S. at 6. Thus, in the years following the investigation and study, EPA directed the defendants to undertake various remediation actions such as "remov[ing] one foot of soil from thirteen acres of the marsh and sediment in creeks in front of the old Honeywell trash dump." Ultimately, in 2016, the defendants and EPA entered a consent decree binding the parties to EPA's chosen remediation plan (as outlined in EPA's final Record of

Decision). The consent decree affirmed that EPA had followed CERCLA's required steps (including public notice and opportunity for State involvement).

The consent decree demonstrates that EPA maintained considerable authority over the remediation activities. It explained that EPA could designate a "Project Coordinator" along with "other representatives, which may include [EPA's] employees, contractors and/or consultants, to oversee the Work," oversight that "include[d] the authority to halt the Work and/or to conduct or direct" emergency response actions when "necessary." EPA could also require the defendants to "conduct community involvement activities under EPA's oversight" including "designation of a Community Involvement Coordinator and implementation of a technical assistance plan." The consent decree also outlined that EPA could take over performance of the remediation work if it determined that the defendants were not adequately implementing the remediation plan.

The details of CERCLA's statutory scheme and the history of EPA's involvement here show that the defendants are acting under EPA in carrying out remediation efforts at the Plant Site: EPA exercised a "significant level of control" over the defendants, and the defendants were carrying out CERCLA and EPA's objectives when they engaged in remediation efforts. *See Caver*, 845 F.3d at 1143. More importantly, because CERCLA tasks EPA with cleaning up hazardous waste, directing it either to remediate such pollution itself or to "compel responsible parties to perform the cleanup," *Atl. Richfield*, 590 U.S. at 6, the defendants assisted EPA by "perform[ing] a job that . . . the Government itself [otherwise] would have had to perform." *Watson*, 551 U.S. at 154; *see Ruppel v. CBS*

Corp., 701 F.3d 1176, 1181 (7th Cir. 2012) (holding this prong is met when "the federal government uses a private corporation to achieve an end it would have otherwise used its own agents to complete"). Just as in *Caver*, the defendants operate—in a limited manner—as "instrumentalities of the United States" for the purpose of cleaning the Plant Site on behalf of EPA.[16] *Id.* at 1143.

The City argues that we should be persuaded by a Fourth Circuit case holding that defendants seeking § 1442 removal were not "acting under" EPA when EPA required them "to perform certain remedial measures to obtain an operating permit." *W. Va. State Univ. Bd. of Governors v. Dow Chem. Co.*, 23 F.4th 288, 301 (4th Cir. 2022) ("*WVSU*"). It is true that the Fourth Circuit case shares some surface similarities with this one: both involve environmental pollution emanating from a property owned by the defendants, and in both cases the defendants worked with EPA to identify and implement necessary corrective actions. *See id.* at 292–94. But the defendants'

[16] Although the City's allegations relate to pollution that has traveled to its own property, as well as pollution at the Superfund site, the defendants argue that CERCLA and the consent decree govern *all* their remedial actions related to pollution from the Superfund site, not just remediation on the site itself. *See* 42 U.S.C. § 9622(e)(6) (noting that, after a consent decree has been entered, "no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President" through EPA); *id.* § 9601(9) (defining "facility" as "any site or area where a hazardous substance has been deposited . . . or otherwise come to be located"). *See Atl. Richfield*, 590 U.S. at 17–23 (explaining these provisions). At this time, we need not decide whether the defendants' argument about the scope of CERCLA and the consent decree under these provisions is correct on this point, since we "credit the [defendant's] theory of the case for purposes of [all] elements of [the court's] jurisdictional inquiry." *Jefferson County*, 527 U.S. at 432.

relationship with EPA in *WVSU* was governed, not by CERCLA, but by the Resource Conservation and Recovery Act ("RCRA")—a critical distinction. Under RCRA, the defendants applied for a permit to operate hazardous waste management units, and EPA granted the permit with a general condition that the defendants had an ongoing obligation to comply with any corrective measures EPA imposed. *Id.* at 292–94. The *WVSU* defendants attempted to argue that they were "acting under EPA authority" because their "corrective actions were taken only at the direction and oversight of EPA, which . . . EPA itself would have performed under CERCLA if Defendants had not." *Id.* at 303 (alteration adopted) (quotations omitted). But the Fourth Circuit found that the defendants were simply regulated by EPA pursuant to RCRA, as Philip Morris was regulated by the FTC in *Watson*, and thus removal was improper. *Id.* at 302–06. Crucially, the *WVSU* court explicitly distinguished its facts from a hypothetical case where "the federal government [had] ordered a 'cleanup' under CERCLA and [had] taken over remediation responsibilities" on the property, concluding that the defendants' argument invoking CERCLA was speculative and irrelevant, given the "detailed and lengthy procedure" needed to designate the property a Superfund site and develop a remedial action plan in the first place. *Id.* at 306; *cf. Mays v. City of Flint*, 871 F.3d 437, 447 (6th Cir. 2017) (concluding that a state environmental agency was not entitled to removal simply because EPA could "intervene if a state fails to properly exercise its primary enforcement authority").

No such speculation is needed here. EPA has already executed CERCLA's lengthy procedure and adopted a remedial plan under which EPA has chosen to have the defendants carry out the necessary remediation efforts as required by the consent decree. Thus, the defendants do more than "simply comply[]" with "federal laws, rules, and regulations," *Watson*, 551 U.S. at 152–53; rather, they are "help[ing] federal officers fulfill a basic governmental task that the government otherwise would have had to perform," *Caver*, 845 F.3d at 1143.

Accordingly, we conclude that the defendants were "acting under" EPA in the context of their remediation efforts on the Superfund site, satisfying the first prong of the federal officer removal test.

2. The City's allegations and state tort claims are "for or relating to" the defendants' remediation activities as directed by EPA

Under the second prong of the federal officer removal test, we consider whether the actions forming the basis of the City's claims are "closely connected" to the defendants' actions taken under color of law. *Plaquemines Parish*, 146 S. Ct. at 1060. The defendants argue that they satisfy this prong of the test because the defendants' remediation efforts, governed by CERCLA and the consent decree, are "critical to the City's theory of liability for continuing nuisance and continuing trespass."[17]

The federal officer removal statute allows for removal of cases "for or relating to any act under color of such office," 28 U.S.C. § 1442(a)(1), language we have interpreted to call for only "a connection or association between the act

[17] The City does not argue, on appeal, why the defendants fail to meet the second prong of the federal officer removal test, asserting only that the defendants are not "*de facto* federal agent[s]."

in question and the federal office" rather than a strict causal relationship, *Caver*, 845 F.3d at 1144 (quotations omitted); *see also Plaquemines Parish*, 146 S. Ct. at 1060 ("[A] removing defendant need not show that his federal duties specifically required or strictly caused the challenged conduct."). While "a tenuous, remote, or peripheral" relationship between the "challenged conduct and the performance of [the defendants'] federal duties" is not sufficient, "[o]ne thing can relate to another even if the connection is indirect" and "even if it was not specifically designed to affect it." *Plaquemines Parish*, 146 S. Ct. at 1061, 1060 (quotations omitted); *see also id.* at 1062 ("[T]he ordinary meaning of 'relating to' does not require the defendant to show that his federal duties specifically invited his challenged conduct.").

Caver demonstrates the type of "connection or association" that satisfies this prong of the test. In *Caver*, the defendant argued that it could not make the cash distributions for which the plaintiffs were suing because doing so would cause it to breach its agreement with RUS, the federal agency. 845 F.3d at 1145. We determined the defendant had met the connection prong because it alleged that "the acts for which [it was] being sued . . . occurred because of [its] performance of its duties" under its agreement with RUS. *Id.*; *see Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 296 (5th Cir. 2020) (*en banc*) (concluding a defendant satisfied this prong when the defendant performed the activities forming the basis of the lawsuit "pursuant to directions of the U.S. Navy"). On the other hand, we have rejected a federal officer's attempt to remove when his official duties did not overlap with the activities for which he was being prosecuted. *See Meadows*, 88 F.4th at 1349; *see also Cabalce v. Thomas E. Blanchard & Assocs., Inc.*, 797 F.3d 720, 730 (9th Cir. 2015) (affirming remand when a defendant "failed to provide any evidence of federal control or supervision over" the actions plaintiffs challenged, as relevant to the court's discussion of the "for or relating to" prong).

As in *Caver*, the allegations in the City's complaint and the defendants' notice of removal demonstrate that the City's claims against the defendants are closely connected to the defendants' remediation efforts as directed by EPA. The City alleges that "Honeywell's activities at the Plant Site caused and continue to cause toxic mercury and PCBs to be spilled, discharged and deposited into the Turtle River . . . and onto property of the City of Brunswick." It has brought claims for "continuing trespass" and "continuing nuisance," alleging that the "[d]efendants' continuing failure and refusal to permanently remove their pollution from property of the City of Brunswick[] unreasonably and substantially interferes with the City's right to exclude others and the pollutants of others from its property" and with "the City's use and enjoyment of its property."[18] But the defendants' notice of removal alleges that their remedial actions are governed by their consent decree with EPA, which, along with CERCLA's text, prevents them from undertaking any remedial actions without EPA's authorization. Thus, according to the defendants' allegations, "the acts for which [they are] being sued"—failure to adequately remediate pollution on the City's property—"occurred because of [their] performance of [their] duties" and their consent decree with

[18] The City does not allege that either defendant is continuing to dump new pollutants on its property, just that the defendants are not adequately dealing with the pollution already present.

EPA. *Caver*, 845 F.3d at 1145. The defendants have "plausibly alleged a close relationship between [their] challenged conduct and the performance of [their] federal duties."[19] *Plaquemines Parish*, 146 S. Ct. at 1061.

We therefore conclude that the City's continuing trespass and nuisance claims for the defendants' continued failure to remediate the pollution on the City's property are related to the defendants' CERCLA-governed remediation plan, meeting the second prong of the federal officer removal test.[20]

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[19] In its briefing below, the City argued that the defendants failed the "causal connection" prong because it was "not suing Defendants for the way they have conformed or failed to conform to the Consent Decree" but rather "for the pollution that migrated into the Marshes of Glynn long before EPA became involved." But the language of the complaint alleges "continuing trespass" and "continuing nuisance," language which, on its face, challenges the sufficiency of the defendants' current remediation efforts by asserting that pollution continues to emanate from the Plant Site onto the City's property. And even if the claims in the complaint also encompass the defendants' actions before EPA's involvement, removal would still be proper. *See Nadler v. Mann*, 951 F.2d 301, 306 n.9 (11th Cir. 1992) (quoting another case for the proposition that "if one claim cognizable under Section 1442 is present, the entire action is removed, regardless of the relationship between the Section 1442 claim and the non-removable claims").

[20] Our holding today serves to clarify this Court's interpretation of the "for or relating to" prong of the federal officer removal test. A previous version of the relevant provision allowed for removal of only those actions "for any act under color of such office." *See* 28 U.S.C. § 1442(a)(1) (2010). But in 2011 Congress amended the provision, adding the words "or relating to." *Caver*, 845 F.3d at 1144 n.8. Even after this amendment, we continued to require a "causal connection" or a "causal nexus" between a plaintiff's claims and a defendant's conduct, although we recognized that the provision's amendment "broaden[ed] the scope of acts that allow a federal officer to remove a case to federal

3. The defendants have raised a colorable federal defense

Finally, for the third prong of the federal officer removal test, we ask whether the defendants have raised a colorable federal defense. *Caver*, 845 F.3d at 1145. The defendants argue that the City's claims are preempted by federal law because the City seeks to hold the defendants liable for failing to remove pollution from the Plant Site and surrounding areas, which conflicts with the defendants' remedial obligations under EPA's CERCLA-based directives.[21]

To satisfy this prong of the federal officer removal test, a "colorable federal defense need only be plausible; its ultimate validity is not to be determined at the time of removal." *Id.* (quotation omitted); *see Mesa v. California*, 489

court." *Id.* at 1144–45 & 1144 n.8; *see Meadows*, 88 F.4th at 1348 (requiring the defendant to "establish some causal connection or association between [the alleged criminal actions] and his federal office" but noting that "the bar for proof is quite low" (quotations omitted)). The Supreme Court has since affirmed that "a removing defendant need not show that his federal duties specifically required or strictly caused the challenged conduct." *Plaquemines Parish*, 146 S. Ct. at 1060; *see Town of Pine Hill v. 3M Co.*, --- F.4th ---, 2026 WL 2178967, at *3 (11th Cir. July 29, 2026) (observing that "the hurdle erected by this requirement is quite low" (quotations omitted)). Instead, the "for or relating to" language requires only that the acts challenged by the removed lawsuit are "closely connected to the performance of [the defendants'] federal duties." *Plaquemines Parish*, 146 S. Ct. at 1062. Thus, while *Plaquemines Parish* does not change the test we have applied to the second prong pursuant to the broadened statutory language, it does suggest that we retire the "causal connection" and "causal nexus" language we have previously used.

[21] As with the second prong, the City offers no argument on appeal why the defendants fail the third prong of the federal officer removal test.

U.S. 121, 129 (1989) ("[T]he validity of the defence authorized to be made is a distinct subject" and "has no connection whatever with the question of jurisdiction." (quotation omitted)). Because one key purpose of federal officer removal is to allow federal defenses to be tried in federal court, the "law does not require that the removing defendant virtually win his case before it can be removed." *Caver*, 845 F.3d at 1145; *see Isaacson v. Dow Chem. Co.*, 517 F.3d 129, 138 (2d Cir. 2008) (stating that a defendant need only "raise a claim that is defensive and based in federal law" and "aris[es] out of [the party's] official duties" (quotations omitted)).[22] Thus, in *Caver*, we accepted as plausible the defendant's federal preemption defense when the Supreme Court had "expressly left open the possibility" that preemption could attach in a case like the defendant's. 845 F.3d at 1146.

The defendants in this case have offered a colorable federal defense: they plausibly contend that federal directives pursuant to CERCLA preempt state tort actions. "Conflict preemption can occur when (1) it is impossible for a party to comply with both state and federal law, or (2) the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of

[22] A recent Fifth Circuit decision demonstrates the low bar for a colorable federal defense. *See Caris MPI, Inc. v. UnitedHealthcare, Inc.*, 108 F.4th 340, 346–47 (5th Cir. 2024). The defendant offered two federal defenses: failure to exhaust and preemption. The Fifth Circuit concluded that the failure to exhaust defense was colorable when asserted, allowing for removal, even though the court proceeded to reject that argument on its merits later in the same opinion. *Id.* at 346, 349. The court also credited the defendant's preemption defense as a plausible, colorable defense, highlighting that, while the Fifth Circuit had not yet decided that particular preemption question, the plaintiff had "cite[d] no contrary caselaw." *Id.* at 347.

Congress." *Lawson-Ross v. Great Lakes Higher Educ. Corp.*, 955 F.3d 908, 920 (11th Cir. 2020) (quotations omitted). A conflict preemption analysis asks whether the state law or legal action "stands as an obstacle to the carefully calibrated federal regime." *Odebrecht Constr., Inc. v. Sec'y, Fla. Dep't of Transp.*, 715 F.3d 1268, 1274 (11th Cir. 2013). Thus "a conflict between federal and state law is imminent when two separate remedies are brought to bear on the same activity." *Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1267 (11th Cir. 2012) (quotations omitted).

As discussed above, CERCLA requires that once a party's obligations have been defined "pursuant to an administrative order or consent decree [after] a remedial investigation and feasibility study for a particular facility," "no potentially responsible party may undertake any remedial action at the facility unless such remedial action has been authorized by the President." 42 U.S.C. § 9622(e)(6). And the statute's definition of "facility" plausibly includes the City's property, an "area where a hazardous substance has . . . come to be located." *Id.* § 9601(9). The defendants have thus plausibly asserted that it would be impossible for them to comply both with their obligations under CERCLA and the consent decree and with potential remedies under state tort law; such remedies might counteract EPA's "carefully crafted federal regime" of remediation. *See Odebrecht Constr.*, 715 F.3d at 1274. The Supreme Court has reserved the question of whether an EPA-approved restoration plan could preempt state law, *see Atl. Richfield*, 590 U.S. at 25–26, and the City has cited no authority foreclosing this preemption defense. We thus conclude that the defendants have raised a colorable federal defense that CERCLA preempts the City's state tort claims.

* * *

In sum, then, we hold that the defendants have satisfied the three-prong test for federal officer removal and were entitled to remove this action pursuant to § 1442(a)(1) because they were acting under EPA when they engaged in remediation efforts controlled by CERCLA and the consent decree; the City's state tort claims are related to those remediation efforts; and the defendants have raised a colorable federal preemption defense.

IV. Conclusion

For the foregoing reasons, we deny the City's motion to dismiss the appeal and reverse the district court's remand to Glynn County Superior Court.

REVERSED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

CITY OF BRUNSWICK, by and through its MAYOR AND BOARD OF COMMISSIONERS,	* * * *	
Plaintiff,	* * *	
	*	CV 222-132
v.	* *	
HONEYWELL INTERNATIONAL, INC., formerly known as ALLIED CHEMICAL CORPORATION, and as ALLIEDSIGNAL, INC., and THE GEORGIA POWER COMPANY,	* * * * * * *	
Defendants.	*	

ORDER

Presently before the Court is Plaintiff City of Brunswick's (the "City") motion to remand (Doc. 21) and Defendants Honeywell International, Inc. f/k/a Allied Chemical Corporation and as AlliedSignal, Inc. ("Honeywell") and Georgia Power Company's ("Georgia Power") request for hearing (Doc. 26). For the following reasons, the City's motion to remand is **GRANTED**, and Defendants' request for hearing is **DENIED**.

I. BACKGROUND

On October 20, 2022, the City filed suit in the Superior Court of Glynn County, Georgia, alleging claims of continuing trespass and continuing nuisance against Defendants. (Doc. 1-1, at 158-162.) According to the City, the conduct underlying its claims is that Defendants polluted the waters and marshlands on and abutting the City's property when Honeywell released mercury and Aroclor 1268 poly-chlorinated byphenals ("PCBs") and Georgia Power released mercury.[1] (Id. at 154-55.) Based upon this, the City seeks punitive damages and litigation costs. (Id. at 162.)

On November 18, 2022, Defendants filed their notice of removal pursuant to 28 U.S.C. §§ 1331, 1332, 1441, 1442(a), and 1446. (Doc. 1, at 1.) On December 19, 2022, the City filed the present motion asking the Court to remand the action because Georgia Power was not fraudulently joined, and there is no federal officer or federal question jurisdiction. (Doc. 21; Doc. 21-1, at 1.) The motion was timely filed within thirty days of removal pursuant to 28 U.S.C. § 1447. Defendants filed responses in opposition to the City's motion (Docs. 24, 25),[2] the City filed a reply

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[1] Even though the Complaint refers to Honeywell and Georgia Power collectively as Defendants, the Complaint does not allege that Georgia Power also released PCBs. (See Doc. 1-1, at 154-55.) Accordingly, the Court will refer to mercury and PCBs as "pollutants" when addressing the conduct of Honeywell and Georgia Power collectively as Defendants and just mercury when addressing the conduct of Georgia Power.

[2] Although Honeywell and Georgia Power respond to the City's motion to remand separately, each incorporates the arguments of the other. (See Doc. 24, at 23; Doc. 25, at 12 n.4.) Accordingly, the Court will address the arguments as being raised by both Defendants.

in further support (Doc. 32), Defendants filed sur-replies in opposition (Docs. 35, 36), and the City filed a reply to Georgia Power's sur-reply (Doc. 38). Defendants also filed a motion for oral argument on the motion pursuant to Local Rule 7.2. (Doc. 26.) Accordingly, the motions are properly before the Court.

II. DISCUSSION

The Court addresses each motion below.

A. Motion to Remand

The City moves to remand this case back to the Superior Court of Glynn County. (Doc. 21, at 1.) "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994) (internal citations omitted). As such, a defendant may only remove an action from state court if the federal court would possess original jurisdiction over the subject matter. 28 U.S.C. § 1441(a).

Federal district courts have jurisdiction over all civil actions: (1) "arising under the Constitution, laws, or treaties of the United States"; and (2) "where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between citizens of different States." 28 U.S.C. §§ 1331, 1332. Further, district courts have jurisdiction over an action "against or directed to . . . [t]he 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 . . . ." 28 U.S.C. § 1442(a)(1).

On a motion to remand, the removing party bears the burden of establishing federal jurisdiction. Williams v. Best Buy Co., 269 F.3d 1316, 1319 (11th Cir. 2001). It is well established that removal jurisdiction is construed narrowly with all doubts resolved in favor of remand. Mann v. Unum Life Ins. Co. of Am., 505 F. App'x 854, 856 (11th Cir. 2013) ('[W]e strictly construe removal statutes, resolving all doubts in favor of remand."). In evaluating a motion to remand, the Court makes its "determinations based on the plaintiff's pleadings at the time of removal; but[,] the court may consider affidavits and deposition transcripts submitted by the parties." Crowe v. Coleman, 113 F.3d 1536, 1538 (11th Cir. 1997) (citation omitted).

Defendants rely on three grounds for removal and contend each ground provides an independent basis for federal subject matter jurisdiction over the case: (1) federal officer removal jurisdiction under 28 U.S.C. § 1442, (2) federal question jurisdiction under 28 U.S.C. § 1331, or (3) diversity jurisdiction under 28 U.S.C. § 1332(a). (Doc. 1, at 8-9.) The City argues remand is proper because none of these grounds provide a basis for federal subject matter jurisdiction. (Doc. 21, at 1.) The Court addresses each ground below.

1. Federal Officer Removal Jurisdiction (28 U.S.C. § 1442)

First, Defendants rely on the federal officer removal statute as a ground for removal. (Doc. 1, at 8-18.) Specifically, they argue there is federal officer removal jurisdiction because "the City's claims are 'connected or associated with' Defendants' decades-long investigation and remediation of environmental contamination . . . under the direction and oversight of [the United States Environmental Protection Agency ('EPA')]." (Id. at 8.) In its motion for remand, the City argues there is no federal officer removal jurisdiction. (Doc. 21-1, at 14.) Specifically, the City argues Defendants are not "*de facto* Federal Officer[s]" because "[t]he toxic releases from the industrial plants of [Defendants] all occurred before there were any [Comprehensive Environmental Response, Compensation, and Liability Act ('CERCLA')] enforcement actions by the [EPA, and n]either Defendant was a government contractor, manufacturing a product for the government according to government specifications." (Id.)

Removal pursuant to the federal officer removal statute, 28 U.S.C. § 1442, establishes an independent basis for the exercise of federal jurisdiction. Magnin v. Teledyne Cont'l Motors, 91 F.3d 1424, 1427 (11th Cir. 1996) (citing Willingham v. Morgan, 395 U.S. 402, 406 (1969)). In other words, the subject matter jurisdiction established by 28 U.S.C. § 1442 "is an incident of federal supremacy and is designed to provide federal officials with a federal forum in which to raise defenses arising from their official duties." Caver v. Cent. Ala. Elec. Coop., 845 F.3d 1135, 1142 (11th Cir. 2017) (quotation and citation omitted).

Because Defendants are not federal officers or agencies, they must satisfy a three-pronged test to rely on 28 U.S.C. § 1442 for subject matter jurisdiction. Id. First, Defendants must show they are "person[s] within the meaning of the statute who acted under a federal officer." Id. (citation omitted). Second, they "must show that [they] performed the actions for which [they are] being sued under color of federal office." Id. (citation omitted). Stated differently, they "must show a causal connection between what [they have] done under asserted official authority and the action against [them]." Id. (citation omitted).

Third, they "must raise a colorable federal defense." Id. (citation omitted). Defendants argue they satisfy the three-prong test, and the City disagrees. (Doc. 1, at 10-18; Doc. 21-1, at 14-25; Doc. 25, at 12 n.4.)

First, the Court looks at whether Defendants were persons "acting under" a federal officer when they polluted "the waters and marshlands on and abutting property of [the City]." (See Doc. 1-1, at 155.) The City does not argue that Defendants are not persons within the meaning of the statute, but instead, it argues "Defendants have not shown that they 'acted under' a federal officer when they released their contamination to the environment on and about the City's property." (Doc. 21-1, at 20.) Specifically, the City argues Defendants "fail[] to demonstrate that either Defendant ever manufactured products using. PCBs and mercury (1) under a direct contract with the United States government, (2) under any particular government specification for PCBs, or (3) under 'direction' from any federal officer." (Id.) According to Defendants, they "'acted under' federal officers because the federal government exerted extensive 'subjection, guidance, or control' over Defendants' remediation of the [Linden Chemicals and Plastics Corp. ('LCP Chemicals')] Superfund Site[3] and because Defendants engaged in 'an effort to assist, or to help carry out, the duties or tasks of the federal superior." (Doc. 1, at 10-11 (emphasis and citation omitted, footnote added).) Defendants contend their remedial efforts were not mere compliance with EPA regu-

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[3] CERCLA "directs [the] EPA to compile and annually revise a prioritized list of contaminated sites for cleanup, commonly known as Superfund sites." Atl. Richfield Co. v. Christian, 140 S. Ct. 1335, 1346 (2020) (citing 42 U.S.C. § 9605).

lations but rose to the level of assisting the federal government because if they did not perform the investigation and remediation the EPA "at least arguably" would have had to do it under CERCLA. (Id. at 11-12; Doc. 24, at 8.) Defendants argue "federal appellate courts have concluded that private corporations act under federal authority when they perform EPA-directed cleanups" by relying on two unpublished opinions. (Doc. 1, at 12 (citing Greene v. Citigroup, Inc., No. 99-1030, 2000 WL 647190, at *1-2 (10th Cir. May 19, 2000); California v. H & H Ship Serv. Co., No. 94-10182, 1995 WL 619293, at *2 (9th Cir. Oct. 17, 1995)) (quotation marks omitted and alterations adopted).) Specifically, Defendants contend the City's claims are similar to those in Greene where the Tenth Circuit "held that the private corporation acted under the direction of a federal officer by implementing a remedy selected by the EPA, a federal agency, pursuant to CERCLA." (Id. (quoting Greene, 2000 WL 647190, at *1-2 (quotation marks omitted and alterations adopted)).)

The Court finds Defendants fail to satisfy the first prong in demonstrating they were "acting under" a federal officer when they allegedly released pollutants in the waters and marshlands on and abutting the City's property. In Watson v. Philip Morris Cos., the Supreme Court provided the "acting under" language is broad, and "the statute must be liberally construed," however, this "broad language is not limitless." 551 U.S. 142, 147 (2007) (citations and internal quotation marks omitted). According to the Supreme Court, "[i]n this context, the word 'under' must refer to what has been described as a relationship that involves 'acting in a certain capacity, considered in relation to one holding a superior position or office,' . . .

[which] typically involves 'subjection, guidance, or control.'" Id. at 151 (citations omitted). Moreover, the Supreme Court stated that "precedent and statutory purpose make clear that the private person's 'acting under' must involve an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior." Id. at 152 (citing Davis v. South Carolina, 107 U.S. 597, 600 (1883)) (emphasis in original). The Supreme Court then found the federal officer removal statute did not apply because 'a federal regulatory agency direct[ing], supervis[ing], and monitor[ing] a company's activities in considerable detail" was not enough to establish the company was "acting under" a federal officer. Id. at 145. Therefore, simply complying with a federal law or regulation is insufficient to invoke federal officer jurisdiction, even if the regulatory scheme is "highly detailed" and the defendant's "activities are highly supervised and monitored." Id. at 153. However, "[t]he assistance that private contractors provide federal officers goes beyond simple compliance with the law and helps officers fulfill other basic governmental tasks." Id.

Here, Defendants do not argue they were private contractors hired by the federal government to complete tasks; instead, they contend they were acting under the EPA because their remediation efforts were "under the close supervision of the federal government." (Doc. 1, at 13.) However, the EPA supervising Defendants' activities is not sufficient to demonstrate they acted under a federal officer. See Watson, 551 U.S. at 153. Moreover, Defendants' reliance on Greene and H & H Ship Serv. Co. is unavailing. (See Doc. 1, at 12 (citations omitted).) First, in Greene, the activity that allegedly violated the interstate compact was the implementation of the remedy ordered by the EPA. See Greene, 2000 WL 647190, at *1. Here, the City is not alleging the implementation of the remediation efforts violated Georgia law or caused the pollution. (Doc. 21-1, at 18-19; see generally Doc. 1-1.) Second, in H & H Ship Serv. Co., the court found the private defendant "acted under" a federal officer where it was hired to clean up a hazardous spill because the conduct that allegedly violated state law was done while "the defendants were present at the site in order to execute a removal that was under the direction and control of a federal officer." See H & H Ship Serv. Co., 1995 WL 619293, at *1-2. Here, the City argues Defendants released pollutants even before the EPA was involved, and the Complaint does not allege the pollution was done under the direction and control of the EPA. (Doc. 21-1, at 14; see generally Doc. 1-1.) Contrary to the cases Defendants rely on, in Morgan v. Ford Motor Co., a district court relied on Watson and found the federal officer removal statute did not apply where the defendant argued it was acting under a federal officer "because its conduct was governed by a series of administrative consent orders and it was doing exactly what the [EPA] told it to do . . . ." CIVA No. 06-1080, 2007 WL 2137831, at *1 (D.N.J. July 23, 2007). Accordingly, Greene and H & H Ship Serv. Co. are inapplicable to the present case because as the City argues, "Defendants have not identified how the Consent Decree,[4] federal regulations, or federal officers required them to cause [the] pollution." (Doc. 21-1, at 18-19 (footnote added).)

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[4] The Consent Decree resulted from another action where the United States brought suit against Honeywell and Georgia Power pursuant to CERCLA, seeking injunctive relief and recovery costs. (United States v. Honeywell Int'l Inc. and Georgia Power Company, No. 2:16-cv-112, Doc. 1 (S.D. Ga. July 27, 2017).) On July 27, 2017, the

Therefore, the Court finds Defendants fail to satisfy the first prong in demonstrating they were "acting under" a federal officer, namely the EPA, when they released pollutants into the waters and marshlands on and abutting the City's property. Accordingly, the Court does not address whether Defendants satisfy the second and third prong, and the Court finds the federal officer removal statute does not apply.

2. Federal Question Jurisdiction (28 U.S.C. § 1331)

Second, Defendants rely on federal question jurisdiction as a ground for removal. (Doc. 1, at 8, 18-25.) Specifically, they argue the City's claims "necessarily involve substantial and disputed federal questions . . . because they constitute a challenge to a federally directed environmental cleanup under CERCLA and because they seek contribution for response costs under CERCLA." (Id. at 8.) According to Defendants, the City's claims "implicate and threaten to interfere with the ongoing implementation of a CERCLA cleanup that Defendants are performing under [the] EPA's direction," and "this Court is the proper forum to address the City's claims challenging the sufficiency of Defendants' remedial efforts under the Consent Decree." (Id. at 21-22.) In its motion to remand, the City argues there is no federal question jurisdiction for several reasons: (1) "[n]o federal questions appear on the face of the City's Complaint"; (2) "[t]he City has not alleged that Defendants are in violation of any federal law"; (3) "[n]o element of the City's state law trespass and nuisance claims necessarily raise any issue of federal law that

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Court approved the "Consent Decree for Remedial Design and Remedial Action at Operable Unit One of the LCP Chemicals Superfund Site." (Id., Doc. 26.)

is an element of either of those claims"; (4) "[t]he lawsuit seeks only money damages" and "does not seek any injunctive relief"; and (5) "neither of [the City's claims] 'arise under' CERCLA." (Doc. 21-1, at 7 (citations omitted).)

Removal jurisdiction based on a federal question is governed by the well-pleaded complaint rule. Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal., 463 U.S. 1, 11 (1983). Under the well-pleaded complaint rule, "[o]nly state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant . . . . The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) (citations omitted); see also Merrell Dow Pharms. Inc. v. Thompson, 478 U.S. 804, 809 n.6 (1986) ("Jurisdiction may not be sustained on a theory that the plaintiff has not advanced." (citations omitted)). In plain terms, unless the face of a plaintiff's complaint states a federal question, a defendant may not remove a case to federal court based on federal question jurisdiction. Kemp v. Int'l Bus. Machs. Corp., 109 F.3d 708, 712 (11th Cir. 1997). As a result, neither a party's defenses nor its counterclaims can give rise to federal question jurisdiction. Vaden v. Discover Bank, 556 U.S. 49, 60 (2009).

However, even where only state law claims are asserted in a complaint, the case "might still 'arise under' the laws of the United States if a well-pleaded complaint established that [the] right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties." Franchise Tax Bd. of

Cal., 463 U.S. at 13. In other words, a claim "aris[es] under" federal law if it "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 314 (2005); see also Hobbs v. Carter, No. CV 2:22-148, 2023 WL 2495762, at *3 (S.D. Ga. Mar. 14, 2023) ("In [the Eleventh Circuit], the accepted rule is that upon removal the court should inspect the complaint carefully to determine whether a federal claim is necessarily presented by plaintiff, even if plaintiff has couched his pleadings exclusively in terms of state law.") (citations omitted).

Here, applying the well-pleaded complaint rule, the Court finds that the City's complaint does not, on its face, state a federal question because the two claims it brings are state law claims. (See Doc. 1-1, at 158-162.) Defendants do not seem to dispute there is no federal question on the face of the City's Complaint; instead, they argue "the City's claims necessarily raise disputed and substantial federal issues sufficient to support this Court's jurisdiction because (1) they constitute a challenge to a CERCLA cleanup, and (2) they seek contribution for response costs under CERCLA." (Doc. 1, at 20.) Therefore, the Court looks to the City's Complaint to determine whether the state law claims arise under federal law.

Although the City's Complaint references CERCLA and the Consent Decree,[5] "there is no specific request for

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[5] The City references the Consent Decree to allege Georgia Power "acknowledged joint responsibility for the mercury pollution of the Marshes of Glynn." (Doc. 1-1, at 155.)

enforcement, modification, or alteration of the requirements of the consent decree[]" or Defendants' remedial efforts. (See Doc. 1-1, at 155-56); Abbo-Bradley v. City of Niagara Falls, No. 13-CV-487, 2013 WL 4505454, at *7 (W.D.N.Y. Aug. 22, 2013). Moreover, the City's Complaint does not challenge the sufficiency or legality of Defendants' remedial efforts under CERCLA, nor does the City seek injunctive relief that might conflict with the remedial efforts.[6] (See Doc. 1-1.) Accordingly, the state law claims do not necessarily depend on the resolution of substantial questions regarding liabilities or obligations imposed by the EPA under CERCLA, and the Court lacks federal question jurisdiction over this matter.

Moreover, Defendants also argue the Court has jurisdiction because "Section 113(b) of CERCLA confers on the federal district courts exclusive original jurisdiction over all controversies arising under [CERCLA]." (Doc. 1, at 21-22 (quoting 42 U.S.C. § 9613(b)) (quotation marks omitted).) However, as already discussed, the City's claims "do not expressly challenge the effectiveness of [Defendants' cleanup], request modification of . . . [any remedial efforts], or seek any specific action that might conflict with the remediation plan," but "seek only to be made whole for any harm proximately caused by defendants' conduct, whether in performance of operation, maintenance, and monitoring obligations with respect to the remedy, or during the [cleanup]." See Abbo-Bradley, 2013

[6] The Court notes the City's Complaint states, "Defendants are liable for all such remediation costs and damages," however, under each count and the prayer for relief, the City only seeks punitive damages. (See Doc. 1-1, at 156-57, 159, 162.) Therefore, the Court construes the City's Complaint as seeking punitive damages and not remediation costs.

WL 4505454, at *10; see also Se. Tex. Env't, L.L.C. v. BP Amoco Chem. Co., 329 F.Supp.2d 853, 871 (S.D. Tex. 2004) ("Because [p]laintiffs' claims bear only on the liability of individual defendants and not on the cleanup itself, the [c]ourt concludes that [p]laintiffs have not challenged a CERCLA cleanup."). Based on the foregoing, the Court also does not have jurisdiction under Section 113(b) of CERCLA.

3. Diversity Jurisdiction (28 U.S.C. § 1332)

Lastly, Defendants argue the City fraudulently joined Georgia Power to defeat diversity jurisdiction, and thus, the Court should disregard Georgia Power's citizenship and find there is diversity jurisdiction because the City and Honeywell are citizens of different states and the amount in controversy exceeds $75,000.00. (Doc. 1, at 8-9, 29.) In its motion to remand, the City does not dispute the citizenships of the City or Honeywell or the amount in controversy; instead, it argues Georgia Power was not fraudulently joined. (Doc. 21-1, at 3-7.)

Diversity jurisdiction requires complete diversity, which means "*each* defendant is a citizen of a different state from *each* plaintiff." Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978) (emphasis in original). However, "[f]raudulent joinder is a judicially created doctrine that provides an exception to the requirement of complete diversity." Triggs v. John Crump Toyota, Inc., 154 F.3d 1284, 1287 (11th Cir. 1998). In other words, courts must retain jurisdiction and "ignore the presence of the nondiverse defendant" when plaintiff joined a nondiverse party solely to defeat federal diversity jurisdiction. Stillwell v. Allstate Ins. Co., 663 F.3d 1329, 1332 (11th Cir. 2011) (citation omitted). "In such a case, the plaintiff is said to have 'fraudulently joined' the non-diverse defendant." McKenzie v. King Am. Finishing, Inc., No. 6:12-cv-065, 2012 WL 5473498, at *1 (S.D. Ga. Nov. 9, 2012) (citing Stillwell, 663 F.3d at 1332).

> To establish fraudulent joinder, "the removing party has the burden of proving by clear and convincing evidence that either: (1) there is no possibility the plaintiff can establish a cause of action against the resident defendant; or (2) the plaintiff has fraudulently pled jurisdictional facts to bring the resident defendant into state court."

Stillwell, 663 F.3d at 1332 (quoting Crowe v. Coleman, 113 F.3d 1536, 1538 (11th Cir. 1997) (alterations adopted)).

With a motion to remand, "the district court must evaluate the factual allegations in the light most favorable to the plaintiff and must resolve any uncertainties about state substantive law in favor of the plaintiff." McKenzie, 2012 WL 5473498, at *2 (internal quotations and citation omitted). The court must "not [] weigh the merits of a plaintiff's claim beyond determining whether it is an arguable one under state law." Stillwell, 663 F.3d at 1333 (citation omitted). Indeed, "[i]f there is even a possibility that a state court would find that the complaint states a cause of action against any one of the resident defendants, the federal court must find that joinder was proper and remand the case to state court." Coker v. Amoco Oil Co., 709 F.2d 1433, 1440-41 (11th Cir. 1983) (citations omitted), *superseded by statute on other grounds as stated in* Georgetown Manor, Inc. v. Ethan Allen, Inc., 991 F.2d 1533 (11th Cir. 1993).

"The burden of establishing fraudulent joinder is a heavy one, and such a claim must be supported by clear and convincing evidence." Ishmael v. Gen. Growth Props., Inc., No. CV 114-175, 2014 WL 7392516, at *2 (S.D. Ga. Dec. 29, 2014) (quoting Poll v. Deli Mgmt., Inc., No. 1:07-cv-959, 2007 WL 2460769, at *3 (N.D. Ga. Aug. 24, 2007)) (quotation marks omitted). In addressing a fraudulent joinder claim, "this Court 'must necessarily look to the pleading standards applicable in state court, not the plausibility pleading standards prevailing in federal court.'" McKenzie, 2012 WL 5473498, at *3 (quoting Stillwell, 663 F.3d at 1334). In contrast to the federal pleading standard, Georgia simply requires notice pleading. See O.C.G.A. § 9-11-8. Thus, "it is immaterial whether a pleading states conclusions or facts as long as fair notice is given, and the statement of claim is short and plain." Carley v. Lewis, 472 S.E.2d 109, 110-11 (Ga. Ct. App. 1996).

In their notice of removal, Defendants do not argue that the City fraudulently pled jurisdictional facts; instead, they argue Georgia Power was fraudulently joined because the City cannot prove a cause of action against Georgia Power under Georgia law for two reasons: (1) the City's claims are barred by the statute of limitations; (2) the City failed to allege the elements required to state a claim for trespass and nuisance. (Doc. 1, at 25-29.) Accordingly, the Court must determine whether there exists a "possibility that a state court would find that the complaint states a cause of action against" Georgia Power. See Coker, 709 F.2d at 1440-41. The Court addresses each argument below to determine whether Defendants meet their burden of establishing fraudulent joinder.

a. *Statute of Limitations*

Defendants argue the City's claim against Georgia Power is barred by the statute of limitations because "[t]he alleged trespasses and nuisances from Georgia

Power's operations meet the definition of permanent nuisances - not continuing nuisances – as they are alleged in the City's Complaint." (Doc. 1, at 27.) According to Defendants, the latest the City could have brought its claims against Georgia Power was in 1976 "[b]ecause the City alleges the mercury was emitted from a coal-fired plant, the latest Georgia Power would have emitted the alleged mercury was 1972 - the year Georgia Power ceased combusting coal at Plant McManus." (Id.) In its motion to remand, the City argues its claims are not barred by the statute of limitations because the pollution caused by the release of mercury "is a classic case of continuing nuisances and continuing trespasses." (Doc. 21-1, at 4.) In response, Defendants again argue the City's claims are actually allegations of permanent nuisance and trespass and not continuing. (Doc. 25, at 4-8.)

Under Georgia law, trespass and nuisance claims are subject to a four-year statute of limitations."[7] O.C.G.A § 9-3-30 (a). "However, when the statute begins to run depends on the nature of the nuisance or trespass." City of Atlanta v. Carlisle, 858 S.E.2d 543, 545 (Ga. Ct. App. 2021), *cert. denied* (Nov. 2, 2021). The Georgia Supreme Court provides guidance on whether a trespass or nuisance is permanent or continuing and when the statute of limitations begins to run:

> A nuisance, permanent and continuing in its character, the destruction or damage being at once

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[7] Although the statute only refers to a trespass claim, "[n]uisance and trespass are closely analogous claims," and [t]herefore, it is appropriate to treat the accrual of claims of trespass and nuisance in similar fashion." Provident Mut. Life Ins. Co. of Philadelphia v. City of Atlanta, 938 F. Supp. 829, 836 (N.D. Ga. 1995) (citing Rinzler v. Folsom, 74 S.E.2d 661, 664 (Ga. 1953)).

> complete upon the completion of the act by which the nuisance is created, gives but one right of action, which accrues immediately upon the creation of the nuisance, and against which the statute of limitations begins, from that time, to run. Where a nuisance is not permanent in its character, but is one which can and should be abated by the person erecting or maintaining it, every continuance of the nuisance is a fresh nuisance for which a fresh action will lie. This action accrues at the time of such continuance, and against it the statute of limitations runs only from the time of such accrual.

City of Atlanta v. Kleber, 677 S.E.2d 134, 137 (Ga. 2009) (quoting City Council of Augusta v. Lombard, 28 S.E. 994, 994 (Ga. 1897)). However, "Georgia courts are not uniform in their distinction between permanent and continuing nuisances." Crosson v. Carrollton City Sch. Dist., 478 F. Supp. 3d 1255, 1265-66 (N.D. Ga. 2020) (comparing Camp v. Warrington, 182 S.E.2d 419, 420 (Ga. 1971) with Lombard, 28 S.E. at 994). Moreover, "Georgia courts have found that the distinction between a permanent nuisance and a continuing nuisance has been referred to as one of the most baffling areas of the law." Id. at 1266 (alterations adopted, citations and quotation marks omitted). At this stage of the proceedings, the Court must resolve all doubts in favor of remand. Mann, 505 F. App'x at 856 (citation omitted). With this in mind, the Court finds Defendants' statute of limitations argument unavailing because "[i]n the absence of clear precedent," Defendants fail to meet their burden of demonstrating with clear and convincing evidence that the City alleges permanent trespass and nuisance. See Stephens v. Wal-Mart Stores E., LP, No. 5:09-CV-325, 2010 WL 1487213, at *2 (M.D. Ga. Apr.

12, 2010). Given that there is no clear bright line rule on whether Georgia Power's conduct constitutes permanent or continuing nuisance and trespass, there is a possibility the statute of limitations does not bar the City's claim against Georgia Power.

b. *Elements of Trespass and Nuisance*

Defendants also argue the City fails to allege the required elements for trespass and nuisance. (Doc. 1, at 27-29.) Specifically, in the removal notice, Defendants argue the City does not allege Georgia Power's conduct was intentional as required for a trespass claim, and the City cannot establish a claim for nuisance because Georgia Power's alleged conduct was legal. (Id. at 28.) In the motion to remand, the City argues it alleged that Georgia Power's conduct was intentional, and a claim for nuisance can be brought even when the conduct was legal. (Doc. 21-1, at 6-7.) In response, Defendants argue the City's claims fail because the City's Complaint does not allege Georgia Power had the "right to abate," which Defendants contend is an essential element of a continuing trespass and nuisance claim. (Doc. 25, at 12.)

The Court looks to the City's Complaint to determine "[i]f there is even a possibility that a state court would find that the complaint states a cause of action against" Georgia Power. Coker, 709 F.2d at 1440. However, the Court does not weigh the merits of the case; instead, it only looks to see if the pleading requirements have been met under Georgia law. Stillwell, 663 F.3d at 1332; McKenzie, 2012 WL 5473498, at *3. Under Georgia law, "[t]he true test is whether the pleading gives fair notice and states the elements of the claim plainly and succinctly . . . ." Carley, 472 S.E.2d at 111 (citation omitted).

Under Georgia law, "[a] property owner may bring an action for nuisance and trespass against one who contaminates his property with a hazardous substance." Sprayberry Crossing P'ship v. Phenix Supply Co., 617 S.E.2d 622, 624 (Ga. Ct. App. 2005) (citing Hoffman v. Atlanta Gas Light Co., 426 S.E.2d 387, 388 (Ga. Ct. App. 1992)). Nuisance and trespass are tort claims, and thus, an essential element of both claims is a showing of proximate cause. Alexander v. Hulsey Env't Servs., Inc., 702 S.E.2d 435, 439 (Ga. Ct. App. 2010) (citation omitted). Additionally, for a trespass claim, "the act of trespass must have been a voluntary, intentional act in that it intended the immediate consequences of the act, causing the trespass . . . ." Lanier v. Burnette, 538 S.E.2d 476, 480 (Ga. Ct. App. 2000) (citations omitted).

Here, the City's Complaint alleges "[t]he Georgia Power Plant was coal fired, and emitted mercury into the air, the waters and the marshes of Glynn County." (Doc. 1-1, at 154.) The City then alleges that this conduct is the actual and proximate cause of the City's injury, which is the contamination, or pollution, of the City's property with mercury. (Id. at 154, 159, 161.) Moreover, the Complaint also alleges "Defendants' conduct . . . showed willful misconduct, malice, wantonness, [or] oppression . . . ." (Id. at 159.) Based upon the allegations in the Complaint and the pleading standard under Georgia law, the Court finds there is a possibility that a state court could find the City states a cause of action against Georgia Power. The Court, at this stage, does not determine whether the City's claims against Georgia Power will succeed. See Stillwell, 663 F.3d at 1333. The Court also finds Defendants' argument that Georgia Power's alleged conduct was legal unavailing because O.C.G.A. § 41-1-1 provides that "[a] nuisance is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance." (See Doc. 1, at 28.)

Further, the Court is unconvinced by Defendants' argument that the City's claims fail because Georgia Power was not given the right to abate. (See Doc. 25, at 12-13.) Defendants cite three cases in support of their argument, but each of these cases address nuisance and trespass where the conduct causing the injury took place on a property outside the defendant's control, which is not the case here because the alleged conduct that caused the contamination was at Georgia Power's plant. (Id.); see Briggs & Stratton Corp. v. Concrete Sales & Servs., Inc., 971 F. Supp. 566, 573 (M.D. Ga. 1997) (finding a nuisance and trespass claim failed where the defendant had no legal right to enter the premise to correct the hazardous waste disposal activities); Corp. of Mercer Univ. v. Nat'l Gypsum Co., No. CIV.A. 85-126-3, 1986 WL 12447, at *6-7 (M.D. Ga. Mar. 9, 1986) (finding a nuisance and trespass claim failed where product causing the nuisance "was in the *possession and control of the plaintiff* from the time it purchased the . . . products") (emphasis added); Bodin v. Gill, 117 S.E.2d 325, 330-31 (finding a nuisance and trespass claim failed where the defendant "had no legal right to go upon the . . . property for the purpose of terminating the *cause* of the injury") (emphasis added). Additionally, other than these three cases, the Court is unaware of any other court in Georgia that has imposed the "right to abate" as an essential element of nuisance and trespass claims. See Parker v. Scrap Metal Processors, Inc., 386 F.3d 993, 1016 n.29 (11th Cir. 2004) ("The fact that the [plaintiffs] prevented the defendants from coming onto the [plaintiffs'] property to clean up the debris does not prevent a finding of continuing nuisance"). Accordingly, the Court does not decide at this time whether the "right to abate" is an essential element of nuisance and trespass claims but finds that Defendants fail to support with clear and convincing evidence that the City had to allege in its Complaint that Georgia Power had a "right to abate." (See Doc. 25, at 12-13.) Because the City's Complaint states the elements of trespass and nuisance and gives Georgia Power fair notice that it is being sued for releasing mercury into the City's property, Defendants' argument that the City fails to sufficiently allege its claims for trespass and nuisance is unavailing.

For the foregoing reasons, Defendants fail to meet their heavy burden of establishing fraudulent joinder with clear and convincing evidence. As such, there is no diversity of citizenship in the case, and diversity jurisdiction does not exist. Accordingly, because Defendants fail to establish the three jurisdictional grounds on which they based the removal, the Court lacks subject matter jurisdiction over this matter.[8]

B. Request for Hearing

Defendants move, pursuant to Local Rule 7.2, for a hearing on the City's motion to remand. (Doc. 26, at 1.)

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[8] Defendants also based their removal on supplemental jurisdiction under 28 U.S.C. § 1367(a) "[t]o the extent any part of [the City]'s causes of action can be construed as non-federal." (Doc. 1, at 1.) However, as discussed herein, the Court does not have original jurisdiction over this matter, and in turn, it does not have supplement jurisdiction. 28 U.S.C. § 1367(a).

Local Rule 7.2 states that motions shall generally be determined upon the motion and its supporting documents. L.R. 7.2, SDGa. However, the Local Rule does allow, at the District Judge's discretion, oral argument upon written request of either party. Id. Here, the Court finds oral argument unnecessary for the disposition of the motion to remand because of the extensive filings of the Parties. Accordingly, Defendant's request for hearing is **DENIED**.

III. CONCLUSION

Based on the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's motion to remand (Doc. 21) is **GRANTED** and Defendants' request for hearing (Doc. 26) is **DENIED**. The Clerk is **DIRECTED to REMAND** this case to the Superior Court of Glynn County, Georgia. The Clerk is further **DIRECTED to TERMINATE** all remaining pending motions, if any, and **CLOSE** this case.

ORDER ENTERED at Augusta, Georgia, this 1st day of September, 2023.

/s/ J. Randal Hall
J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

APPENDIX C

28 U.S.C. §1441: Removal of civil actions

(a) GENERALLY.—Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—

(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) JOINDER OF FEDERAL LAW CLAIMS AND STATE LAW CLAIMS.—

(1) If a civil action includes—

(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute, the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in paragraph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).

(d) ACTIONS AGAINST FOREIGN STATES.—Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) MULTIPARTY, MULTIFORUM JURISDICTION.—

(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if—

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j)[1] has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability

[1] So in original. Section 1407 of this title does not contain a subsec. (j).

determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) DERIVATIVE REMOVAL JURISDICTION.—The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

APPENDIX D

28 U.S.C. §1442: 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.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(c) Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer—

(1) protected an individual in the presence of the officer from a crime of violence;

(2) provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or

(3) prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

(d) In this section, the following definitions apply:

(1) The terms "civil action" and "criminal prosecution" include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.

(2) The term "crime of violence" has the meaning given that term in section 16 of title 18.

(3) The term "law enforcement officer" means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5 and any special agent in the

Diplomatic Security Service of the Department of State.

(4) The term "serious bodily injury" has the meaning given that term in section 1365 of title 18.

(5) The term "State" includes the District of Columbia, United States territories and insular possessions, and Indian country (as defined in section 1151 of title 18).

(6) The term "State court" includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and a tribal court.

APPENDIX E

28 U.S.C. §1446: 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 thirty 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.

(c) REQUIREMENTS; REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—

(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

(i) nonmonetary relief; or

(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.—Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) COUNTERCLAIM IN 337 PROCEEDING.—With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(g)[1] Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

[1] So in original. Section does not contain a subsec. (f).

APPENDIX F

28 U.S.C. §1447: Procedure after removal generally

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(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). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.