

In the
Supreme Court of the United States

STATE OF LOUISIANA, ET AL.,
Applicants,

v.

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

**REPLY IN SUPPORT OF APPLICATION TO
VACATE THE FIFTH CIRCUIT’S OCTOBER 5 ORDER**

VICTOR L. MARCELLO
A. PAUL LEBLANC, JR.
TALBOT, CARMOUCHE &
MARCELLO
17405 Perkins Road
Baton Rouge, LA 70810

Counsel for Cameron Parish

ELIZABETH B. MURRILL
Attorney General
J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
CAITLIN A. HUETTEMANN
Assistant Solicitor General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov

Counsel for Louisiana

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicants each represent that they do not have any parent entities and do not issue stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iv
REPLY.....	1
ARGUMENT	1
I. VACATUR IS WARRANTED.....	1
A. There Is a Reasonable Probability That This Court Will Grant Certiorari.....	1
B. There Is a Fair Prospect That This Court Will Reverse.	6
C. The Equities and Public Interest Favor Vacatur.	10
II. THE COURT SHOULD TREAT THE APPLICATION AS A PETITION FOR CERTIORARI BEFORE JUDGMENT.	14
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Arnold v. Garlock, Inc.</i> , 278 F.3d 426 (5th Cir. 2001)	3
<i>Blanche v. Ozurumba</i> , No. 25-1343 (U.S. filed May 29, 2026)	5
<i>Chevron USA Inc. v. Plaquemines Par.</i> , 608 U.S. 1 (2026)	2, 4
<i>City of Brunswick v. Honeywell Int’l, Inc.</i> , 184 F.4th 1230 (11th Cir. 2026).....	5, 6
<i>Coinbase, Inc. v. Bielski</i> , 599 U.S. 736 (2023)	1, 2, 8, 9, 14
<i>Dixon v. United States</i> , 900 F.3d 1257 (11th Cir. 2018)	3
<i>Griggs v. Provident Consumer Discount Co.</i> , 459 U.S. 56 (1982)	1, 2, 3, 4, 5, 6, 7, 8, 9, 10
<i>Guerrero v. Johnson</i> , No. 25-1003 (U.S. filed Feb. 19, 2026)	5
<i>California ex rel. Harrison v. Express Scripts, Inc.</i> , 139 F.4th 763 (9th Cir. 2025).....	6, 9
<i>Haywood v. Drown</i> , 556 U.S. 729 (2009)	13
<i>Hebert v. Exxon Corp.</i> , 953 F.2d 936 (5th Cir. 1992)	3
<i>Int’l Partners for Ethical Care, Inc. v. Ferguson</i> , No. 25-840 (U.S. filed Jan. 7, 2026)	5
<i>Labrador v. Poe</i> , 144 S. Ct. 921 (2024)	11, 12
<i>McKesson v. Doe</i> , 592 U.S. 1 (2020)	13

<i>Rep. Nat’l Committee v. Mi Familia Vota</i> , No. 25-1017 (U.S. filed Feb. 19, 2026)	5
<i>Salazar v. Paramount Global</i> , No. 25-459 (U.S. filed Oct. 10, 2025).....	5
<i>Smith v. Bayer Corp.</i> , 564 U.S. 299 (2011)	9
<i>Tafflin v. Levitt</i> , 493 U.S. 455 (1990)	13
<i>Wassily v. Blanche</i> , No. 25-842 (U.S. filed Jan. 12, 2026)	5
<i>Whitman v. Am. Trucking Ass’ns, Inc.</i> , 531 U.S. 457 (2001)	9
Statutes	
28 U.S.C. § 1446.....	11
28 U.S.C. § 1447.....	7, 8, 10
28 U.S.C. § 2283.....	9
Other Authorities	
Fed. R. Civ. P. 62	3

REPLY

Devon’s response makes Louisiana’s case for vacatur, if not certiorari before judgment. Devon agrees that the circuits are squarely split over the recurring issue whether *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), halts state-court proceedings due to a notice of appeal filed after a remand order has been transmitted to the state court. Devon outright ignores about half of Louisiana’s explanations why the Fifth Circuit’s extension of *Griggs* is directly contrary to all nine Justices’ understandings of *Griggs* in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). And Devon does not seriously dispute that this is one of the cleanest vehicles imaginable: It arises in the midst of an existing stay with a runway available to avoid mootness; it rests on the Fifth Circuit’s belief that “*Griggs* alone” “divests” and “deprives the state court of jurisdiction,” App.4a n.2, 12a, 14a; and it is now fully briefed at the Court with time to spare for merits briefing and oral argument this Term if the Court wishes to grant plenary review.

All these points establish that, at a minimum, vacatur is warranted. And given that this application is likely the last vehicle that this Court will see in time for a decision this Term, certiorari before judgment is equally warranted.

ARGUMENT

I. VACATUR IS WARRANTED.

A. There Is a Reasonable Probability That This Court Will Grant Certiorari.

Devon’s response effectively concedes the cert-worthiness of Louisiana’s application—and rightly so. Specifically, Devon concedes that “there is division

among the courts of appeals,” namely, the Fourth, Fifth, Ninth, and Eleventh Circuits. Resp.14–15; *see id.* at 17 (claiming “the Fourth, Fifth, and Eleventh Circuits” on Devon’s side of the split). And Devon concedes that the question presented is “quickly” recurring nationwide. Resp.17. Because this Court’s review is inevitable, Devon’s best shot at avoiding vacatur is to find a vehicle problem—but there is none.

1. Devon’s lead argument against review is that this Court could deadlock because “[o]ne member of the *Coinbase* majority” (Resp.2) is presently recused.¹ That argument is meritless. As explained in Louisiana’s application, four Justices did not join the *Coinbase* majority for reasons that squarely foreclose the Fifth Circuit’s extension of *Griggs* here. *See* 599 U.S. at 752–60 (Jackson, J., dissenting). And the *Coinbase* majority expressly limited *Griggs* to a concern that “the district court could move forward with pre-trial and trial proceedings,” *id.* at 743, which is not implicated here because the district court has nothing left to do after transmitting a remand order. Devon’s assumption that “the *Coinbase* majority” (Resp.2, 12) will side with Devon is thus not just startlingly presumptuous but almost certainly wrong. And in all events, a Conference majority’s agreement on Louisiana’s entitlement to vacatur would be the clearest confirmation that a deadlock is unlikely.

¹ Louisiana does not know the basis for the recusal. If it was prompted by the appearance of Burlington Resources Oil & Gas Co. L.P. in the case caption below (*see* Appl.iii), however, Louisiana would urge reconsideration of that recusal decision given that Burlington’s dismissal from this entire suit means “the recusal issue caused by Burlington’s presence in [*Chevron USA Inc. v. Plaquemines Par.*, 608 U.S. 1 (2026)] is not implicated here,” Appl.9 & n.3.

2. Devon tries to inject two additional issues to thwart the Court’s review—both of which the Fifth Circuit refused to address in rendering its decision based on “*Griggs* alone.” App.4a n.2.

First, Devon challenges “whether the district court’s mailing of the remand order was legally effective under Federal Rule of Civil Procedure 62.” Resp.12. The Fifth Circuit declined to “address” that argument because, as the Fifth Circuit noted, every federal court of appeals addressing the question presented has decided that question “on the ground of *Griggs* alone.” App.4a n.2. Accordingly, the Fifth Circuit concluded that “the *Griggs* principle, as a self-contained matter, affords Devon an automatic stay pending appeal.” *Id.* And that is the sole issue presented here.

Devon protests that Louisiana’s theory of the case “only works if the mailing is legally effective.” Resp.13. But the Fifth Circuit *agreed* that the mailing was effective and that jurisdiction had been restored to the state court “after the district court transmitted [the] remand order.” App.4a n.2. Like the Eleventh Circuit, however, the Fifth Circuit thought (wrongly, in Louisiana’s view) that *Griggs* retroactively “divests” and “deprives” the state court of that jurisdiction. App.12a, 14a. Again, that is the sole issue presented here—and there is no justification for Devon’s attempt to inject a new issue that the Fifth Circuit not only declined to address but also deemed immaterial to its holding that “*Griggs* alone” resolves this case. App.4a n.2.²

² For the sake of completeness, it bears noting that Devon’s Rule 62 argument is frivolous. “The stay provisions of Rule 62 pertain to judgments for money.” *Arnold v. Garlock, Inc.*, 278 F.3d 426, 437 (5th Cir. 2001) (citing *Hebert v. Exxon Corp.*, 953 F.2d 936, 938 (5th Cir. 1992)); accord *Dixon v. United States*, 900 F.3d 1257, 1268 (11th Cir. 2018) (“Rule 62(a) precludes the execution of a money judgment” before the

Second, Devon complains that Louisiana’s win on the question presented would “not be outcome determinative” because Devon has also requested a discretionary stay from the Fifth Circuit. Resp.14. That is not a vehicle issue—and it is also wrong.

For one thing, as Devon admits, the Fifth Circuit “did not reach” this issue. Resp.10. And that makes this vehicle *better*, not *worse*: For the only issue presented is whether “*Griggs* alone” can operate here. App.4a n.2. For another thing, this Court answers questions that may not be outcome determinative all the time. Look no further than *Chevron USA Inc. v. Plaquemines Parish*, which resolved a discrete federal-officer removal question while declining to “address the other requirements of federal officer removal.” 608 U.S. 1, 14 & n.5 (2026). For yet another thing, the Court could resolve this case in a way that forecloses Devon from seeking even a discretionary stay. *See* Appl.27–28. And for still another thing, Devon’s request for a discretionary stay rests on a borderline-frivolous invocation of the federal-officer removal statute that would doom that request anyway. Appl.4–5, 8–10. This is not a serious argument against the Court’s review in this case.

3. All Devon has left, therefore, is a nominal request for “further percolation.” Resp.14. To what end? Devon claims (Resp.17) a 3-1 split on the question presented, which plainly warrants this Court’s review now. *Cf.* Appl.18–19 (explaining that the

expiration of the stay period). “[T]here is no ‘money judgment’ inherent in [a] remand” order, however. *Arnold*, 278 F.3d at 437. Thus, Rule 62(a) does not apply to remand orders. In fact, Devon’s eagerness to export *Griggs* everywhere would render Rule 62’s various stay provisions entirely superfluous.

split is better characterized as 2-2).³

Devon notes that there is an unripe issue concerning whether *Griggs* may apply where (unlike here and in the Ninth and Eleventh Circuit cases) “the removing party appealed *before* the [remand] order was mailed.” Resp.16. But Devon does not acknowledge Louisiana’s express discussion of that point, including Louisiana’s explanation why its question presented focuses only on the precise factual scenario generating the nationwide split—*i.e.*, a notice of appeal filed *after* the remand order was transmitted. Appl.37–38. Nor does Devon acknowledge that when the *pre*-transmittal issue comes to this Court, that would hardly be an appropriate vehicle to decide whether the *post*-transmittal issue presented here warrants its own analysis.

Devon also tries to draw a negative inference from the Court’s recent denial of certiorari in *City of Brunswick v. Honeywell International, Inc.*, No. 26-289. See Resp.15–16. But Devon does not respond to Louisiana’s explanation that the broader question presented in the *City of Brunswick* petition—combined with the oddities in that case—may have contributed to this Court’s reluctance to grant review. Appl.5, 37–38.

³ Devon’s nose-counting in cherry-picked cases (Resp.15) ignores others on this Court’s merits docket with splits identical to the split here. See, e.g., Pet. for Writ of Cert. at 19–20, *Blanche v. Ozurumba*, No. 25-1343 (U.S. filed May 29, 2026) (alleging a 2-1 split); Pet. for Writ of Cert. at 19–22, *Rep. Nat’l Committee v. Mi Familia Vota*, No. 25-1017 (U.S. filed Feb. 19, 2026) (alleging a 1-1 split and a 3-1 split); Pet. for Writ of Cert. at i, *Wassily v. Blanche*, No. 25-842 (U.S. filed Jan. 12, 2026) (alleging a 2-1 split); Pet. for Writ of Cert. at 28–29, *Int’l Partners for Ethical Care, Inc. v. Ferguson*, No. 25-840 (U.S. filed Jan. 7, 2026) (alleging a 1-1 split); Pet. for Writ of Cert. at 1–2, *Salazar v. Paramount Global*, No. 25-459 (U.S. filed Oct. 10, 2025) (alleging a 2-2 split); Pet. for Writ of Cert. at 1–2, *Guerrero v. Johnson*, No. 25-1003 (U.S. filed Feb. 19, 2026) (alleging a 2-2 split).

Finally, Devon bizarrely claims that further percolation is necessary to develop Louisiana’s position “which has never been adopted by a court of appeals.” Resp.16. Devon ignores Louisiana’s extensive discussion (Appl.16) of the Ninth Circuit’s federalism-based decision in *California ex rel. Harrison v. Express Scripts, Inc.*, 139 F.4th 763 (9th Cir. 2025)—*which adopted Louisiana’s position*—and then Louisiana’s own emphasis on those federalism-based arguments against importing *Griggs* here (Appl.23–24). Devon also ignores Louisiana’s focus on the Ninth Circuit’s distinction from the arbitration context and the court’s concern about the gamesmanship invited by Devon’s view (Appl.17–18)—and then Louisiana’s own arguments on those precise points (Appl.4, 24–25, 37).

Devon criticizes Louisiana for arguing that “*Griggs* does not apply to remand orders because once the case is remanded, there is no district court proceeding to stay” and that “an automatic stay contradicts both the removal provisions themselves and the Anti-Injunction Act.” Resp.16. “The Ninth Circuit relied on neither line of logic in rejecting an automatic stay,” Devon complains. *Id.* But Devon omits that the Fifth Circuit *did* address those issues below to justify *granting* an automatic stay. Louisiana is thus obligated to explain why the Fifth Circuit erred in joining the Eleventh Circuit, which relegated “[f]ederalism and comity” to a footnote, *City of Brunswick v. Honeywell Int’l, Inc.*, 184 F.4th 1230, 1241 n.9 (11th Cir. 2026). And, as Louisiana explained, Appl.23–24, this Court need not reach those issues to reject the Fifth Circuit’s extension of *Griggs* to control state-court proceedings.

B. There Is a Fair Prospect That This Court Will Reverse.

Because the Court’s review in this case is reasonably probable, it is notable

that Devon’s merits defense of the Fifth Circuit’s decision below is nearly non-existent. In fact, it is difficult to respond given Devon’s refusal to engage with Louisiana’s application in critical respects.

1. Start with whether *Griggs* is relevant at all. Devon’s primary argument (Resp.17–18) is that *Griggs* must automatically stay state-court proceedings because Devon has a statutory right to appeal under 28 U.S.C. § 1447(d). Devon does not acknowledge, much less refute, Louisiana’s precise response to that argument. Appl.26–27. Even worse, Devon takes its argument further by characterizing (Resp.19) Louisiana as arguing that a “removing party” such as Devon “cannot appeal, and the [remand] order is insulated from review.” That is the opposite of what Louisiana’s application says. Louisiana explained how reading the removal statutes together “fully effectuate[s]” both § 1447(c) (which reverts jurisdiction in the state court) and § 1447(d) (which includes an appeal right). Appl.27. In fact, Louisiana spent four pages explaining how parties and courts navigate Devon’s professed fear, preserving appellate rights and even assuring federal court jurisdiction if an appellate court determines that a case was improperly remanded to state court. *See* Appl.30–33; *contra* Resp.19 (mistakenly asserting that, on Louisiana’s view, no federal appellate court could “ever overturn an erroneous remand order”). Devon does not say a word in response. The Court should ignore its hyperbolic rhetoric.

In defending the Fifth Circuit’s “exten[sion]” of *Griggs* to divest state courts of jurisdiction, App.14a, Devon also articulates no coherent justification for doing so. Take, for example, the problem that the district court had nothing more to do after

transmitting its remand order to the state court—and so there are no district court “proceedings” to stay. Appl.22–23 (citing *Coinbase*, 599 U.S. at 744). Devon parrots the Fifth Circuit’s claim that “there is a valid district court proceeding—a remand—to be stayed.” Resp.18 (quoting App.12a). “[E]ven though the remand is ‘a past event,’” Devon says, that “does not mean that it cannot be altered or stayed.” Resp.19.

Devon is avoiding the issue: The remand *order* is not the critical problem here; the problem is the *transmittal* of the order to which Congress ascribed statutory significance—namely, the revesting of jurisdiction in the state court. *See* § 1447(c) (“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.”). The Fifth Circuit acknowledged that the state court thus had jurisdiction before the Fifth Circuit purported to “deprive[]” and “divest[]” it of that jurisdiction. App.12a, 14a. And Devon does not dispute that “[a]n already concluded event is not a ‘proceeding’ in any sense of the English language—and certainly not in the *Griggs* sense.” Appl.23; *see id.* (“No reasonable person would speak of ‘staying’ the 2022 World Series between the Astros and the Phillies, or a Pizza Hut delivery two nights ago.”).

Griggs thus obviously cannot “stay” the already-complete transmittal of the remand order to divest the state court of jurisdiction. And Devon cannot get around that fact by artificially claiming to seek only a stay of the “order,” when it is the transmittal of the order that bars Devon’s invocation of *Griggs* and that is unstayable. As nine Justices in *Coinbase* recognized, *Griggs* at most pauses “continue[d] [litigation] in the district court,” 599 U.S. at 741 (citation omitted), and avoids the

district court and court of appeals “step[ping] on each other’s toes,” *id.* at 754 (Jackson, J., dissenting)—a concern that undisputedly does not exist here.

In addition, Devon dismisses the stunning blow to federalism and comity produced by turning *Griggs* into a tool to enjoin state-court proceedings. It does not “matter,” says Devon (Resp.19), that *Griggs* is about avoiding the perceived inefficiencies of “allowing a case to proceed simultaneously in the district court and the court of appeals,” *Coinbase*, 599 U.S. at 743. That is a remarkable position to take in the face of a legal tradition dating back to the Founding that embodies a “core message ... of respect for state courts, *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011); see Appl.24. It is similarly remarkable given that, when Congress wants to permit the heavy artillery of federal-court injunctions against state courts, it says so expressly. See 28 U.S.C. § 2283; see *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 468 (2001) (Congress does not “hide elephants in mouseholes”). All this betrays how fundamentally the Fifth and Eleventh Circuits have divorced *Griggs* from its doctrinal underpinnings. The Ninth Circuit was exactly right to hold that no plausible reading of *Griggs* permits this abridgment of “the bedrock principle of comity.” *California*, 139 F.4th at 769.

Finally, Devon admits (Resp.20) that its position would import *Griggs* into every forum-selection dispute, even though both the majority and the dissent in *Coinbase* rejected such a categorical rule. Appl.24–25. “This underscores that *Griggs* cannot be extended to ‘stay’ a remand order already transmitted to a state court.” Appl.25.

2. Devon’s cursory nod at the federal removal statutes and the Anti-Injunction Act confirms the Fifth Circuit’s error. Devon claims (Resp.21) that there is a “gap” in the federal removal statutes regarding whether a federal court can stay state-court proceedings pending appeal after the remand order has been transmitted. In the same breath, however, Devon repeats the very statutory language authorizing the state court to “proceed with such case” upon the transmittal of the remand order. *Id.* (quoting § 1447(c)). Not only is there no gap, but Congress also expressly spoke on the issue of the state court’s revested jurisdiction. That Devon declines to engage with Louisiana’s emphasis (Appl.27) on reading the removal statutes *in pari materia* should tell the Court all it needs to know to reverse.

Devon’s approach to the Anti-Injunction Act is even more puzzling: Devon simply quotes the Fifth Circuit’s reasoning. Resp.21–22. Devon does not acknowledge, let alone respond to, Louisiana’s own explanation why the Fifth Circuit’s reasoning does not hold up. Appl.28–30.

* * *

It is unclear why Devon has refused to engage on the key defects underlying the Fifth and Eleventh Circuits’ decisions. But whatever the reason, those decisions are plainly wrong for applying *Griggs* to stay state-court proceedings after a remand order has been transmitted to the state court. There is thus a fair prospect of reversal.

C. The Equities and Public Interest Favor Vacatur.

Devon’s brief discussion of the equities and public interest confirms that vacatur is warranted.

1. On the equities, Louisiana explained that the Fifth Circuit’s order imposes

classic irreparable harm by (a) “divest[ing] the State of Louisiana’s own judiciary of jurisdiction that both is expressly protected by statute and (as the district court has concluded) has properly been restored to the state court,” and (b) “divest[ing] the State of Louisiana as a litigant of its ability to enforce its own duly enacted laws.” Appl.34. Devon does not dispute the first sovereign harm—because it cannot. *See* Resp.22. After all, the Fifth Circuit unambiguously purported to “divest[]” and “deprive[] the state court of jurisdiction.” App.12a, 14a. That undisputed point and Devon’s silence end the irreparable-harm inquiry on Louisiana’s side of the ledger.

Insofar as the Fifth Circuit’s stay also prevents Louisiana as a litigant from enforcing its own laws, Devon complains that there is no injunction against Louisiana and this harm is “no different from [that] experienced by every plaintiff whose case has been removed to federal court.” Resp.22. But Devon does not dispute the practical consequence of its borderline-frivolous appeal and demand for an automatic stay of state-court proceedings: Louisiana’s law is not “enforceable,” indefinitely. *Labrador v. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring in the grant of stay). And that harm is night-and-day different from the situation faced by a plaintiff whose case was just removed to federal court: He has no basis to claim a right to proceed with his case in state court “unless and until the case is remanded.” 28 U.S.C. § 1446(d). Not so for Louisiana given (a) the district court’s determination that Devon should have never removed to federal court in the first place and (b) the revesting of jurisdiction in the state court of which the Fifth Circuit claimed to “divest[]” and “deprive[]” the state court, App.12a, 14a.

Devon’s inability to establish its own irreparable harm seals this inquiry for Louisiana. Devon professes a fear that it could be “forced to proceed to trial” in state court. Resp.23. To support that claimed fear, Devon points to the briefs of another parish in a related case that purportedly argued a federal appeal “was moot” because the defendant “dared to defend itself in state court and because the jury had already rendered a verdict.” *Id.* “No doubt,” says Devon, “Applicants would attempt the same gambit here absent a stay.”

Devon badly mischaracterizes those briefs. The State of Louisiana’s actual brief did not argue mootness at all. It explained that the defendant’s decision to not advance its appeal for three years while it litigated the case to a jury verdict in state court constituted a waiver of any right to a federal forum. Appellee Br. of Louisiana at 12–19, No. 23-30336 (5th Cir. July 21, 2026), ECF 221-1. Plaquemines Parish separately filed a motion to dismiss suggesting that the waiver issue could be resolved as a matter of the Fifth Circuit’s jurisdiction. *See* Resp.23 (citing motion). Unless Devon plans on halting its federal appeal for three years while litigating to a jury verdict in state court, however, Louisiana cannot “attempt the same gambit here” because it has no waiver argument. *Id.* And that ends Devon’s claim of irreparable harm, confirming that the balance of the equities favors Louisiana.

Last, note that Devon does not dispute Louisiana’s point that “even if the Court believed that ‘the harms and equities [were] very weighty on both sides,’ ‘assessing [Louisiana’s] likelihood of success on the merits’ would control the disposition of this application.” Appl.35 (quoting *Labrador*, 144 S. Ct. at 929 (Kavanaugh, J., concurring

in the grant of stay)). And because Louisiana is likely to succeed on the merits, the “equities resolve in Louisiana’s favor.” *Id.*

2. Devon also whiffs on the public interest. It outright ignores Louisiana’s emphasis on the destruction of “[t]he comity essential to our federalism” prompted by the Fifth and Eleventh Circuits’ determinations that they may invalidate state-court proceedings. *Id.* And it ignores Louisiana’s separate emphasis on the public’s “interest in the judiciary’s faithful implementation of Congress’s duly enacted laws.” Appl.36.⁴ Instead, Devon complains that “federal jurisdiction is necessary to protect defendants acting under federal oversight from ‘local prejudice’ and ‘interference by hostile state courts.’” Resp.24. But Devon does not even try to respond to Louisiana’s discussion of Devon’s abuse of the federal-officer removal statute given that Devon has no serious claim to federal-officer removal. Appl.4–5, 8–10. And Devon’s complaint boils down to its merits position: that Devon is entitled to an automatic stay “before having to return to Applicants’ home turf.” Resp.24. Again, therefore, the Court’s agreement with Louisiana’s likelihood of success on the merits would end this inquiry in favor of vacating the Fifth Circuit’s October 5 order.

⁴ This undermining of congressional will plainly is not in the public interest. As this Court has recently emphasized, “[o]ur system of ‘cooperative judicial federalism’ presumes federal and state courts alike are competent to apply federal and state law.” *McKesson v. Doe*, 592 U.S. 1, 5 (2020) (per curiam). “So strong” is that presumption that it may be displaced only where “Congress expressly ousts state courts of jurisdiction” or “a state court refuses jurisdiction.” *Haywood v. Drown*, 556 U.S. 729, 735 (2009) (citation omitted); accord *Tafflin v. Levitt*, 493 U.S. 455, 459 (1990). No such exception applies here because Congress ended the period of exclusive federal jurisdiction over removed cases upon the transmittal of the remand order to a state court. The Fifth and Eleventh Circuits’ abrogation of that decision to the detriment of the state courts unmistakably is not in the public interest.

II. THE COURT SHOULD TREAT THE APPLICATION AS A PETITION FOR CERTIORARI BEFORE JUDGMENT.

Certiorari before judgment is likewise warranted. That is principally because this Court's review is inevitable—and reversal is exceedingly likely. The only question is whether the Court wishes to incur the risk of mootness by delaying its review. And to be clear, that risk will arise in virtually every case raising the question presented: Unless this Court intervenes early enough in an ongoing appeal, the appeal (and thus the stay issue) will expire.

There is no good reason to incur that risk. The Court has sufficient time to order merits briefing and hear argument this Term. That avoids the exacerbated mootness risk presented by certiorari petitions that are not fully briefed at the Court until after January (and are thus unable to be scheduled for argument during the next nine months). Moreover, it bears noting—and perhaps this is Devon's strategy—that the delay from ordering duplicative cert-stage briefing in this case would unfairly reward Devon's misuse of the federal-officer removal process by perpetuating an automatic stay that should have never been entered in the first place.

Devon notes (Resp.25) that the *Coinbase* petitioner raised similar mootness concerns and yet the Court denied the request to treat a stay application as a petition for certiorari before judgment. But the mootness danger this Court narrowly avoided in *Coinbase* is a reason to *grant* certiorari before judgment here not *deny* it. *See* Appl.36. In addition, neither Devon nor Louisiana knows whether the mootness issue played any role in the disposition of the *Coinbase* application. Given the resulting 5-4 vote on the merits, it is equally plausible that a Conference majority did not believe

there was a fair prospect of reversal.

Devon also says (Resp.25) that Louisiana could cajole the Fifth Circuit into delaying proceedings below to avoid any mootness issue. That is utterly perverse: Louisiana is currently under an unlawful stay; the State cannot fairly be required to either (1) seek to extend that unlawful stay just to litigate its illegality or (2) proceed apace below and thus run the serious risk of losing its ability to challenge the stay. The straightforward way to resolve that problem is to grant review now—and if the Court were not inclined to grant outright review, it should at least vacate the stay decision below, which rewards Devon’s misuse of the federal-officer removal statute, pending this Court’s review in due course.

CONCLUSION

The Court should vacate the Fifth Circuit’s October 5 order. In addition and in the alternative, the Court should treat this application as a petition for certiorari before judgment and grant certiorari.

Respectfully submitted,

VICTOR L. MARCELLO
A. PAUL LEBLANC, JR.
TALBOT, CARMOUCHE &
MARCELLO
17405 Perkins Road
Baton Rouge, LA 70810

Counsel for Cameron Parish

ELIZABETH B. MURRILL
Attorney General
J. BENJAMIN AGUIÑAGA
Solicitor General
Counsel of Record
CAITLIN A. HUETTEMANN
Assistant Solicitor General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third St.
Baton Rouge, LA 70802
(225) 506-3746
AguinagaB@ag.louisiana.gov

Counsel for Louisiana