

In the
Supreme Court of the United States

LOUISIANA, ET AL.,
Applicants,

v.

DEVON ENERGY PRODUCTION COMPANY, L.P.,
Respondent.

**RESPONSE IN OPPOSITION TO APPLICATION TO VACATE
THE FIFTH CIRCUIT'S STAY ORDER**

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CORPORATE DISCLOSURE STATEMENT

Devon Energy Production Company, L.P. is a limited partnership with two partners: DVN Operating Company, L.L.C. (general partner) and Devon OEI Operating, L.L.C. (limited partner).

The sole member of DVN Operating Company, L.L.C. is Devon OEI Operating, L.L.C.

The sole member of Devon OEI Operating, L.L.C. is Devon OEI Holdings, L.L.C.

The sole member of Devon OEI Holdings, L.L.C. is Devon Energy Corporation (Oklahoma).

Ten percent or more of Devon Energy Corporation (Oklahoma)'s stock is owned by Devon Energy Corporation, which is a publicly traded corporation. Devon Energy Corporation trades on the New York Stock Exchange under the ticker symbol DVN.

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INTRODUCTION

The Fifth Circuit entered an ordinary stay pending appeal of a remand order. Rather than petition for certiorari in the normal course, Cameron Parish and Louisiana seek to skip the line by requesting vacatur in an emergency posture. Their Application satisfies none of the criteria for that extraordinary relief, and this Court should deny it.

Several Louisiana parishes, joined by the state of Louisiana, have sued oil and gas companies for billions in alleged damages under an anachronistic theory that the companies' exploration and production activities violated a state permitting law passed decades later. Concerned about a fair hearing in a parish's own court, and because this suit implicates conduct at the direction of the federal government, Devon Energy Production Company, L.P. ("Devon") removed the case to federal court under the federal-officer removal statute after this Court's decision last Term in *Chevron USA Inc. v. Plaquemines Parish*, 608 U.S. 1 (2026). The district court remanded the suit to state court, and Devon appealed hours later. Cameron Parish and Louisiana nevertheless insist that the suit must proceed to trial in the Parish's home court while Devon's appeal of the remand order proceeds.

The Fifth Circuit disagreed. In a unanimous opinion, the court of appeals explained that Devon's appeal automatically stayed the remand of the case to state court. The federal-officer removal statute explicitly permits Devon to appeal the remand. That appeal implicates the entire case. So the remand order is necessarily paused pending appeal. The court of appeals deemed this a straightforward and logical conclusion under this Court's precedents in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982) and *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). In reaching that holding, the Fifth Circuit joined two of its

sister circuits. *See City of Brunswick ex rel. Mayor & Bd. of Comm'rs v. Honeywell Int'l*, 184 F.4th 1230, 1238 (11th Cir. 2026), *cert. denied*, No. 26-289 (Oct. 19, 2026); *City of Martinsville, Va. v. Express Scripts, Inc.*, 128 F.4th 265, 271 (4th Cir. 2025).

Applicants have now come to this Court to request that the Court vacate the Fifth Circuit's stay with limited briefing and on an expedited timeline. But vacatur is a high bar. To clear it, Applicants must show that (1) the Court is likely to grant certiorari on the question presented, (2) the lower court decision is likely to be overturned, and (3) the equities favor vacating the stay. Not one of those requirements is met here.

First, certiorari is not likely. This Court has declined to take up the question presented twice this year, including just two days ago. *See City of Brunswick v. Honeywell Int'l, Inc.*, No. 26-289 (U.S. cert. denied Oct. 19, 2026). And this case is an unusually poor vehicle to reach it. The question turns on an application of this Court's recent decision in *Coinbase*, a 5-4 ruling. One member of the *Coinbase* majority has recused from this Application. So the case presents a real threat of deadlock. An allegedly "important and recurring" question should be resolved with the full Court.

Plus, the question presented is intertwined with an unresolved threshold procedural issue. The district court mailed its remand order to the state court the moment the order was entered. But under Federal Rule of Civil Procedure 62, enforcement of an appealable order is stayed for 30 days. Applicants merely assume that the district court's snap mailing was valid, notwithstanding Rule 62. To answer the question presented in their favor, however, this Court would have to resolve that contested assumption, upon which the Fifth Circuit did not pass and which has divided district courts. Besides, resolving the question

presented would not change the outcome here. Even if this Court were to rule for Louisiana on the merits, the State is likely to end up exactly where it is now based on Devon's unresolved request for a discretionary stay.

Vehicle problems aside, certiorari is also unlikely because the disagreement among the courts of appeals is shallow and recent. The Fourth, Fifth, and Eleventh Circuits all agree that an appeal from a remand order under the federal-officer removal statute triggers an automatic stay. Only the Ninth Circuit has held otherwise, in a decision that predates the Fifth and Eleventh Circuits' thoughtful opinions. Those four decisions are less than two years old. Each turned on *Coinbase*, itself decided just three years ago. More to the point, the Application itself illustrates the need for percolation, by relying on arguments that have not been adopted by any court of appeals.

Second, even if there were some chance that this Court might grant further review, Applicants have not shown that the Fifth Circuit erred—let alone clearly and demonstrably—in holding that an automatic stay is triggered here. An appeal divests the district court of control over those aspects of the case involved in the appeal. Logically, an automatic stay is required where proceeding would defeat the point of the appeal. And a remand order involves the entire case, because it decides which court the case belongs in. Forcing an appealing defendant to trial in state court while the court of appeals decides whether the defendant is entitled to a federal forum could undermine the defendant's right to appeal and impair appellate jurisdiction.

Third, the equities do not support Applicants' request because they suffer no harm from the Fifth Circuit's stay. The stay simply maintains the status quo pending appeal,

imposing no more than the minimal burden borne by every plaintiff in a removed case that must wait for resolution of jurisdiction before litigating in their preferred forum. By contrast, Devon faces serious harm—the loss of its statutory right to appeal. This risk is not hypothetical. In a related case that was *not* stayed pending appeal of a remand order, Louisiana forced another oil company to trial, obtained a nearly \$750 million verdict in a hostile forum, and then insisted to the Fifth Circuit that the company’s appeal was moot because a verdict had already been rendered.

The court should deny the Application. The Court should also reject the alternative request to treat the Application as a petition for certiorari before judgment. Applicants face no imminent risk of mootness. And other litigants raising this question have sought review through the ordinary certiorari process. Applicants can do the same.

STATEMENT

A. Louisiana parishes sue oil companies, claiming that decades-old operations eroded the State’s coastline.

This suit is one of the forty-two by Louisiana parishes against oil and gas companies. *See Chevron*, 608 U.S. at 8. This particular case, *Cameron Parish v. Burlington Resources Oil & Gas Co.*, involves the Deep Lake Oil and Gas Field, located in coastal marshlands about 50 miles south of Lake Charles. In 2016, Cameron Parish sued Devon, Exxon Mobil Corporation (“Exxon”), and nearly a dozen other oil and gas companies, claiming that their Deep Lake operations harmed the coastline. Louisiana has intervened in support of the Parish.

The Parish’s theory is novel: Operations in Deep Lake began in the 1940s at the urging of the federal government to meet World War II energy needs. The Parish claims

that the oil companies, by conducting drilling operations, building and using waste pits, and dredging canals over 80 years ago, have today caused “environmental changes” and “faster land loss” off Louisiana’s coast, “and amplified flood and storm-related damage.” Appendix 25a (“App.”); *see Chevron*, 608 U.S. at 8-9.

The Parish filters its claims through Louisiana’s State and Local Coastal Resources Management Act, a state permitting program established in 1980 that requires licenses for new oil projects but exempts operations existing prior to the Act. La. Rev. Stat. Ann. § 49:214.21 *et seq.*; *see Chevron*, 608 U.S. at 8. The Parish claims that the Deep Lake operations violate the Act, although it has studiously avoided explaining how. *See, e.g.*, CA5 Dkt. No. 7-3 at 79-80. For Deep Lake alone, the Parish seeks over \$500 million in damages.

Cameron Parish cannot tie any of its claimed coastal harms to the actions of any one defendant. So it relies on a state-law theory of “solidary liability,” asserting that every oil company that has ever acted in Deep Lake is liable for each other’s alleged contribution to the indivisible, “cumulative impacts” on Louisiana’s coast over the course of the twentieth century. *Id.* at 9-10. For instance, although Devon’s predecessors and related entities did not begin operations in Deep Lake until the 1950s, and none has operated there since 2002, the Parish still seeks to hold Devon—now the only remaining defendant in this suit—liable for all activities conducted there in the 1940s, during World War II, and for activities conducted post-2002.

B. The oil companies remove the case based on federal-officer jurisdiction.

This past April, after this Court clarified the scope of federal-officer removal in *Chevron*, 608 U.S. 1, Devon and Exxon jointly removed this case to federal court. CA5 Dkt.

No. 7-2 at 5-19. Under 28 U.S.C. § 1442(a), a case is properly removed if it (1) targets “a federal officer, or a person ‘acting under’ a federal officer, such as certain private parties hired to assist federal officers,” (2) is “for or relating to any act under color of such office,” and (3) the removing defendant “assert[s] a colorable federal defense.” *Chevron*, 608 U.S. at 6 (quotations omitted). As Exxon and Devon explained, federal-officer jurisdiction applies here on two separate grounds:

First, the Parish’s suit attacks operations in Deep Lake in the 1940s, during World War II. App. 25a. Oil companies, including Exxon, had “contracted with the federal government to supply aviation gas ... during World War II.” App. 25a. Because these operations occurred “under federal contracts,” App. 3a, Exxon (with which Devon is allegedly “solidarily liable”) had acted under a federal officer, and the Parish’s current claims relate to those federal duties. *See Chevron*, 608 U.S. at 8-9, 12-13.

Second, the Parish’s suit challenges “conservation activities taken” by oil companies “while acting in furtherance of the federal government’s property interest.” App. 3a (quotations omitted). Deep Lake is in the Rockefeller Wildlife Refuge. Louisiana maintains the refuge, but the federal government has a dominant property interest in the Refuge, and Louisiana acts under federal oversight. App. 51a. Over several decades, Devon and its predecessors and related entities took various conservation actions, like building water management units, that the federal government otherwise would have had to handle. CA5 Dkt. No. 7-3 at 65-68.

Cameron Parish and Louisiana moved to remand. During the pendency of that motion, Exxon settled, though it still remains in the operative pleading. CA5 Dkt. No. 7-4 at 13.

C. The district court remands the case to state court.

In August, the district court entered an opinion in a related case that addressed the propriety of federal officer removal in this case. App. 24a-57a.

First, the district court recognized that Devon’s co-defendants had operated under the oversight and direction of the federal government during World War II, and that under *Chevron*, those contacts would likely trigger federal jurisdiction. App. 32a-47a. The district court nonetheless set aside these federal contracts because they were not Devon’s own contacts, and only Devon remained in the suit. App. 49a-50a. The district court did not address the Fifth Circuit’s recent holding that, because it “consider[s] the claims in the state court petition as they existed at the time of the removal,” federal officer jurisdiction is appropriate so long as one defendant has qualifying federal contacts, even if that defendant later withdraws from the case. *Plaquemines Par. v. BP Am. Prod. Co.*, 103 F.4th 324, 332 n.29 (5th Cir. 2024), *vacated and remanded on other grounds sub nom. Chevron*, 608 U.S. 1, (quotations omitted); *see also Manguno v. Prudential Prop. & Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002).

Second, the district court recognized that Devon and its predecessors and related entities had conducted conservation-related activities in the Refuge. App. 51a. But after “intensive fact-finding,” the district court found those activities insufficient to give rise to

federal-officer jurisdiction because Devon acted under the state of Louisiana in constructing the water management units, not the federal government. App. 51a-52a, 56a.

Although the district court ultimately rejected both removal theories, it disagreed with Applicants that the theories were “meritless” and “frivolous.” App. 55a. Instead, the court explained, Devon had offered “a colorable argument” and “an objectively reasonable basis for removal.” App. 56a (quotations omitted) (citations omitted).

Two days later, after issuing that opinion on a different docket, the district court entered an order remanding this case. App. 19a. At the same time, the district court directed the clerk to mail the order to the state court. App. 20a. Within hours, Devon filed its notice of appeal. App. 21a.

D. The district court declines to issue a stay pending appeal.

Shortly after appealing, Devon filed an emergency motion to clarify or stay the remand order. As Devon pointed out, the district court had prematurely transmitted the remand order. “Execution on a judgment” is supposed to be “stayed for 30 days after its entry.” Fed. R. Civ. P. 62(a). But the district court had sent the remand order to state court the same day it issued the order. Devon also asserted that, under *Griggs*, 459 U.S. 56, and *Coinbase*, 599 U.S. 736, its appeal had triggered an automatic stay of the remand order pending appeal. In the alternative, Devon urged that it was entitled to a discretionary stay under *Nken v. Holder*, 556 U.S. 418 (2009).

The district court denied the stay motion. It found that Rule 62 did not apply here, reasoning that the Rule “stays execution and enforcement of a judgment,” and “a remand order requires neither.” App. 16a. The district court also rejected that Devon’s appeal

triggered an automatic stay, declining to apply *Coinbase* because that case did not involve a remand. *Id.* Even if it had, the court reasoned, the “Anti-Injunction Act prohibits this Court from issuing a stay order divesting the state court of jurisdiction after the mailing of the Notice of Remand.” *Id.* The district court did believe it had the power to enter a discretionary stay, but it declined to issue one. App. 17a-18a.

E. The Fifth Circuit enters an automatic stay.

Devon then moved the court of appeals for a stay pending appeal. In a unanimous published decision, the Fifth Circuit (Smith, Southwick, Wilson, JJ.) held that Devon’s notice of appeal triggered an automatic stay of the remand order and granted a stay pending appeal. App. 2a, 4a.

As the court of appeals explained, “the *Griggs* principle” provides that, “when an issue is appealed, the district court is divested of its control over those aspects of the case involved in the appeal.” App. 5a (cleaned up) (citing *Griggs*, 459 U.S. at 58). As this Court held a few Terms ago in *Coinbase*, that principle means that “an automatic stay obtains where not granting one would defeat the point of the appeal, nullifying Congress’ decision to afford a right to an ... appeal.” App. 6a (cleaned up) (citing *Coinbase*, 599 U.S. at 743-44). Although *Coinbase* had involved an interlocutory appeal from a denial of a motion to compel a case to arbitration, the Fifth Circuit explained that the same principles apply “with equal force to the federal officer removal statute.” *Id.* In 28 U.S.C. § 1447(d), Congress had explicitly provided a right to appeal “whenever a district court remands to state court for want of removal jurisdiction under the federal officer removal statute.” App. 5a. With a remand, as with arbitration, “the entire case is essentially involved in the appeal.” App. 7a (citation

omitted). And because “the right to removal is ... a right to be removed from the jurisdiction of state courts,” “not automatically staying the remand could jeopardize [the] appeal” and deprive the defendant of “the right that it seeks to retain by exercising its ... appeal.” *Id.*

Because the court of appeals found that Devon’s appeal triggered an automatic stay, the court did not reach whether a discretionary stay was appropriate. The Fifth Circuit noted, however, that discretionary stays “remain available” in this “context.” App. 9a n.5. The Fifth Circuit also did not pass on whether the district court, by sending the remand order to the state court the same day it was issued, violated Rule 62. App. 4a n.2. Instead, the court of appeals reasoned that the automatic stay applied “even after the district court transmitted [the] remand order.” *Id.*

This application to vacate followed. The docket notes that Justice Alito is recused.

ARGUMENT

I. The Court should not vacate the Fifth Circuit’s order.

Applicants are not entitled to the extraordinary relief they seek here. This Court’s power to vacate a stay “should be exercised with the greatest of caution and should be reserved for exceptional circumstances,” *Holtzman v. Schlesinger*, 414 U.S. 1304, 1308 (1973) (Marshall, J., in chambers), mindful of the “great deference ... owe[d] to the Court of Appeals’ decision,” *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013) (Scalia, J., joined by Thomas, and Alito, JJ., concurring in denial of application to vacate stay). To clear that “high” bar, *Valentine v. Collier*, 590 U.S. 935, 936 (2020) (Sotomayor, J., joined by Ginsburg, J., respecting the denial of application to vacate stay), Applicants must satisfy a three-pronged test.

First, Applicants must show a high probability that this Court will grant certiorari—that is, the decision “very likely would be reviewed.” *W. Airlines, Inc. v. Int’l Bhd. of Teamsters*, 480 U.S. 1301, 1305 (1987) (O’Connor, J., in chambers). Second, Applicants must prove the Fifth Circuit “clearly and demonstrably erred” in granting the stay. *Planned Parenthood*, 134 S. Ct. at 506 (quotations omitted). That “[r]easonable minds can perhaps disagree about whether the Court of Appeals should have granted a stay” is not enough. *Id.* at 507. Third, Applicants must show “the rights of the parties to a case ... may be seriously and irreparably injured by the stay.” *W. Airlines, Inc.*, 480 U.S. at 1305. In other words, the equities must be on Applicants’ side. *Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.*, 141 S. Ct. 2320, 2321 (2021) (Kavanaugh, J., concurring).

Applicants fail on each prong.

A. This Court is unlikely to grant certiorari.

The Court is not “very likely” to grant review in this case. *W. Airlines, Inc.*, 480 U.S. at 1305. On the contrary, this Court just denied certiorari on the question presented two days ago. *See City of Brunswick*, No. 26-289. And this case is a poor vehicle to resolve an issue that is only beginning to percolate.

1. This case is not the vehicle to resolve the question presented.

To the extent the Court is interested in taking up the question presented, this case is not the one. Applicants face three discrete vehicle problems.

a. This case poses a real threat of a deadlock on the question presented.

At the threshold, there is a profound risk that the Court cannot reach a precedential decision on the question presented. One member of the Court has recused from this matter,

so the Court may be evenly divided. This risk is exacerbated because *Coinbase* was a recent 5-4 decision, and the recused member was part of the *Coinbase* majority. All courts of appeals that have decided the automatic stay issue at the core of the question presented agree that it turns squarely on an application of *Coinbase*. See App. 6a-7a (“At bottom, *Coinbase* and *Griggs* teach”); *City of Brunswick*, 184 F.4th at 1240 (“The *Coinbase* Court’s reasoning”); *California ex rel. Harrison v. Express Scripts, Inc.*, 139 F.4th 763, 773 (9th Cir. 2025) (“*Nken*, and not *Coinbase*, provides the proper standard”); *City of Martinsville*, 128 F.4th at 271 (“The rationale of *Coinbase* applies here.”).

The Court should wait for a vehicle in which all nine members of the Court could weigh in. As Applicants agree, this issue is sure to return to the Court sooner rather than later. Indeed, the Court has already been asked twice in the past year to review the question in cases with no recusal issues. See Petition for a Writ of Certiorari, *Express Scripts, Inc. v. California*, No. 25-327 (U.S. filed Sept. 16, 2025); Petition for a Writ of Certiorari, *City of Brunswick*, No. 26-289 (U.S. filed Sept. 1, 2026). More are sure to follow.

b. Rule 62(a) is a threshold procedural barrier to the question presented.

Next, the question presented is not cleanly teed up, as this case implicates a threshold procedural issue that would complicate this Court’s review of the question presented (at least as Applicants have framed it): namely, whether the district court’s mailing of the remand order was legally effective under Federal Rule of Civil Procedure 62. Under Rule 62, “execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.” Fed. R. Civ. P. 62(a). A “judgment,” as defined in the Rules, is “any order from which an appeal lies.” Fed. R. Civ. P. 54(a). By statute, a

remand order declining to find federal officer jurisdiction is immediately appealable. 28 U.S.C. § 1447(d). So under Rule 62’s plain direction, a remand order mailed at the same time as judgment is entered is ineffective for 30 days, meaning that the notice of appeal here *was* filed before any mailing of the remand order became effective.¹

Applicants explicitly decline to grapple with this procedural issue, Brief in Support of Application to Vacate (“Br.”) at 11 n.5, but it is key to their entire theory. Applicants insist that no automatic stay could be entered here because the case was transferred back to the state court the moment the district court mailed the remand order. But that premise only works if the mailing is legally effective. If enforcement (i.e., transmittal) of the remand order is instead automatically stayed for 30 days, Applicants’ entire theory crumbles. Applicants therefore cannot prevail unless Rule 62 does not apply. And because the Fifth Circuit had no need to address this issue, App. 4a n.2, this Court would be faced with

¹ District courts have widely adopted this view. *See, e.g., Canadian Breaks LLC v. JPMorgan Chase Bank, N.A.*, No. 21-cv-037, 2026 WL 1164691, at *2 (N.D. Tex. Apr. 29, 2026); *Kansas v. Pfizer, Inc.*, No. 24-cv-1128, 2025 WL 1548507, at *2 (D. Kan. May 30, 2025); *Town of Pine Hill, Ala. v. 3M Co.*, No. 24-cv-284, 2025 WL 994187, at *3 (S.D. Ala. Apr. 2, 2025); *Doe v. Gundersen Lutheran Health Sys., Inc.*, No. 23-cv-694, 2024 WL 663479, at *1 (W.D. Wis. Feb. 16, 2024); *Doe v. Sarah Bush Lincoln Health Ctr.*, No. 23-cv-2170, 2023 WL 12144306, at *1-2 (C.D. Ill. Nov. 20, 2023); *Doe v. Mosaic Health Sys.*, No. 23-cv-6008, 2023 WL 12197521, at *1 (W.D. Mo. Sept. 6, 2023); *Martin v. LCMC Health Holdings, Inc.*, No. 23-cv-411, 2023 WL 5173791, at *3 (E.D. La. Aug. 11, 2023); *Northrop Grumman Tech. Servs., Inc. v. DynCorp Int’l LLC*, No. 16-cv-534, 2016 WL 3180775, at *2 (E.D. Va. June 7, 2016). That includes this district court, prior to this case. *See Horton v. Willis-Knighton Med. Ctr.*, No. 23-cv-314, 2024 WL 698786, at *1 (W.D. La. Jan. 9, 2024) (Doughty, J.). But some district courts, including the court below, have found that Rule 62(a) does not apply to remand orders. *See, e.g., App. 16a; Nev. ex rel. Nev. Gaming Control Bd. v. KalskiEX, LLC*, No. 26-cv-406, 2026 WL 700039, at *1 (D. Nev. Mar. 12, 2026). Yet others have held that, even if Rule 62(a) applies to remand orders, the district court implicitly dissolves the automatic 30-day stay by ordering transmittal. *See, e.g., Ill. ex rel. Raoul v. 3M Co.*, No. 25-cv-4189, 2025 WL 3605873, at *6 (C.D. Ill. Nov. 26, 2025).

interpreting Rule 62 on its own. Of course, this “Court does not ordinarily decide questions that were not passed on below.” *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 609 (2015).

c. Resolving the question presented would not be outcome determinative here.

Even if the Court manages to reach the question presented, resolving that question will not be outcome determinative here. Applicants ask only that this Court hold that no automatic stay is triggered. Even if this Court holds as much—it shouldn’t—then that does not mean that Applicants can proceed to trial during Devon’s appeal. Devon moved for both an automatic and a discretionary stay. On remand, then, the Fifth Circuit would still have to address the discretionary stay. *See* App. 11a. And Applicants have not disputed that, as the Fifth Circuit has held, a discretionary stay may be entered after a remand order has been mailed. *See Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 371-72 (5th Cir. 2023). That alone means that this case is “not an appropriate vehicle for this Court’s review.” *Castro v. Guevara*, 146 S. Ct. 1066, 1068 (2026) (Sotomayor, J., respecting the denial of certiorari). The Court should wait to resolve this question presented in a case where it would “make [a] difference” to the parties. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994).

2. The question presented requires further percolation.

Vehicle issues aside, the Court is not likely to grant certiorari in this case. Although there is division among the courts of appeals, that disagreement is nascent. And certiorari has been denied on this issue recently. Further percolation is needed to sufficiently air the issues and arguments underlying the question presented.

The Fifth and Eleventh Circuits have held that, in the context of federal-officer removal, an appeal from a remand order results in an automatic stay pending resolution of the appeal, even after the mailing of a remand order. App. 4a; *City of Brunswick*, 184 F.4th at 1238. The Fourth Circuit held the same *before* the remand order is mailed. *City of Martinsville*, 128 F.4th at 271. Only the Ninth Circuit—the same Circuit overruled in *Coinbase*—has held by published opinion that an appeal in the federal-officer removal context does not trigger an automatic stay. *California*, 139 F.4th at 766.

This disagreement among the courts of appeals is recent. All four cases have been decided within the past two years. Each decision turns on the interpretation of *Coinbase*, which was itself decided only four Terms ago. More time is warranted for the courts of appeals to assess these fast-developing arguments. The division is also much shallower than in cases involving procedural issues that the Court has taken up in recent terms. In *Coinbase*, for instance, nine circuits had weighed in, and the split was 6-3. Petition for a Writ of Certiorari i, *Coinbase v. Bielski*, No. 22-105 (U.S. filed July 29, 2022). In *Younge*, set to be argued this Term, the split is 8-3. Petition for a Writ of Certiorari 11, *Younge v. Fulton Cnty. Jud. Cir. Dist. Att’y’s Office, Ga.*, No. 25-352 (U.S. filed Sept. 22, 2025); *see also, e.g.*, Petition for a Writ of Certiorari i, *Berk v. Choy*, No. 24-440 (U.S. filed Oct. 16, 2024) (alleging a 6-2 split); Petition for a Writ of Certiorari 8-11, *Coney Island Auto Parts Unlimited, Inc. v. Burton*, No. 24-808 (U.S. filed Nov. 25, 2024) (11-1 split); Petition for a Writ of Certiorari 11-14, *Royal Canin U.S.A., Inc. v. Wullschlegler*, No. 23-677 (U.S. filed Dec. 19, 2023) (7-1 split). Moreover, this Court denied certiorari on this very issue this past January, *see*

Express Scripts, Inc. v. California, 146 S. Ct. 1507 (2026), and again two days ago, *see City of Brunswick*, No. 26-289.

For proof that further percolation is needed, the Court need look no further than the arguments in this case. Applicants raise a host of reasons against an automatic stay, none of which has ever been adopted by a court of appeals. *Compare* Br. 20-33 *with California*, 139 F.4th at 767-68. For instance, Applicants claim that *Griggs* does not apply to remand orders because once the case is remanded, there is no district court proceeding to stay. Br. 22-23. And they suggest that an automatic stay contradicts both the removal provisions themselves and the Anti-Injunction Act. *Id.* at 26-30. The Ninth Circuit relied on neither line of logic in rejecting an automatic stay; that court instead relied on federalism and policy concerns. *California*, 139 F.4th at 767-69, 771-72.

At any rate, there is a wrinkle to the question presented that makes even Applicants hedge on whether to call the split 3-1, 2-1, or 2-2. Br. 15; *see also* Brief in Opposition to Certiorari at 4-6, *Express Scripts, Inc.*, No. 25-327 (U.S. filed Dec. 9, 2025) (similarly noting this complication). Below and in *City of Brunswick*, the removing parties appealed *after* the remand order was mailed back to the state court. The Fifth and Eleventh Circuits deemed that irrelevant. App. 9a-10a; *City of Brunswick*, 184 F.4th at 1242. In *Martinsville*, in comparison, the removing party appealed *before* the order was mailed. 128 F.4th at 268. The Fourth Circuit held that the remand order was automatically stayed in that circumstance because “the district court still had an action it needed to take before it could shunt the case elsewhere,” namely, “mail[ing] a copy of the remand order to the state court.” *Id.* at 271. The Fourth Circuit explicitly declined to decide what would happen with a post-mailing

notice of appeal. *Id.* Underlying the question presented, then, is the significance (if any) of whether the district court has already sent the remand order to the state court before the appeal is noticed.

This Court should continue to hold off on review until the relevant issues and arguments have been adequately ventilated and passed upon by the courts of appeals, so that this Court can remain a court of review, and not first view. That percolation is inevitable, and is likely to occur quickly; “[h]ow far *Coinbase* extends is an active subject in the federal appellate courts.” *City of Martinsville*, 128 F.4th at 269.

B. Applicants are not likely to prevail on the merits.

Emergency relief is also inappropriate because Applicants have not shown that the decision below is “clearly and demonstrably” wrong. *Planned Parenthood*, 134 S. Ct. at 506 (quotations omitted). As the court of appeals rightly held, “Devon was entitled to an automatic stay of the district court’s remand order once its § 1447(d) notice of appeal was docketed.” App. 2a. This conclusion follows from *Griggs*, 459 U.S. 56, and *Coinbase*, 599 U.S. 736, as the Fourth, Fifth, and Eleventh Circuits have recognized. None of Applicants’ contrary arguments, drawn primarily from the dissent in *Coinbase*, are persuasive; most were soundly rejected by the Fifth Circuit, and none have been adopted by any court of appeals.

1. An automatic stay is required because the entire case is involved in the remand appeal.

Congress provided for appeals “whenever a district court remands to state court for want of removal jurisdiction under the federal officer removal statute.” App. 5a (citing 28 U.S.C. § 1447(d)). And “when an issue is appealed, the district court is divested of its control over those aspects of the case involved in the appeal.” *Id.* (quoting *Coinbase*, 599 U.S. at

740 and *Griggs*, 459 U.S. at 58). “[T]he appeal of a remand order decides whether the case belongs in state court or instead in the district court.” App. 7a (quoting *City of Brunswick*, 184 F.4th at 1240). So “the entire case is essentially involved in the appeal.” *Id.* (quoting *City of Brunswick*, 184 F.4th at 1240).

“As a corollary of” this “jurisdictional shift, an automatic stay must issue.” App. 6a. “[N]ot granting one would defeat the point of the appeal, nullifying Congress’ decision to afford a right to ... appeal.” *Id.* (quoting *Coinbase*, 599 U.S. at 743-44) (cleaned up). “The point of” a remand appeal “is to adjudicate [the] right to removal,” and “the right to removal is—eponymously—a right to be *removed* from the jurisdiction of state courts.” App. 7a. Absent a stay, the removing party “would be subjected to the jurisdiction of the state court,” “los[ing] the right that it seeks to retain by exercising its ... appeal.” *Id.* Resuming “litigation in state court” could even “moot” the appeal, interfering with the court of appeals’ jurisdiction. *Id.* (quoting *City of Brunswick*, 184 F.4th at 1240). Indeed, as this Court has previously recognized, “for suits against federal officers or agencies removed pursuant to 28 U.S.C. § 1442 ... Congress has deemed it appropriate to allow appellate review *before* a district court may remand a case to state court.” *BP P.L.C. v. Mayor & City Council of Balt.*, 593 U.S. 230, 235-36 (2021) (emphasis added).

Fighting this conclusion, Applicants deny (at 22) that an automatic stay is appropriate because after remand, “there are no federal district court ‘proceedings’ to speak of.” But as the Fifth Circuit explained, Applicants miss the point. App. 9a-10a. “Contrary to [Applicants’] assertion, there is a valid district court proceeding—a remand—to be stayed.” App. 12a. A stay in this context “targets the district court’s remand order, *not* state court

proceedings themselves.” *Id.* And a remanding court necessarily retains jurisdiction to modify and stay its remand order, App. 11a, even though the remand is “a past event,” Br. 22. That an order “already has occurred” does not mean that it cannot be altered or stayed. Br. 23; *see, e.g.*, Fed. R. Civ. P. 59, 60, 62; Fed. R. App. P. 8.

On Applicants’ reading, then, no court could ever modify or stay a remand order once it has been mailed. Nor could a court of appeals ever overturn an erroneous remand order after mailing. Under Applicants’ view, then, so long as the district court mails its remand order before a removing party has a chance to notice their appeal—here, the district court mailed its order within minutes of entering it—then the removing party cannot appeal, and the order is insulated from review. “The administrative task of 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.” *City of Brunswick*, 184 F.4th at 1242.

Applicants next claim (at 23) that an automatic stay is not appropriate because remand involves “a federal court and a state court,” not “two federal courts.” But the same principles apply no matter the courts involved: Allowing the case to proceed in a different forum while an appellate court is deciding whether the case should be there necessarily interferes with appellate jurisdiction. Federalism concerns do not demand otherwise. App. 8a. The federal government “can act only through its officers and agents, and they must act within the States.” *Tennessee v. Davis*, 100 U.S. 257, 263 (1879). To ensure that an “unfriendly” state court does not attempt to punish or “paralyze” actions taken under federal oversight to promote federal interests, *id.*, Congress chose to allow removal in any case

implicating a federal officer, 28 U.S.C. § 1442, and to permit appeals from such remand orders, *id.* § 1447(d). Staying those remand orders pending appeal in federal court does not impermissibly “intru[de] into the workings of [the] state judiciary” any more than the removal itself. Br. 24.

Applicants finally argue (at 24-25) that automatic stays should be limited to appeals “involving a defendant’s claimed right not to litigate,” rather than appeals over “*where* [the defendant] must litigate.” Applicants never raised this argument below. And *Griggs* and *Coinbase* are not so “artificially restrict[ed].” *City of Martinsville*, 128 F.4th at 268, 270; *see City of Brunswick*, 184 F.4th at 1238 (“[E]very appeal implicates the *Griggs* principle.”). No matter the reason, so long as “the entire case is essentially involved in the appeal,” then an automatic stay is appropriate. App. 7a (quotations omitted) (citations omitted); *see City of Brunswick*, 184 F.4th at 1240. Besides, choosing between state and federal court is not so different from choosing between court and arbitration; in both situations, the court of appeals is deciding “the proper forum for a dispute.” Br. 25; *see City of Brunswick*, 184 F.4th at 1240; *City of Martinsville*, 128 F.4th at 270.

Griggs and *Coinbase* dictate the outcome here: Remand implicates the entire case, so the remand must be stayed pending appellate resolution of where the case should proceed.

2. No statute precludes an automatic stay.

The removal statutes themselves do not overcome that straightforward conclusion, as Applicants’ novel argument suggests. Br. 26-28. Once a case is removed, “the State court shall proceed no further unless and until the case is remanded.” 28 U.S.C. § 1446(d). After

remand, “[a] certified copy of the order of remand shall be mailed by the [district court] clerk to the clerk of the State court,” and “[t]he State court may thereupon proceed with such case.” *Id.* § 1447(c). These procedural provisions simply dictate the order of operations for removal and remand; they do not answer whether an automatic stay is appropriate pending appellate review of the remand order. App. 9a. That gap is filled not by the removal statutes themselves, but by the “background principle[s]” against which those statutes operate. App. 12a; *see City of Brunswick*, 184 F.4th at 1239-40. These removal provisions stand in contrast to provisions in other statutes that explicitly provide that an appeal does not stay the ongoing proceedings. *Cf., e.g.*, 38 U.S.C. § 7292(b)(1) (“Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the Court of Appeals for Veterans Claims.”).

The Anti-Injunction Act does not prohibit an automatic stay either. App. 13a-14a. “A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283. As the Fifth Circuit recognized, no state court proceeding is being stayed here; the stay is upon the district court’s remand order. “[T]he automatic stay ... divests the state court of jurisdiction,” and until the appeal is finished and jurisdiction returned to the State court, “there are no valid proceedings in a State court to enjoin.” App. 13a (quotations omitted). Even if the stay could be construed as staying “proceedings in a State court,” rather than the remand order, that stay is still not barred, as it “would be necessary in aid of” the court of appeals’ jurisdiction. App. 14a (quotations omitted). Just as “a federal district court and a federal court of appeals

should not attempt to assert jurisdiction over a case simultaneously,” so too should federal “appellate jurisdiction” be protected “from parallel state court proceedings.” *Id.* (citations omitted).

C. Neither the equities nor public interest favor vacatur.

In any event, the equities squarely favor keeping the stay intact. Staying the remand order pending appeal of that order causes no harm to Applicants. And vacating it would infringe on the uniquely important federal interests codified in the federal officer removal statute.

1. Applicants will not be harmed by the stay.

There is no irreparable harm here to Applicants. *W. Airlines, Inc.*, 480 U.S. at 1305. This stay does not “divest[] the State of Louisiana as a litigant of its ability to enforce its own duly enacted laws.” Br. 34. The Fifth Circuit has not entered an injunction “prohibit[ing] a State from enforcing any aspect of its duly enacted law against anyone.” *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921, 921 (2024) (Gorsuch, J., concurring in the grant of stay). The Fifth Circuit simply paused the remand in this particular case pending appeal. This procedural stay—of a meritless suit, no less, *see, e.g., New Orleans City v. Aspect Energy, L.L.C.*, 126 F.4th 1047, 1052, 1054-55 (5th Cir. 2025) (gutting Applicants’ theory of the case by explaining that SLCRMA does not apply to activities that commenced before that Act went into effect)—is nothing out of the ordinary. Indeed, Applicants’ claimed “harms” are no different from those experienced by every plaintiff whose case has been removed to federal court.

2. Devon will be harmed absent a stay.

In contrast, Devon *will* be harmed if the stay is vacated. Devon has a statutory right to appeal, and meritorious arguments in support of removal, as the district court recognized. If the remand order is not stayed, and Devon is forced to proceed to trial, its right to appeal could effectively be extinguished.

That concern is proven: Louisiana (there intervening on behalf of a different parish) recently tried to effectively extinguish another oil company's right to appeal in a related case. *See Plaquemines Par. v. Chevron USA*, No. 23-30336 (CA5). In that case, Chevron also removed based on federal-officer jurisdiction, and the district court remanded. Appellant's Brief, No. 23-30336, Dkt. 204-2 at 15 (CA5 filed July 14, 2026). The Fifth Circuit ruled in a closely related case that Chevron was not entitled to a discretionary stay, considering it "implausible" that "state-court proceedings will reach finality" before the appeal would be resolved. *Plaquemines Par.*, 84 F.4th at 376. The district courts then lifted the stays across the related cases. On remand, the state court moved quickly, and Chevron had to go to trial while the appellate courts were still considering whether Chevron should even be in state court in the first place. A local jury returned a nearly \$750 million verdict against Chevron. *See Appellant's Brief*, No. 23-30336, Dkt. 204-2 at 16-17. Shortly thereafter, this Court decided *Chevron*, making clear that the case should have never been in state court. Louisiana, trying to preserve its win in state court, then argued that Chevron's Fifth Circuit appeal was moot because Chevron had dared to defend itself in state court and because the jury had already rendered a verdict. *See Appellee's Motion to Dismiss Appeal as Moot*, No. 23-30336, Dkt. No. 203-1 at 1 (CA5 filed July 14, 2026); *Appellee's Brief*, No. 23-30336, Dkt.

No. 221-1 at 57-60 (CA5 filed July 21, 2026). No doubt, Applicants would attempt the same gambit here absent a stay.

The harm to Devon is confirmed by the important federal interests at stake. The premise of federal-officer removal is that federal jurisdiction is necessary to protect defendants acting under federal oversight from “local prejudice” and “interference by hostile state courts.” *Watson v. Philip Morris Cos.*, 551 U.S. 142, 148-49 (2007) (quotations omitted); see Brief of Hon. William P. Barr & Hon. Michael B. Mukasey as Amici Curiae in Support of Petitioners at 2, *Chevron*, 608 U.S. 1 (detailing particular difficulties faced by oil and gas defendants in Louisiana state courts). Those interests are so strong that Congress prohibited appeals from remand orders in other contexts, but explicitly permitted them for remands involving federal-officer jurisdiction. 28 U.S.C. § 1447(d). No matter how impatient Applicants are to proceed in a home forum, Devon is entitled to have the court of appeals test that remand order before having to return to Applicants’ home turf.

II. The Court should not treat this application as a petition for certiorari before judgment.

In any event, the Application should not be treated as a petition for certiorari before judgment. Stay orders, like that at issue here, can be reviewed by writ of certiorari. 28 U.S.C. § 1254(1). In fact, petitioners in *Brunswick* and *California* both sought review of this issue through a standard petition for a writ of certiorari. Petition for a Writ of Certiorari, *City of Brunswick*, No. 26-289; Petition for a Writ of Certiorari, *Express Scripts, Inc.*, No. 25-327. Applicants’ arguments can also be heard and resolved in the normal course, without jumping the line for this Court’s review.

Applicants claim (at 36) that the normal cert process is insufficient, as the question presented could be mooted once the Fifth Circuit decides the remand appeal on the merits. But that possibility arises any time this Court considers a similar procedural issue in the stay context. In *Coinbase*, petitioner made the exact same argument in asking this Court to construe its stay motion as a petition for certiorari, claiming that “the question presented is particularly susceptible to mootness.” Application for Stay 25-26, *Coinbase v. Bielski*, No. 22A91 (U.S. filed July 29, 2022). The Court denied the application, No. 22A91, and later granted cert in the normal course, No. 22-105, issuing a decision on the standard timeline.

There is no particular risk of mootness here. The Fifth Circuit has not even set a briefing schedule on the merits of the remand order, and it is not likely to do so until procedural issues are resolved involving Applicants’ own cross-appeal. If this Court did grant certiorari, Applicants would be free to move in the Fifth Circuit to stay briefing or decision pending this Court’s resolution of the question presented. The Ninth Circuit did just that in *Coinbase*, deferring its merits ruling pending this Court’s review of the stay issue. *See Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1008 n.1 (9th Cir. 2023). There is no reason to believe that the Fifth Circuit would not do the same.

CONCLUSION

For these reasons, the Application should be denied.

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Respectfully submitted,

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