No. _____

IN THE

Supreme Court of the United States

EXPRESS SCRIPTS, INC., ET AL.,

Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

BRIAN D. BOONE
MATTHEW P. HOOKER
ALSTON & BIRD LLP
1120 South Tyron St.
Suite 300
Charlotte, NC 28203
(704) 444-1000

D. ANDREW HATCHETT
ALSTON & BIRD LLP
1201 W. Peachtree St.
Suite 4900
Atlanta, GA 30309
(404) 881-7000

CHRISTOPHER G. MICHEL
Counsel of Record
MICHAEL J. LYLE
JONATHAN G. COOPER
ALEX VAN DYKE
QUINN EMANUEL URQUHART & SULLIVAN, LLP
1300 I Street, NW, 9th Fl.
Washington, D.C. 20005
(202) 538-8308
christophermichel@quinnemanuel.com

Counsel for Petitioners

[Additional Counsel Listed On Inside Cover]

September 16, 2025

LISA M. GEARY
COURTNEY DAUKAS
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 Fifth Ave.
New York, NY 10016
(212) 849-7000

Counsel for Petitioners

QUESTION PRESENTED

Like the statute at issue in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), Section 1447(d) of Title 28 creates a rare statutory exception to the usual rule that parties may not appeal before final judgment. Section 1447(d) permits the immediate appeal of a remand order in a case removed under the federal officer removal statute, 28 U.S.C. § 1442(a). The question presented is:

Whether a remand order appealed under 28 U.S.C. § 1447(d), like the orders at issue in *Coinbase*, is subject to an automatic stay pending appeal.

CORPORATE DISCLOSURE STATEMENT

Petitioner Express Scripts Pharmacy, Inc. certifies that it is a wholly owned subsidiary of Medco Health Solutions, Inc., which is a wholly owned subsidiary of Evernorth Health, Inc. Petitioner ESI Mail Pharmacy Service, Inc. certifies that it is a wholly owned subsidiary of Petitioner Express Scripts, Inc., which certifies that it is a wholly owned subsidiary of Evernorth Health, Inc. All interests in Evernorth Health, Inc. are held by The Cigna Group, a publicly traded company. The Cigna Group has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner OptumRx, Inc. states that UnitedHealth Group Incorporated is its ultimate parent. UnitedHealth Group Incorporated is publicly traded on the New York Stock Exchange, and no publicly traded entity owns 10% or more of UnitedHealth Group Incorporated's stock.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners (defendants-appellants in the court of appeals) are: Express Scripts Inc., ESI Mail Pharmacy Service, Inc., Express Scripts Pharmacy, Inc., and OptumRx, Inc.

Respondent (plaintiff-appellee in the court of appeals) is: the People of the State of California, acting by and through Los Angeles County Counsel Dawyn R. Harrison.

Express Scripts Administrators, LLC, Medco Health Solutions, OptumInsight, Inc., and OptumInsight Life Sciences, Inc. were defendants in the district court.

RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

California v. Express Scripts, Inc., No. 2:23-cv-08570-SPG (Feb. 28, 2024)

United States Court of Appeals (9th Cir.):

California v. Express Scripts, Inc., No. 24-1972 (June 2, 2025)

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INTRODUCTION

Under 28 U.S.C. § 1442(a)(1), federal officers and those "acting under" them may remove certain suits related to their official conduct from state to federal court. That critical protection shields those defendants—and the federal government itself—from "local prejudice" and "interference by hostile state courts." *Watson v. Philip Morris Cos.*, 551 U.S. 142, 148, 150 (2007) (citations omitted). In 2011, Congress enhanced those safeguards by creating a statutory right to an immediate appeal of an order remanding to state court a case removed to federal court under Section 1442. 28 U.S.C. § 1447(d); *see BP p.l.c. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 235–36 (2021). The question presented is whether an appeal under Section 1447(d) triggers an automatic stay of the remand order pending appeal—or whether litigation must instead proceed simultaneously in state court and a federal appellate court absent a discretionary stay.

That important and recurring question of federal law is subject to an acknowledged circuit conflict. In the first published decision addressing the issue, a Fourth Circuit panel majority (Richardson & Heytens, JJ.) concluded that an automatic stay is required. *City of Martinsville v. Express Scripts, Inc.*, 128 F.4th 265, 272 (4th Cir. 2025). As the court explained, the rationale of this Court's decision in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023)—which required a stay pending appeal of the denial of a motion to compel arbitration, *id.* at 738—dictates that result. In the federal officer removal context, as in the arbitration context, Congress created a right to an interlocutory appeal regarding the proper forum for

litigation to proceed. *Martinsville*, 128 F.4th at 270. And in the federal officer removal context, as in the arbitration context, the purpose of that statutorily authorized appeal—avoiding litigation in the wrong forum—"would be largely nullified" without a stay. *Id.* at 269 (quoting *Coinbase*, 599 U.S. at 743). The principles animating this Court's decision in *Coinbase* thus apply "just as forcefully" in the federal officer removal context as "in *Coinbase* itself." *Id.* at 270.

In the published decision below, however, a Ninth Circuit panel (Murguia, C.J., Sanchez & H. Thomas, JJ.) expressly rejected the Fourth Circuit's position and held that the discretionary standard of *Nken v. Holder*, 556 U.S. 418 (2009), applies to a stay request in a federal officer removal appeal. App. 4a, 7a. Clarifying the sharpness of the split, the Ninth Circuit adopted the *Martinsville* dissent's position that *Coinbase* "merely represents a carve-out in favor of arbitration." App. 17a–18a (quoting *Martinsville*, 128 F.4th at 275 (Wynn, J.)). That acknowledged circuit conflict provides a paradigmatic basis for this Court's intervention. Sup. Ct. R. 10(a). There is no reason why the treatment of federal officers or those acting under them should differ between California and Virginia.

Review in this case is especially warranted because the Ninth Circuit's decision is wrong. Contrary to that court's reasoning, *Coinbase* made clear that it was *not* adopting "a special, arbitration-preferring procedural rule"; rather, this Court applied the "same stay principles that courts apply in other analogous contexts where an interlocutory appeal is authorized." 599 U.S. at 746. Those principles support an automatic stay here. Indeed, this Court has explained that Congress amended Section 1447(d) precisely "to allow

appellate review *before* a district court may remand a case to state court." *BP*, 593 U.S. at 236 (emphasis added).

The importance and recurring nature of the question presented further weigh in favor of review. The question arises frequently, with at least a dozen courts addressing it in the past two years and reaching conflicting results. *See* pp. 14–15, *infra*. The question is also profoundly significant. As this Court explained long ago, a "more important question can hardly be imagined" than whether federal officers can access a federal forum to assert federal defenses. *Tennessee v. Davis*, 100 U.S. 257, 262 (1879). The Ninth Circuit's position exposes federal officers and those acting under them to the very "harassing litigation in the State courts" from which Congress enacted the federal officer removal statute to shield them. *Mayor & Alderman of City of Nashville v. Cooper*, 73 U.S. 247, 253 (1867); *see Watson*, 551 U.S. at 148.

The Ninth Circuit's position also undermines the "institutional" interests of courts and principles of federalism by creating the prospect that state courts "will waste scarce resources" adjudicating a case only for a federal court to claw it back after a successful appeal. *Coinbase*, 599 U.S. at 743. In short, "[t]wo courts at once is one court too many." *Martinsville*, 128 F.4th at 272. This Court should grant review and reverse the flawed decision below.

OPINIONS BELOW

The amended opinion of the Ninth Circuit denying a stay pending appeal (App. 1a–18a) is reported at 139 F.4th 763. The district court's order granting remand

and denying a stay pending appeal (App. 19a–31a) is not reported but is available at 2024 WL 841197.

JURISDICTION

The Ninth Circuit's order denying a stay was entered June 2, 2025, and amended June 6, 2025. App. 1a. The order of the Ninth Circuit denying rehearing was entered on August 29, 2025. App. 32a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The federal officer removal statute, 28 U.S.C. § 1442(a), is reproduced in full in the appendix to this petition. As relevant here, it provides:

> A civil action . . . 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) . . . 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[.]

The statute governing appeals from remand orders, 28 U.S.C. § 1447(d), provides:

> 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.

STATEMENT OF THE CASE

A. Legal Background

"Congress enacted the original federal officer removal statute near the end of the War of 1812" and has steadily expanded it since then. *Watson*, 551 U.S. at 147; *see id.* at 147–49. "The purpose of all these enactments is not hard to discern." *Willingham v. Morgan*, 395 U.S. 402, 406 (1969). The federal government "can act only through its officers and agents, and they must act within the States." *Davis*, 100 U.S. at 263. "If, when thus acting, and within the scope of their authority, those officers can be" sued "in a State court, for an alleged offence against the law of the State, yet warranted by the Federal authority they possess" without any prospect of removal, the "operations of the general government may at any time be arrested at the will of one of its members." *Id.* The right of removal is thus "essential to the peace of the nation, and to the vigor and efficiency of the government." *Cooper*, 73 U.S. at 253; *see, e.g.*, *Maryland v. Soper*, 270 U.S. 9, 32 (1926). Indeed, this Court has described the right as central to "the possibility of the [federal] government's preserving its own existence." *Davis*, 100 U.S. at 262.

The right of removal is not limited to federal executive officers alone. The statute also applies to an "officer of the courts of the United States" and members of "either House of Congress." 28 U.S.C. § 1442(a)(3)–(4); *see, e.g.*, *Jefferson County v. Acker*, 527 U.S. 423, 433 (1999) (addressing removal by federal judges). In addition, the statute applies to

entities "acting under" federal officers. 28 U.S.C. § 1442(a)(1); *see Watson*, 511 U.S. at 152–53. For all those defendants, the availability of removal ensures "an impartial setting" for the adjudication of issues—often including an immunity defense—"free from local interests or prejudice." *Arizona v. Manypenny*, 451 U.S. 232, 242 (1981); *see Watson*, 511 U.S. at 150. And for the government itself, the availability of removal protects against the risk of "interference with its" personnel and operations. *Watson*, 511 U.S. at 150; *see, e.g.*, *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1253 (9th Cir. 2006) ("If the federal government can't guarantee its agents access to a federal forum if they are sued or prosecuted, it may have difficulty finding anyone willing to act on its behalf.").

Congress's most recent amendments to the federal officer removal framework came in the Removal Clarification Act of 2011. Pub. L. No. 112-51, 125 Stat. 545. Those amendments added language allowing removal of claims not only "for" an act "under color of [federal] office" but also "for *or relating to*" such an act. 28 U.S.C. § 1442(a)(1) (emphasis added). Of central relevance here, the amendments also created a new statutory right to immediate appellate review of a district court order remanding a case removed under the federal officer removal statute. *See BP*, 593 U.S. at 235–36. Specifically, Congress amended 28 U.S.C. § 1447(d) to authorize appeals of orders remanding a case to state court after it has been "removed pursuant to section 1442."[*] The legislative

[*] Section 1447(d) also permits interlocutory appeals from remand orders in cases removed under 28 U.S.C. § 1443, which authorizes the removal of any case "(1) [a]gainst any person who

record indicates that the amendments were intended in part to correct a decision that subjected a sitting member of Congress to harassing and burdensome state-court litigation while her appeal of a remand order was pending. *See* 157 Cong. Rec. 1371 (2011) (citing *Price v. Johnson*, 600 F.3d 460 (5th Cir. 2010)).

Congress created Section 1447(d)'s new right to immediate appeal against the backdrop of *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), which recognized that such an appeal typically "divests the district court of its control over those aspects of the case involved in the appeal." *Id.* at 58. As this Court explained in *Coinbase*, when the question in an interlocutory appeal is whether a case can proceed in federal court at all—rather than being sent to another forum—"the entire case is essentially 'involved in the appeal,'" and "the district court must stay its proceedings" during the appeal unless Congress has provided contrary direction. *Coinbase*, 599 U.S. at 741 (quoting *Griggs*, 459 U.S. at 58); *see id.* at 743–44. Numerous courts—including the Fourth Circuit in its published decision in *Martinsville*—have accordingly concluded that an automatic stay applies to an appeal of a remand order under Section 1447(d). 128 F.4th at 272; *see* p. 14, *infra* (collecting cases).

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is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States," or "(2) [f]or any act under color of authority derived from any law providing for equal rights."

B. Proceedings Below

1. District Court Proceedings

Respondent—the Los Angeles County Counsel, on behalf of and in the name of the People of the State of California—filed this suit in California Superior Court. App. 4a–5a. The suit asserts a single claim for public nuisance under California law against various entities that provide pharmacy benefit management (PBM) and mail-order pharmacy services for private and governmental clients. *Id.* The complaint alleged that petitioners contributed to a public nuisance by, among other things, purportedly placing opioid medications on their formularies with preferred status in exchange for manufacturer rebates and failing to adequately monitor for, identify, and refuse to fill suspicious prescriptions in Los Angeles County. App. 20a. Dozens of cases involving similar allegations have been removed to federal court under the federal officer removal statute. *See, e.g.*, *County Bd. of Arlington County v. Express Scripts Pharmacy, Inc.*, 996 F.3d 243, 257 (4th Cir. 2021) (reversing grant of remand motion in similar case); *In re Nat'l Prescription Opiate Litig.*, 2023 WL 166006 (N.D. Ohio Jan. 12, 2023) (denying remand motions in the prescription opioid multi-district litigation (MDL)).

Petitioners timely removed this case to the U.S. District Court for the Central District of California under the federal officer removal statute. App. 5a, 20a. The notice of removal explained that petitioners acted under federal officers by providing PBM and mail-order pharmacy services to federal agencies, including the U.S. Department of Defense, the Department of Veterans Affairs, and Office of

Personnel Management, and that those services were related to the County's claims that petitioners' formulary and dispensing practices created a public nuisance. App. 5a, 27a.

After removal, the County filed an amended complaint that purported to limit its allegations to petitioners' "conduct in the non-federal market" and disclaim any relief based on their work for federal health plans. App. 5a, 29a. Relying on its new purported disclaimer, the County moved to remand the case on the asserted ground that the federal officer removal statute did not support jurisdiction. App. 5a, 27a. Petitioners opposed the motion and also argued that if the district court remanded the case, a mandatory stay of the remand order during the pendency of any appeal was required under the logic of this Court's decision in *Coinbase*. App. 5a, 30a.

The district court granted the County's motion to remand and denied petitioners' request to stay the remand order pending appeal. App. 30a. Without addressing *Coinbase*, the court held that whether to grant a stay in this context was a matter of discretion and declined to issue one after applying a four-factor balancing test. App. 30a–31a.

2. Court of Appeals Proceedings

Petitioners timely appealed the district court's remand order and denial of a stay. Because a recent motions panel of the Ninth Circuit had denied a motion for an automatic stay pending appeal in a similar federal officer removal case, petitioners did not file an independent stay motion. App. 3a–4a n.1. Instead, petitioners asked the Ninth Circuit merits panel to "address th[e] recurring issue" of whether a

mandatory stay is required before resolving whether their removal was proper—an approach that the Ninth Circuit ultimately approved. *Id.*

After briefing was complete but before argument, the Fourth Circuit decided *Martinsville*. Applying *Coinbase*, the court held that an automatic stay is required in an appeal of an order remanding a case removed under the federal officer removal statute. *Martinsville*, 128 F.4th at 270–71. The court explained that *Coinbase*'s reasoning applies "just as forcefully" to appeals of remand orders under the federal officer removal statute. *Id.* at 270. "[I]n both situations," the court reasoned, Congress has expressly authorized an appeal, and "essentially the whole case is 'involved in the appeal.'" *Id.* (quoting *Coinbase*, 599 U.S. at 740). The court added that nothing in Section 1447(d)'s text "overrides the background *Griggs* principle." *Id.* To the contrary, anything but an automatic stay "would 'largely defeat[] the point of the appeal.'" *Id.* (alteration in original) (quoting *Coinbase*, 599 U.S. at 743). Judge Wynn dissented from the panel's decision, describing *Coinbase* as a "policy choice" by this Court applicable only to arbitration cases. *Id.* at 275.

The Ninth Circuit merits panel in this case adopted petitioners' proposal to address the "recurring" question whether a stay pending appeal is warranted in appeals under Section 1447(d) before resolving the appeal itself. Pet. App. 3a–4a n.1. Acknowledging that the question had created "uncertainty" after *Coinbase*, the panel expressly disagreed with the Fourth Circuit's resolution of the question in *Martinsville*. App. 4a n.2. The panel instead concluded that "the discretionary stay factors outlined in *Nken v. Holder*"—rather than the

automatic-stay rule explained in *Coinbase*—apply to "motions to stay litigation in the federal officer removal context." App. 3a–4a. The panel reasoned that *Coinbase* did not abrogate *Nken* "beyond the arbitration context," in part because the "fundamental differences between arbitration and litigation do not exist as between litigation in state versus federal courts." App. 8a, 13a. The panel concluded by adopting the language of Judge Wynn's dissent as its holding, stating that *Coinbase* "merely represents a carve-out in favor of arbitration." App. 17a–18a (quoting *Martinsville*, 128 F.4th at 275 (Wynn, J.)).

After calling for a response, the Ninth Circuit denied petitioners' timely petition for panel rehearing or rehearing en banc. App. 32a–33a. The panel then issued an opinion affirming the remand order on September 8, 2025. 2025 WL 2586648. That opinion acknowledges a circuit conflict on whether a disclaimer like the County's can effectively defeat removal. *Id.* at *13 (discussing *Maryland v. 3M Co.*, 130 F.4th 380 (4th Cir. 2025)). Petitioners intend to seek panel or en banc rehearing of that decision and, if necessary, a stay of the mandate pending a petition for a writ of certiorari. Fed. R. App. P. 41. An abeyance of the appeal or certiorari petition may also be warranted pending this Court's decision in *Chevron USA, Inc., v. Plaquemines Parish*, No. 24-813 (cert. granted June 16, 2025), which could provide guidance relevant to the questions in the appeal. Indeed, the Second Circuit recently held a similar appeal in abeyance pending this Court's resolution of *Plaquemines. County of Westchester v. Express Scripts, Inc.*, No. 24-1639, ECF 116.1 (2d Cir. Aug. 28, 2025). The Ninth Circuit's mandate on the underlying

appeal of the remand order is thus unlikely to issue for a considerable period of time.

REASONS THE WRIT SHOULD BE GRANTED

The Ninth Circuit's decision creates a square circuit conflict on the significant and recurring issue of whether remand orders in federal officer removal cases are subject to an automatic stay pending appeal. While the Fourth Circuit correctly applied the reasoning of *Coinbase* to conclude that an automatic stay of such orders is required, the Ninth Circuit expressly disagreed, applying the discretionary stay standard instead. That acknowledged conflict between precedential decisions warrants review under a straightforward application of this Court's certiorari criteria. The question is undeniably important, as its resolution will dictate whether federal officers and those acting under them—along with federal judges and members of Congress—must endure litigation before the very state courts from which the statute shields them while pursuing appeals that Congress expressly allowed. This case provides a compelling vehicle to resolve the question because it is cleanly presented through a published opinion and because the extensive state-court litigation during the pendency of the appeal vividly illustrates the costs of simultaneous proceedings in state and federal court.

I. THE DECISION BELOW CREATES AN ACKNOWLEDGED CIRCUIT CONFLICT ON THE QUESTION PRESENTED

The circuit conflict on the question presented is square and unmistakable. The Ninth Circuit held in a published decision that "the discretionary stay factors outlined in *Nken*"—rather than the automatic-stay

rule explained in *Coinbase*—apply to "motions to stay litigation in the federal officer removal context." App. 4a. The Ninth Circuit acknowledged that its decision conflicts with the Fourth Circuit's published decision on the same question in *Martinsville*—a factually similar case involving the same claims and many of the same defendants—in which the Fourth Circuit concluded that *Coinbase* requires an automatic stay of the remand order pending appeal. App. 4a n.2; *see Martinsville*, 128 F.4th at 269. Underscoring just how square the conflict is, the Ninth Circuit concluded its decision by adopting the *dissenting* opinion in *Martinsville* as its own holding. App. 17a–18a (quoting *Martinsville*, 128 F.4th at 275 (Wynn, J.)).

That stark disagreement among federal courts of appeal in published opinions is a paradigmatic basis for this Court's review. Sup. Ct. Rule 10(a); *see, e.g.*, *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 166 (2025) ("Circuit splits followed by this Court's review are commonplace."); *Stanley v. City of Sanford*, 145 S. Ct. 2058, 2068 (2025) ("We took this case to resolve a circuit split."); *Rivers v. Guerrero*, 605 U.S. 443, 449 (2025) ("We granted certiorari to resolve [a] split."); *cf. GHP Mgmt. Corp. v. City of Los Angeles*, 145 S. Ct. 2615, 2616 (2025) (Thomas, J., dissenting from denial of certiorari) (noting the Court's "obligation to fix" circuit splits). Indeed, this Court has granted review to resolve "disagreement among the Courts of Appeals" specifically on the question of what standard applies to a motion for a stay pending appeal. *Coinbase*, 599 U.S. at 740; *see Nken*, 556 U.S. at 423 (same).

There is no tenable prospect that the circuit conflict presented here will be resolved without this Court's intervention. The Ninth Circuit denied rehearing en banc in this case. And district courts in other circuits have come out on both sides of the split—with many of them following the Fourth Circuit's decision in *Martinsville*—further underscoring the depth of the divide and illustrating the recurring nature of the question presented. *Compare, e.g.*, *Kentucky v. Express Scripts, Inc.*, No. 5:24-cv-303, ECF 71 (E.D. Ky. Aug. 27, 2025) (granting stay pending appeal based on Section 1447(d)); *Kansas v. Pfizer, Inc.*, 2025 WL 1548507, at *3 (D. Kan. May 30, 2025) (following *Martinsville* to hold that *Coinbase* principles require an automatic stay of remand order pending appeal); *Hawai'i ex rel. Lopez v. CaremarkPCS Health, L.L.C.*, 2025 WL 1521396, at *1 (D. Haw. May 28, 2025) ("This Court . . . finds the *Martinsville* analysis to be persuasive."); *Town of Pine Hill v. 3M Co.*, 2025 WL 994187 (S.D. Ala. Apr. 2, 2025) (granting stay); *Arkansas ex rel. Griffin v. Optum, Inc.*, No. 4:24-cv-00701, ECF 34, at 10–11 (E.D. Ark. Dec. 31, 2024) (granting stay "under the Supreme Court's reasoning in *Coinbase*"), *with, e.g.*, *Westchester County v. Mylan Pharms., Inc.*, 737 F. Supp. 3d 214, 230–31 & n.13 (S.D.N.Y. 2024) (declining stay request and stating that *Coinbase* is "hardly dispositive" as to whether one is required); *Att'y Gen. v. Dow Chem. Co.*, 2024 WL 3361395, at *9 (D.N.J. July 9, 2024) (declining to apply the reasoning of *Coinbase* is this context "[a]bsent clear guidance" from this Court); *California v. Eli Lilly & Co.*, 2023 WL 4681625, at *1 (C.D. Cal. July 14, 2023) (denying stay).

When the Ninth Circuit called for a response to petitioners' rehearing petition, the County attempted to minimize the circuit conflict by contending that it was lopsided because other courts of appeals have also denied stays pending appeal. *See* Resp. C.A. Reh'g Opp. 8 n.2, 12; *see also* App. 4a n.2. But none of those courts has issued a precedential decision addressing the question. And most decisions denying stays have come through summary orders "without any analysis"—an understandable pattern given that the issue is often raised through emergency motions. *Martinsville*, 128 F.4th at 270 n.4; *see, e.g.*, *City of Chicago v. B.P. P.L.C.*, No. 25-1916, ECF 73 (7th Cir. Aug. 1, 2025) (unpublished order denying stay); *Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 184 n.3 (1st Cir. 2024) (referencing unpublished order denying stay); *County of Westchester*, *supra* ECF 72 (2d Cir. Sept. 6, 2024) (unpublished order denying stay); *Plaquemines Parish v. Chevron USA, Inc.*, 84 F.4th 362, 378 (5th Cir. 2023) (vacating district court's order granting stay pending appeal without addressing *Coinbase*). Other than the decision below, the only court of appeals decision rejecting a *Coinbase* argument with any reasoning is the nonprecedential summary order in *Georgia v. Clark*, 2023 U.S. App. LEXIS 34018 (11th Cir. Dec. 21, 2023). But that order came in a criminal prosecution removed under 28 U.S.C. § 1455, which—unlike any provision at issue here—explicitly provides that "a notice of removal" does not bar "the State court in which such prosecution is pending from proceeding further." 28 U.S.C. § 1455(b)(3). Thus, the summary orders relied on by the County do not diminish the basis to review the square conflict between the precedential decisions of the Fourth and Ninth Circuits. If anything, they

underscore the recurring nature of the question presented and the need for this Court to resolve it.

The County also tried to distinguish this case from *Martinsville* because the remand order here was transmitted to the state court before the filing of the notice of appeal, while the remand order in *Martinsville* was transmitted after the filing of the notice of appeal. *See* Resp. C.A. Reh'g Opp. 7–8. But the Ninth Circuit did not rely on that irrelevant ministerial distinction; the panel did not even mention the timing of the transmittal of the remand order. That is likely because there is no meaningful dispute that a federal court can stay a remand order after it has been transmitted, just as a federal court can recall a remand order after it has been transmitted. Indeed, courts routinely do so when they reverse remand orders on appeal. *See, e.g.*, *Plaquemines*, 84 F.4th at 367; *Acad. of Country Music v. Cont'l Cas. Co.*, 991 F.3d 1059, 1070 (9th Cir. 2021); *Hammer v. U.S. Dep't of Health & Hum. Servs.*, 905 F.3d 517, 525 (7th Cir. 2018); *see also City of Waco v. U.S. Fid. & Guar. Co.*, 293 U.S. 140, 142–43 (1934). The timing of the remand transmittal thus has no connection to the proper resolution of the question presented or the conflict among the circuits in answering that question.

II. THE DECISION BELOW IS WRONG

The need for review is especially clear because the Ninth Circuit's decision is wrong. As the Fourth Circuit recognized, this Court's reasoning in *Coinbase* applies "just as forcefully" in the federal officer removal context as "in *Coinbase* itself." *Martinsville*, 128 F.4th at 270. The Ninth Circuit's contrary holding contradicts not only this Court's rationale in *Coinbase*

but also its repeated instruction that federal officer removal should receive a "broad" rather than "narrow, grudging interpretation" given its importance to the federal system. *Willingham*, 395 U.S. at 406; *see, e.g., Watson*, 551 U.S. at 147; *Colorado v. Symes,* 286 U.S. 510, 517 (1932).

A. Appeals Of Remand Orders Under Section 1447(d) Are Subject To An Automatic Stay Under The Rationale of *Coinbase*

Remand orders in federal officer removal cases are subject to an automatic stay pending appeal based on the logic of this Court's decision in *Coinbase*. There, the Court held that a stay is required when a litigant appeals the denial of a motion to compel arbitration under the statutory right to interlocutory appeal created by 9 U.S.C. § 16(a). 599 U.S. at 738. To reach that conclusion, the Court relied on three basic premises: *First*, under 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.'" *Id.* at 740 (quoting *Griggs*, 459 U.S. at 58). *Second*, where the question in an interlocutory appeal is what forum "the case belongs in, . . . the entire case is essentially 'involved in the appeal,'" and the district court lacks jurisdiction to do anything other than "stay its proceedings while the interlocutory appeal" proceeds. *Id.* at 741. And *third*, while Congress can by statute preclude such a stay—and has done so in other statutes authorizing interlocutory appeals—"absent contrary indications, the background *Griggs* principle . . . requires an automatic stay of district court proceedings that relate to any aspect of the case involved in the appeal." *Id*. at 744 & n.6 (collecting statutes precluding stays).

That same reasoning applies equally to appeals of remand orders in cases removed under the federal officer removal statute. *Martinsville*, 128 F.4th at 270. *First*, like 9 U.S.C. § 16(a), Section 1447(d) creates a "rare statutory exception to the usual rule that parties may not appeal before final judgment" by permitting an interlocutory appeal that "divests the district court of its control over those aspects of the case involved in the appeal." *Coinbase*, 599 U.S. at 740; *see BP*, 593 U.S. at 235–36. *Second*, as in the arbitrability appeals addressed in *Coinbase*, "the question on appeal" in a dispute over federal officer removal is which forum "the case belongs in." 599 U.S. at 741. In other words, "whether 'the litigation may go forward in the district court'" or must be shifted to a different forum—arbitration in *Coinbase* and state court in this case—"'is precisely what the court of appeals must decide.'" *Id.* (citation omitted). And *third*, Congress has given no "indication[]" that an automatic stay is unwarranted in appeals of remand orders in cases removed under the federal officer statute. *Id.* at 744. Section 1447(d) is thus unlike statutory schemes in which Congress has expressly displaced the automatic stay requirement. *Id.* at 744 n.6 (collecting examples). To the contrary, Congress's 2011 amendment to Section 1447(d) was designed "to allow appellate review *before* a district court may remand a case [removed under the federal officer statute] to state court," which indicates that state-court proceedings should *not* continue before the appeal concludes. *BP*, 593 U.S. at 236 (emphasis added).

If anything, the statutory objective underlying interlocutory appeals in the federal officer removal context supports an automatic stay even more so than

in the arbitration context addressed in *Coinbase*. While the statute at issue in *Coinbase* reinforced a "federal policy favoring arbitration," *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (citation omitted), the federal officer removal statute advances the federal government's far more profound interest in "preserving its own existence," *Davis*, 100 U.S. at 262—including by ensuring that entities acting under federal officers are protected against harassment and disruption by hostile state courts, *see Watson*, 551 U.S. at 150. That critical interest "would be largely nullified" without a stay pending appeal because defendants would have to litigate before the very state courts from which Congress enacted the federal officer removal statute to shield them. *Coinbase*, 599 U.S. at 743. The rule adopted in this case, moreover, will apply not only to private entities acting under federal officers but also to federal officers themselves, federal judges, and members of Congress. 28 U.S.C. § 1442(a)(1), (3)–(4). Indeed, Congress amended Section 1447(d) in 2011 partly in response to a decision allowing a sitting member of Congress to face burdensome state-court litigation during her appeal of the remand decision. *See* 157 Cong. Rec. 1371 (citing *Price*, 600 F.3d 460).

Finally, as in *Coinbase*, an automatic stay is necessary in federal officer removal cases from the judiciary's "institutional perspective." 599 U.S. at 743. Without an automatic stay of a remand order pending appeal, litigation will typically continue in state court while the appeal unfolds in federal court. If the appeal succeeds, the federal court will have to claw the case back, resulting in a "waste" of the state court's "scarce judicial resources." *Id.*; *see Martinsville*, 128 F.4th at

267 (describing the "havoc of multiple courts taking actions in the same case, on the same issues, at the same time"). That is exactly what has happened in federal officer removal cases in which courts have denied stays of the remand orders pending appeal, only for the remand orders to be reversed and the case clawed back after months of litigation in state court. *See*, *e.g.*, *Puerto Rico*, 119 F.4th at 184; *California v. CaremarkPCS Health LLC*, 2024 WL 3770326, at *1 (9th Cir. Aug. 13, 2024). An automatic stay pending appeal avoids such a potentially "detrimental result," which would produce unnecessary jurisdictional tension between state and federal courts. *Coinbase*, 599 U.S. at 743; *cf. Elkins v. United States*, 364 U.S. 206, 221 (1960) ("The very essence of a healthy federalism depends upon the avoidance of needless conflict between state and federal courts.").

The Fourth Circuit got all of that right in *Martinsville*. As it correctly explained, "[t]he rationale of *Coinbase* applies" fully to remand orders in federal officer removal cases appealed under Section 1447(d). *Martinsville*, 128 F.4th at 271. That application of *Coinbase* is important but limited—only in the "rare" situations in which all three of the factors described in *Coinbase* are present will a mandatory stay pending appeal be required. *Coinbase*, 599 U.S. at 740; *see Martinsville*, 128 F.4th at 270 n.3.

B. The Decision Below Erroneously Departs From *Coinbase*'s Rationale

The decision below rejected the Fourth Circuit's position in *Martinsville* and contradicted this Court's reasoning in *Coinbase* by holding that remand orders in federal officer removal cases are subject to

discretionary stays under *Nken* rather than automatic stays. The Ninth Circuit offered five rationales for departing from *Coinbase*. None has merit.

First, the Ninth Circuit concluded that *Coinbase* was "concerned only [with] stays in the context of arbitration" and should be limited "to the arbitration context." App. 8a; *see* App. 17a–18a (stating that *Coinbase* "merely represents a carve-out in favor of arbitration") (quoting *Martinsville*, 128 F.4th at 275 (Wynn, J., dissenting)). That fundamentally misreads *Coinbase* and misunderstands the role of this Court's precedent. To be sure, the Court in *Coinbase* decided only the case before it, which involved whether a stay is required in an appeal under 9 U.S.C. § 16(a). But the "rationale" of *Coinbase*, "not only the result," governs future cases. *Seminole Tribe v. Florida*, 517 U.S. 44, 66–67 (1996); *see, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020) ("It is usually a judicial decision's reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases."); *id.* at 125 n.6 (Kavanaugh, J., concurring in part) ("In the American system of *stare decisis*, the result and the reasoning each independently have precedential force, and courts are therefore bound to follow both the result and the reasoning of a prior decision.").

Indeed, in *Coinbase* itself, the Court explained that it was applying the "*same* stay principles that courts apply *in other analogous contexts* where an interlocutory appeal is authorized, including qualified immunity and double jeopardy." 599 U.S. at 746 (emphases added). The Court emphasized, moreover, that it was *not* creating "a special, arbitration-preferring procedural rule." *Id.* As the Fourth Circuit

correctly recognized, "[w]hile *Coinbase* was a case about arbitration, this does not mean it was *only* a case about arbitration." *Martinsville*, 128 F.4th at 270–71. "Distinctions require meaningful differences to matter; a [Supreme Court] decision's rationale binds [lower courts] even if some immaterial facts differ," and the "rationale of *Coinbase* applies here." *Id.* at 271.

Second, the Ninth Circuit erred in suggesting that following *Coinbase*'s rationale in this case would effectively overrule the discretionary approach to stays pending appeal described in *Nken*. App. 8a. In *Coinbase*, the Court applied "the background *Griggs* principle," which has long coexisted alongside *Nken*. *Coinbase*, 599 U.S. at 743–44 (emphasis added); *see id.* at 746–47 (discussing *Nken*). Applying the rationale of *Coinbase* here would thus no more overrule *Nken* than applying that rationale in *Coinbase* did. In short, an automatic stay pending appeal applies in the "rare" situations recognized in *Coinbase*—including statutorily authorized appeals under 9 U.S.C. § 16(a) and Section 1447(d)—while *Nken* continues to provide the default standard for stay requests. *Id.* at 740; *see, e.g., Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2550, 2561–62 (2025) (granting application for partial stay pending appeal under *Nken* factors).

Third, the Ninth Circuit stated that "requiring an automatic stay in the federal officer removal context would implicate federalism concerns not at issue where parties seek to compel arbitration." App. 8a. The court suggested that an automatic stay under *Coinbase* would "deprive state courts of the power" to stay a remanded case if they "think[] the defendants . . . have a strong likelihood of success on appeal."

App. 9a–10a. That position is badly mistaken. As "an incident of federal supremacy," the federal officer removal statute is *designed* to deprive state courts of power over federal officers and those acting under them. *Willingham*, 395 U.S. at 405. The Ninth Circuit's rule empowering a state court to determine whether such a defendant must endure discovery and potentially trial based on whether the state court thinks the defendant is likely to succeed on appeal would "turn[] the removal statute on its head." *Id.* As explained above, moreover, federalism considerations properly understood undermine rather than support the Ninth Circuit's position, which would produce *greater* friction between federal and state courts by requiring state courts to devote resources to litigation that might be wasted. *See* pp. 19–20, *supra*.

Fourth, the Ninth Circuit identified "differences between arbitration and litigation" that purportedly illustrate why "an automatic stay rule is not warranted in the federal officer removal context." App. 12a. The court suggested, for example, that a federal officer wrongly facing litigation in state court instead of federal court suffers a lesser hardship than a defendant wrongly facing litigation in federal court instead of arbitration. App. 13a. And the court opined that the burden on a federal officer wrongly subjected to "some early stages of litigation in state court" would be relatively minimal because the officer could eventually return to federal court before final judgment. App. 14a n.6. But those differences do not justify confining *Coinbase* to arbitration. It is not the case, for instance, that the Federal Arbitration Act serves a weightier end than that served by the federal

officer removal statute—the federal government's interest in "preserving its own existence." App. 11a.

Nor do the protections created by the federal officer removal statute exist only for trial. App. 14a n.6. That cramped understanding disregards Congress's assessment of the importance of a federal forum to a federal officer, which applies to early stages of litigation such as "pre-suit discovery," as well as the ultimate merits. 157 Cong. Rec. 1372 (identifying "a district court ruling in Texas that the Federal removal statute does not apply to a Texas law involving pre-suit discovery" as part of the reason for adopting the 2011 amendment). That is why this Court has long described the protection of the federal officer removal statute in terms of avoiding "harassing *litigation* in the State courts," *Cooper*, 73 U.S. at 253 (emphasis added), not just trial proceedings or an adverse judgment. Indeed, the Court has consistently explained that "[o]ne of the most important reasons for removal is to have the validity of the defense of official immunity tried in a federal court," *Watson*, 551 U.S. at 150 (quoting *Willingham*, 395 U.S. at 405)—a determination that typically comes at the beginning rather than the end of the process, *see, e.g.*, *Mitchell v. Forsyth,* 472 U.S. 511, 526 (1985).

Fifth, the Ninth Circuit speculated that mandatory stays of appeals from remand orders in cases removed under the federal officer removal context "might encourage gamesmanship." App. 15a. But this Court rejected that argument in *Coinbase*, explaining that "the courts of appeals possess robust tools to prevent unwarranted delay and deter frivolous interlocutory appeals." 599 U.S. at 745; *see, e.g.*, 28 U.S.C. § 1447(c) ("An order remanding the case may require payment

of just costs and actual expenses, including attorney fees, incurred as a result of the removal."). Although the Ninth Circuit suggested that those tools would not be effective in this context, it gave no reason why, and none is apparent. The gamesmanship rationale is thus another way in which the Ninth Circuit's decision "artificially restricts *Coinbase*" to arbitration, in contradiction of this Court's reasoning in *Coinbase* itself. *Martinsville*, 128 F.3d at 268.

III. THE QUESTION PRESENTED WARRANTS REVIEW IN THIS CASE

The question presented also satisfies this Court's other criteria for review because it is important, frequently recurring, and cleanly presented.

The right of removal for federal officers and others covered by Section 1442 is exceptionally important; this Court once said that a "more important question can hardly be imagined," given the connection between the right of removal and "the possibility of the federal government preserving its own existence." *Davis*, 100 U.S. at 262; *see, e.g.*, *Willingham*, 395 U.S. at 405; *Soper*, 270 U.S. at 41–42. This Court has sustained that view by granting review in many federal officer removal cases over the years, *see, e.g.*, *Watson*, 551 U.S. at 147–51 (collecting decisions)—including *Plaquemines* this Term, No. 24-813.

The question presented here directly implicates when and whether defendants can benefit from the federal officer removal framework that Congress has created, specifically the right to an immediate appeal of remand orders added in the 2011 amendments to Section 1447(d). *See BP*, 593 U.S. at 235–37. From the perspective of a defendant removing a suit from a

potentially "hostile" state court who loses a remand dispute in a federal district court, *Watson*, 551 U.S. at 148, there is a vast and consequential difference between having the case stayed pending appeal and having to return to state court while the appeal unfolds. After all, the central purpose of the federal officer removal statute is to allow defendants to avoid potential "local prejudice" in state courts, *id.* at 150 (citation omitted), and the central purpose of the interlocutory appeal right created in the 2011 amendments to Section 1447(d) is "to allow appellate review *before* a district court may remand a case to state court," *BP*, 593 U.S. at 236 (emphasis added). Yet without a stay, a defendant has to face the very dangers that the statutory framework was created to avoid—a result that defies "common sense" as well as statutory design. *Coinbase*, 599 U.S. at 743; *see Martinsville*, 128 F.4th at 270.

This case illustrates the harms that result from the absence of an automatic stay pending appeal. While this appeal has been pending in the Ninth Circuit for roughly a year and a half without a stay, the parties have proceeded simultaneously in state court with jurisdictional discovery, extensive motion practice—including demurrers to two amended complaints, multiple hearings and conferences, a motion to disqualify counsel, and a motion to quash—and even an interlocutory state-court appeal. *See People v. Express Scripts, Inc.*, 23-ST-CV-20886 (Cal. Super. Ct.); *People v. OptumRx, Inc.*, 2025 WL 2542288 (Cal. Ct. App. Sept. 4, 2025). Those significant issues are being adjudicated before the County's home courts, which have (among other things) denied a demurrer on petitioners' federal preemption defenses. *See*

People v. Express Scripts, Inc., 2024 WL 5411144 (Cal. Super. Ct. Dec. 17, 2024). Not only does that litigation inflict the very burden that the federal officer removal statute exists to shield petitioners against, *see Watson*, 551 U.S. at 148–51, but it will also all be "waste[d]" if the Ninth Circuit or this Court ultimately reverses the remand decision, *Coinbase*, 599 U.S. at 743.

That is exactly what happened in a recent case brought by the County against some of petitioners alleging illegal conduct in insulin pricing. After those petitioners removed and the district court granted a motion to remand, the Ninth Circuit declined to enter an automatic stay pending appeal, and the state court managed the case for over a year—holding hearings and issuing rulings on defendants' demurrers and a motion to quash—before the Ninth Circuit vacated the remand order. *Caremark*, 2024 WL 3770326, at *1. The case was then transferred to the insulin-pricing MDL, which denied the State's renewed remand motion and held the case was properly removed. *See In re Insulin Pricing Litig.*, 2025 WL 1576940, at *3–15 (D.N.J. June 4, 2025).

As serious as those consequences have been, the harm in other cases governed by the Ninth Circuit's position could be even worse. History is filled with examples of federal officers and their delegates being subjected to "harassing litigation" by states where federal laws or programs are unpopular. *Cooper*, 73 U.S. at 253 (Union-installed mayor in Tennessee); *see Watson*, 551 U.S. at 147–48 (tariff collectors in the early 1800s and prohibition agents in the early 1900s); *Manypenny*, 451 U.S. at 234–35 (border patrol agent); *State v. Meadows*, 88 F.4th 1331, 1351–54 (11th Cir.

2023) (Rosenbaum, J., concurring) (providing additional examples). It is not hard to imagine similar examples today. *See, e.g.*, *In re: 4/1/2025 Findings of Contempt as to ICE Agent Sullivan*, No. 25-cv-10769, ECF 1 (D. Mass. Apr. 1, 2025) (removal under federal officer statute after state court found ICE agent in contempt for arresting undocumented immigrant leaving court proceeding); *Wyoming v. Livingston*, 443 F.3d 1211, 1225, 1230–31 (10th Cir. 2006) (removal under federal officer statute by U.S. Fish and Wildlife Service employee prosecuted for misdemeanor trespass in state court that was "an attempt to hinder a locally unpopular federal program"); *see also Texas Grand Jury Indicts Cheney, Gonzales of Crime*, Reuters (Nov. 18, 2008) (criminal indictment by state grand jury of then-Vice President Cheney and others for purported "organized criminal activity" related to alleged abuse of inmates in private prisons), https://bit.ly/4gni0jL. The need to establish a clear rule to govern such sensitive and significant cases strongly supports review.

In addition to its importance, the question presented is worthy of review because it is frequently recurring. Indeed, the Ninth Circuit issued a separate published decision on the stay issue precisely because the court recognized that the issue is "recurring" and subject to "uncertainty." App. 3a, 4a n.1. The Fourth Circuit agreed that the question is an "active subject" in the federal courts. *Martinsville*, 128 F.4th at 269. Numerous courts of appeals have addressed the issue, albeit largely through summary orders. App. 4a n.2. And as detailed above, district courts are frequently addressing the question and reaching conflicting conclusions. *See* p. 14, *supra*. This Court has

previously granted certiorari to resolve recurring questions regarding the standard for stays, *see e.g.*, *Coinbase*, 599 U.S. at 739; *Nken*, 556 U.S. at 423; *Hilton v. Braunskill*, 481 U.S. 770, 772 (1987), and review is similarly warranted here.

Finally, this case offers a compelling vehicle to resolve the question presented. It arises from a published decision exclusively addressing the stay issue, *see* App. 3a n.1, which is rare in this area given that stays pending appeal are often sought in emergency motions and decided through summary orders. And while the Ninth Circuit recently issued a decision affirming the district court's remand order, *see* 2025 WL 2586648, petitioners plan to seek rehearing en banc, followed by a stay of the mandate pending certiorari if necessary. Moreover, either the Ninth Circuit or this Court may choose to hold requests for further review on the underlying remand issue until this Court's decides *Plaquemines*, which involves similar questions. *See* p. 11, *supra*. There is accordingly no meaningful risk that the stay issue will become moot during the pendency of this Court's review—and either this Court or the Ninth Circuit could readily prevent that result in any event. *Cf. Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1008 n.1 (9th Cir. 2023) (discussing the Ninth Circuit's abeyance of the merits decision in *Coinbase* pending this Court's review of the stay issue). Moreover, the automatic-stay issue is one "capable of repetition, yet evading review," *FCC v. Consumers' Rsch.*, 145 S. Ct. 2482, 2496 n.1 (2025) (quotation omitted), given that timing complications are inevitable in stay-related litigation. At bottom, the question presented is exceptionally

important and worthy of review, and this Court should resolve it in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BRIAN D. BOONE
MATTHEW P. HOOKER
ALSTON & BIRD LLP
1120 South Tyron St.
Suite 300
Charlotte, NC 28203
(704) 444-1000

D. ANDREW HATCHETT
ALSTON & BIRD LLP
1201 W. Peachtree St.
Suite 4900
Atlanta, GA 30309
(404) 881-7000

CHRISTOPHER G. MICHEL
Counsel of Record
MICHAEL J. LYLE
JONATHAN G. COOPER
ALEX VAN DYKE
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
1300 I Street, NW, 9th Fl.
Washington, D.C. 20005
(202) 538-8308
christophermichel@
quinnemanuel.com

LISA M. GEARY
COURTNEY DAUKAS
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 Fifth Ave.
New York, NY 10016
(212) 849-7000

Counsel for Petitioners

September 16, 2025

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-1972
D.C. No. 2:23-cv-08570-SPG-PD

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

Plaintiff - Appellee,

v.

EXPRESS SCRIPTS, INC.; ESI MAIL
PHARMACY SERVICE, INC.; EXPRESS SCRIPTS
PHARMACY, INC.; OPTUMRX, INC.,

Defendants - Appellants,

and

EXPRESS SCRIPTS ADMINISTRATORS, LLC,
MEDCO HEALTH SOLUTIONS, INC., OPTUMINSIGHT,
INC., OPTUMINSIGHT LIFE SCIENCES, INC.,

Defendants.

Appeal from the United States District Court
for the Central District of California
Sherilyn Peace Garnett, District Judge, Presiding

Argued and Submitted March 4, 2025
Pasadena, California

Filed June 2, 2025

Before: Mary H. Murguia, Chief Judge, and Gabriel P. Sanchez and Holly A. Thomas, Circuit Judges.

SUMMARY[*]

ORDER

Stay Pending Appeal

In an appeal from the district court's order remanding a removed action to state court, the panel affirmed the district court's denial of defendants' motion to stay the remand order pending appeal.

Defendants removed the action to federal court under the federal officer removal statute. The district court granted plaintiff's motion to remand and denied defendants' stay motion. Declining to extend the logic of *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), which held that interlocutory appeals of denials of motions to compel arbitration result in automatic stays of district court litigation, the panel clarified that in this Circuit, the discretionary stay factors outlined in *Nken v. Holder*, 556 U.S. 418 (2009), still control district courts and motions panels reviewing motions to stay litigation in the federal officer removal context. The panel disagreed with the Fourth Circuit and agreed with other Circuits. Applying the *Nken* factors, the panel held that the

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[*] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

district court did not abuse its discretion in denying a stay.

COUNSEL

Louis M. Bograd (argued), Elizabeth Smith, and Linda Singer, Motley Rice LLC, Washington, D.C., for Plaintiff-Appellee.

Christopher Michel (argued), Jonathan G. Cooper, and Michael J. Lyle, Quinn Emanuel Urquhart & Sullivan LLP, Washington, D.C.; Kiel Ireland and Sage V. Heuvel, Quinn Emanuel Urquhart & Sullivan LLP, Los Angeles, California; Charles B. Straut II, Quinn Emanuel Urquhart & Sullivan LLP, San Francisco, California; Omar Morquecho and Kimberly K. Chemerinsky, Alexander Akerman, Alston & Bird LLP, Los Angeles, California; for Defendants-Appellants.

ORDER

MURGUIA, Chief Circuit Judge:

Since the Supreme Court decided, in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), that interlocutory appeals of denials of motions to compel arbitration result in automatic stays of district court litigation, some uncertainty has arisen as to whether that holding applies in other contexts. Defendants here argue that *Coinbase*'s logic should extend to the federal officer removal context and ask this Court to issue an automatic stay of the district court's order remanding this case to state court "before deciding the merits of this appeal."[1] We accept Defendants'

[1] Defendants concede in their briefing that a motions panel of this Circuit in a similar federal officer removal case immediately prior to Defendants' appeal denied a motion to stay litigation pending appeal and cited to *Nken v. Holder*. *See California v.*

call to address this issue expeditiously and separately from the merits of their appeal. Today we clarify that in this Circuit, the discretionary stay factors outlined in *Nken v. Holder*, 556 U.S. 418, 434 (2009) still control district courts and motions panels reviewing motions to stay litigation in the federal officer removal context.[2]

I.

This case involves a lawsuit brought originally in state court by the Los Angeles County Counsel

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CaremarkPCS Health LLC, Nos. 23-55597, 23-55599 (9th Cir. Aug. 17, 2023) (order denying motion to stay lower court proceedings). Accordingly, after the district court denied Defendants' motion to stay litigation pending appeal, Defendants did not file a separate application for a stay pending appeal in this Circuit. Instead, they asked this panel to "address this recurring issue." We do so in this order affirming the district court's denial of stay and will issue our disposition on the merits of whether Defendants' removal pursuant to the federal officer removal statute was proper.

[2] All other circuits where this question has been raised, besides the Fourth Circuit, appear to have reached the same conclusion. *See Gov't of P.R. v. Express Scripts*, 119 F.4th 174, 184 n.3 (1st Cir. 2024); *Cnty. of Westchester v. Express Scripts, Inc.*, No. 24-1639 (2d Cir. Sept. 6, 2024) (order denying motion to stay) ("[T]he request to stay is DENIED because the Appellants are not entitled to an automatic stay pending appeal under *Coinbase*."); *Georgia v. Clark*, No. 23-13368, 2023 U.S. App. LEXIS 34018, at *2 (11th Cir. Dec. 21, 2023) ("*Coinbase* was limited to arbitration proceedings, which are not at issue here."); *see also Plaquemines Par. v. Chevron United States, Inc.*, 84 F.4th 362, 373– 78 (5th Cir. 2023) (applying the *Nken* factors in considering whether to grant the plaintiffs' motion to lift and vacate the district court's stay order pending appeal of its remand order in a federal officer removal case). The Fourth Circuit appears to be the first and only circuit in the country to have extended *Coinbase*'s logic to the federal officer removal context. *City of Martinsville, Virginia v. Express Scripts, Inc.*, 128 F.4th 265 (4th Cir. 2025).

against pharmaceutical-entity defendants Express Scripts, Inc.; ESI Mail Pharmacy Service, Inc.; Express Scripts Pharmacy, Inc.; and OptumRx, Inc. ("Defendants"). The People of the State of California acting by and through Los Angeles County Counsel ("Plaintiff" or "the People") allege Defendants should be held liable under California's public nuisance statute for contributing to the public nuisance of the opioid epidemic through their prescription opioid business practices. Defendants removed this case to federal court under the federal officer removal statute on the theory that their business involves contracts with the U.S. Department of Defense, Department of Veterans Affairs, and Office of Personnel Management to fill prescriptions for health plan members, including opioid medications. The federal officer removal statute permits a person "acting under" a federal officer to remove claims "for or relating to" the work for the federal officer. 28 U.S.C § 1442(a)(1). Plaintiff moved to remand and simultaneously amended its Complaint to include a disclaimer expressly limiting the scope of its claims to "Defendants' conduct in the non-federal market."

The district court granted the People's motion to remand, noting that the "explicit disclaimer" in the Amended Complaint eviscerated Defendants' ground for removal. Defendants then appealed that decision pursuant to 28 U.S.C § 1447(d), which provides for interlocutory appeals of remand orders based on lack of subject-matter jurisdiction under the federal officer removal statute. *DeFiore v. SOC LLC*, 85 F.4th 546, 554 (9th Cir. 2023). Defendants also moved in the district court for a stay of the remand order pending appeal. But the district court denied the motion pursuant to *Nken v. Holder*, 556 U.S. 418 (2009) as opposed to *Coinbase, Inc. v. Bielski*, 599 U.S. 736

(2023).[3] We affirm the district court's denial of Defendants' motion to stay.

II.

This Court reviews a district court's stay order for abuse of discretion. *In re PG&E Corp. Sec. Litig.*, 100 F.4th 1076, 1083 (9th Cir. 2024).

III.

In *Coinbase*, the Supreme Court held that a district court is "require[d]" to enter an "automatic stay" pending appeal when a party exercises its statutory right under 9 U.S.C. § 16(a) ("The Federal Arbitration Act" or "FAA") to an interlocutory appeal of the denial of a motion to compel arbitration. 599 U.S. at 742–44. In so ruling, the Court relied on *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982), which held that an "appeal, including an interlocutory appeal, 'divests the district court of its control over those aspects of the case involved in the appeal.'" *Id.* at 740 (quoting *Griggs*, 459 U.S. at 58).[4] Because the question on appeal in the FAA context "is whether the case belongs in arbitration or instead in the district court, the entire case is essentially 'involved in the appeal.'" *Id.* at 741 (quoting *Griggs*, 459 U.S. at 58). Accordingly, a stay of lower court proceedings pending appeal is required when a

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[3] The district court cited to *Golden Gate Rest. Ass'n. v. City and Cnty. of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008), for the four stay factors, but they are essentially identical to those the Supreme Court articulated in *Nken*. *See Nken*, 556 U.S. at 434

[4] *Coinbase* also turned in part on preserving for deserving defendants the unique benefits of arbitration as opposed to litigation, which we will discuss in more depth below. *See* 599 U.S. at 743.

district court denies a motion to compel arbitration. *Id.*

Defendants argue that the Supreme Court's reasoning in *Coinbase* should be extended to automatically stay litigation during the appeals of remand orders in the federal officer removal context. Because the question on appeal is whether the case belongs in federal or state court, Defendants argue that 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. We disagree.[5]

Coinbase read in conjunction with relevant Supreme Court precedent counsels in favor of limiting the *Coinbase* holding to the arbitration context. Federalism 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. Moreover, the unique aspects of arbitration that automatic stays help to preserve are not at issue in the federal officer removal context. Finally, automatic stays of federal officer removal appeals could lead to improper delay tactics and do harm to principles of judicial efficiency. We therefore reaffirm that *Nken v. Holder* still controls district courts and motions panels reviewing motions to stay litigation in the federal officer removal context.

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[5] Indeed, Defendants' broad reading of *Coinbase* and the *Griggs* principle would ostensibly sweep in other areas of litigation including, for instance, interlocutory appeals of remand orders based on 28 U.S.C. § 1443 (the civil rights removal statute), though *Coinbase* made no mention of other such areas.

A.

The *Coinbase* majority clearly stated that "the sole question before [the] Court [was] whether a district court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing." 599 U.S. at 740. The Supreme Court did not receive briefing on the unique federalism issues implicated by the federal officer removal statute that differ in the arbitration context. Instead, the issues and briefing presented concerned only stays in the context of arbitration and the unique aspects of the Federal Arbitration Act. Nearly every paragraph of the *Coinbase* opinion specifically references "arbitrability" or the provisions of the FAA.

Coinbase does not abrogate *Nken v. Holder* beyond the arbitration context. While *Coinbase* represents a carveout to the normal discretionary stay powers in the arbitration context, the opinion does not overrule *Nken* nor render its precepts inoperable in other contexts. Here, we abide by the Supreme Court's instruction to "follow the case which directly controls" and "leav[e] to [the Supreme] Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)).

B.

Crucially, requiring an automatic stay in the federal officer removal context would implicate federalism concerns not at issue where parties seek to compel arbitration. *Nken* emphasizes that a stay is an "intrusion into the ordinary processes of administration and judicial review" and accordingly "is not a matter of right, even if irreparable injury might

otherwise result." 556 U.S. at 427 (quotations omitted). *Nken* further held that a stay is an exercise of judicial discretion, the propriety of which is dependent upon the circumstances of a particular case. *Id.* The ability for federal courts to weigh various factors before issuing the extraordinary remedy of a stay is vital for the efficient administration of justice, especially when the case involves another sovereign: here, the State of California. *See Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733, 764 (9th Cir. 2022).

The four discretionary stay factors courts must weigh under *Nken* are "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." 556 U.S. at 434. The first two factors are the most critical. *Id.*

This discretion makes sense in the federal officer removal context because courts should have the power to weigh these important factors before granting stays that could infringe upon the rights of state courts. *See Younger v. Harris*, 401 U.S. 37, 43 (1971). Improper removals based on the federal officer removal statute deprive state courts of jurisdiction over cases that should rightfully be heard in their fora, in violation of comity principles. Automatic stays of litigation based on those improper removals pursuant to *Coinbase* would only exacerbate federal infringement on state courts' rights. *Nken*'s discretionary stay power allows federal courts to "scrupulously confine their own jurisdiction" and ensure they are giving "[d]ue regard for the rightful independence of state governments." *Cnty. of San Mateo*,

32 F.4th at 764 (quoting *Healy v. Ratta*, 292 U.S. 263, 270 (1934)).

Just as *Nken* affords federal courts discretion, so too are state courts empowered to craft case-specific solutions to balance the interests at stake when they receive remanded cases. For instance, a state court could decide to stay a remanded case if, in its opinion, it thinks the defendants who removed based on the federal officer removal statute do have a strong likelihood of success on appeal. *Coinbase*'s automatic stay rule applied to the federal officer removal context would deprive state courts of the power to make those types of determinations. Federal removal jurisprudence should allow state courts to "actuate federal courts," which is what *Nken*'s discretionary stay factors allow for here. *Healy*, 292 U.S. at 270.

Our federal and state court systems operate on the bedrock principle of comity, which includes "a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger*, 401 U.S. at 44. The federal government "anxious though it may be to vindicate and protect federal rights and federal interest" must always "endeavor[] to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id*. Here, an automatic stay pending appeal of a federal officer removal remand order would run afoul of the delicate balance of federalism. The Supreme Court has repeated "time and time again that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Id.* at 45. A stay pending appeal raises concerns for state court proceedings analogous to those at issue in

Younger. *See Nken*, 556 U.S. at 428 ("A stay pending appeal certainly has some functional overlap with an injunction."). This is why *Nken* counsels that stays pending appeal are discretionary and today we reaffirm that they should remain so in the federal officer removal context. *See id.* at 427.

C.

That arbitration is a fundamentally different form of dispute resolution than litigation further demonstrates why *Coinbase*'s logic is inapposite in the federal officer removal context. The FAA reflects a "liberal federal policy in favoring arbitration" when parties validly contract for it. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Thus, the Supreme Court has long interpreted the FAA as an exceptional statute "designed to promote arbitration . . . 'notwithstanding any state substantive or procedural policies to the contrary.'" *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345–46 (2011) (quoting *Moses H. Cone*, 460 U.S. at 24).

The federal officer removal statute, since its original enactment near the end of the War of 1812, has undergone a series of amendments. *Watson v. Philip Morris Cos.*, 551 U.S. 142, 147–48 (2007). But its "basic purpose" remains "to protect the Federal Government from the interference with its operations that would ensue" if federal officers and agents could be subject to trial and liability in potentially hostile state courts based on actions "within the scope of their authority." *DeFiore*, 85 F.4th at 555 (cleaned up). The statute thus "vindicates . . . the interests of [the federal] government" in "preserving its own existence." *Id.* at 553 (cleaned up).

Congress's intent to promote arbitration via the FAA "notwithstanding any state substantive or procedural policies to the contrary," *Moses H. Cone*, 460 U.S. at 24, stands in contrast to the long-held principle that "removal statutes should be construed narrowly in favor of remand to protect the jurisdiction of state courts." *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698 (9th Cir. 2005). While it is true that the federal officer removal statue should be "liberally construed," *Watson*, 551 U.S. at 147, that guidance must be understood in the broader context of the United States' dual sovereign court system, where federal courts of limited jurisdiction must "scrupulously confine their own jurisdiction to the precise limits which the statute [authorizing removal jurisdiction] has defined." *Healy*, 292 U.S. at 270; *see DeFiore*, 85 F.4th at 553–54 (clarifying that while the language of the federal officer removal statue is broad and must be liberally construed, it "is not limitless" (quoting *Watson*, 551 U.S. at 147)).

Coinbase highlights some of the fundamental differences between arbitration and litigation, 599 U.S. at 743, which illustrate both that *Coinbase* is inapposite and that an automatic stay rule is not warranted in the federal officer removal context. The reason why parties may prefer to arbitrate as opposed to litigate claims is due to "efficiency, less expense, less intrusive discovery, and the like." *Id.* The continuation of proceedings in the district court when stays are denied renders those features "irretrievably lost." *Id.* These unique features of arbitration also help explain Coinbase's contention that a denial of a motion to compel arbitration makes it so "the entire case is essentially 'involved in the appeal,'" necessitating an automatic stay of litigation pending appeals of denials of arbitrability. *Id.* at 741

(quoting *Griggs*, 459 U.S. at 58). Absent an automatic stay in the arbitration context, the benefits of arbitration Congress aimed to effectuate via the FAA could be irreparably lost with each day a party is wrongfully subjected to pretrial litigation and discovery. *Id.* at 743.

These fundamental differences between arbitration and litigation do not exist as between litigation in state versus federal courts. Though state and federal courts may operate in slightly different ways, each provide forums for litigation with roughly similar levels of efficiency, expense, and comprehensive discovery mechanisms. Having to continue litigation in state court for a brief period pending appeal does not cause defendants to "irretrievably lo[se]" any benefits of the type lost when being wrongfully forced to arbitrate.[6] *See id.* at 743.

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[6] Indeed, the Supreme Court has historically understood the federal officer removal statute as intending to shield federal officers from biased *trials* in state court and accompanying judgments. *See Watson*, 551 U.S. at 150. The long line of precedent stretching back over a century interpreting the federal officer removal statute does not discuss the right to avoid pretrial discovery in state court but instead focuses on providing a federal forum for trials and final judgments for federal officers. *Id.* at 150–51. In one of the seminal cases first upholding the constitutionality of an early iteration of the statue, the Supreme Court said the history of the statute was "well known" and that "[i]t gives the right to remove at any time before trial." *Tennessee v. Davis*, 100 U.S. 257, 268 (1879) (emphasis added). The main concern was a biased state court judge presiding over an unfair trial in front of a hostile local jury reflecting "local prejudice" against unpopular federal laws or federal officials. *See Watson*, 551 U.S. at 150 (quoting *Maryland v. Soper*, 270 U.S. 9, 32 (1926)). Over time, the focus on shielding federal officers from biased trials evolved to include giving "officers a federal forum in which to litigate the merits of immunity defenses." *Jefferson*

It also bears noting that applying *Nken*, and not *Coinbase*, to appeals of federal officer removal remand orders such as the one here squares with *Griggs* because the question on appeal here is essentially a narrow venue question of whether the case belongs in state or federal court. This question differs from questions remaining before the state court (assuming the case gets remanded) such as whether the claims have merit, whether the parties are entitled to the discovery they seek, and so on. Proceedings on those questions would not interfere with the appellate court's review of the remand order, nor risk inconsistent judgments. Those proceedings, in other words, 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." 459 U.S. at 59.

In sum, permitting early stage litigation in state court would not preclude a defendant from returning to federal court post-appeal. If removed, the defendant could then have its federal immunity defenses adjudicated and, if necessary, a trial held in federal court. *See Watson*, 551 U.S. at 150–51. This system works, and we see no valid reason to alter it.[7]

Cnty. v. Acker, 527 U.S. 423, 447 (1999) (Scalia, J., concurring in part and dissenting in part). But, having to go through some early stages of litigation in state court does not deprive defendants wrongly remanded from later having their immunity defenses decided in federal court if they are ultimately permitted to remove.

[7] Analogies to other contexts involving interlocutory appeals help to further illustrate the distinct concerns raised in the federal officer removal context. Appeals from denials of qualified immunity, absolute immunity, sovereign immunity, and immunity under the Double Jeopardy Clause all immediately divest the district court of jurisdiction over the entire case

D.

Finally, adopting an automatic stay rule in the federal officer context might encourage gamesmanship by defendants that would frustrate principles of judicial economy. Any defendant seeking to delay discovery could craft an argument for federal officer removal then appeal a district court's remand order. This could cause plaintiffs languishing under mandatory stays to suffer harms in the form of lost evidence, depleted funding, and diminished patience.

Coinbase instructs that courts have tools to avoid such gamesmanship in the arbitration context. But these proposed solutions do not support judicial economy in the federal officer removal context. First, the Supreme Court provides that district courts may "certify that an interlocutory appeal is frivolous." *Coinbase*, 599 U.S. at 754 (citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 629 (2009)). While district courts have the power to certify the question of whether an interlocutory appeal is frivolous, they seldom seem to use it because they have the discretion to simply assess the *Nken* factors before

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against defendants because these immunities represent an entitlement to avoid litigation altogether. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). That entitlement extends even to pretrial discovery. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) ("Until this threshold immunity question is resolved, discovery should not be allowed."). Courts have not understood the federal officer removal statute, by contrast, to shield defendants from pre-trial litigation *in toto*. *See Watson*, 551 U.S. at 150 (quoting *Soper*, 270 U.S. at 32); *Tennessee*, 100 U.S. at 268. The statute instead aims to guarantee a federal *forum* for adjudication of federal immunity defenses and trial on the merits. *See Jefferson Cnty.* 527 U.S. at 447. Allowing some pretrial litigation to continue on in state court pending federal interlocutory appeal of the remand order does not ultimately frustrate this purpose.

deciding whether to grant a stay. Sanctions provide another option to punish frivolous appeals, *see* Fed. R. App. P. 38; *Arthur Andersen*, 556 U.S. at 629, but they are cumbersome for courts to impose and rarely used. Accordingly, the discretionary stay system already in place is superior for the purposes of judicial economy.

IV.

The district court did not abuse its discretion in applying the *Nken* factors to deny Defendants' motion to stay the litigation pending appeal.[8] The district court found that Defendants did not make a strong showing that they were likely to succeed on the merits in large part because Plaintiff's valid and comprehensive disclaimer eviscerated all basis for federal officer removal jurisdiction. A court of appeals assessing the likelihood of success on the merits for the purposes of a stay pending appeal must take care "not to prejudge the merits of the appeal" and need not "address the merits in detail." *Doe #1 v. Trump*, 957 F.3d 1050, 1062 (9th Cir. 2020).

Here, Plaintiff's disclaimer appears to sever all federal involvement from Plaintiff's state law public nuisance claim so as to make it impossible for Defendants to satisfy the elements of the federal officer removal statute—that the entity seeking removal is (a) a person within the meaning of the statute;

[8] The Ninth Circuit's application of the *Nken* factors operates on a "sliding scale," such that "if there is a probability or strong likelihood of success on the merits, a relatively low standard of hardship is sufficient." *Golden Gate*, 512 F.3d at 1116–19 (internal quotations and citations omitted). By contrast, "if the balance of hardships tips sharply in favor of the party seeking the stay, a relatively low standard of likelihood of success on the merits is sufficient." *Id.* at 1119 (cleaned up).

(b) there is a causal nexus between its actions, taken pursuant to a federal officer's directions, and plaintiff's claims; and (c) it can assert a colorable federal defense. *Goncalves ex rel. Goncalves v. Rady Child.'s Hosp. San Diego*, 865 F.3d 1237, 1244 (9th Cir. 2017) (internal citations omitted).[9] Defendants have not addressed any hardship that would be cognizable under *Nken* nor injury to others that would occur in the absence of a stay. Finally, the district court agreed with Plaintiff that the public interest favored continuing with the litigation to abate an ongoing public health crisis to which Defendants are alleged to have contributed. Defendants did not, at this stage in the litigation, attempt to counter Plaintiffs' arguments based on *Nken*. Accordingly, the district court did not abuse its discretion in denying Defendants' motion for a stay pending appeal. *Nken*, 556 U.S. at 434; *In re PG&E Corp.*, 100 F.4th at 1083.

* * *

Defendants asked this Court to rule first and as quickly as possible on their request to stay the lower court proceedings pending review of their federal officer removal arguments. Having done so, we affirm that *Nken*, and not *Coinbase*, provides the proper standard for assessing Defendants' request for a stay of the state court proceedings. "[T]he Supreme Court's decision in *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." *City of*

[9] Our forthcoming opinion will discuss the merits of Defendants' federal officer removal arguments and the viability of Plaintiff's disclaimer in greater depth.

Martinsville, Virginia v. Express Scripts, Inc., 128 F.4th 265, 275 (4th Cir. 2025) (Wynn, J., dissenting). We agree. Accordingly, we affirm the district court's denial of the motion to stay.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:23-cv-08570-SPG-PD

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

Plaintiff,

v.

EXPRESS SCRIPTS, Inc., at al.,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND [ECF NO. 32]

Before the Court is Plaintiff the People of the State of California's motion to remand to the Superior Court of California for the County of Los Angeles. (ECF No. 32). Having considered the parties' submissions, the relevant law, the record in this case, and the arguments of counsel during the hearing on the motion, the Court **GRANTS** Plaintiff's Motion and remands this Action to Los Angeles County Superior Court for all further proceedings.

I. BACKGROUND

On August 30, 2023, Plaintiff the People of the State of California, acting by and through Los Angeles County Counsel Dawyn R. Harrison, filed a

complaint in the Superior Court of California for the County of Los Angeles ("LASC") against Defendants Express Scripts, Inc., et al. (ECF No. 1-1 ("Compl.")). Plaintiff brings a single cause of action for public nuisance under California Civil Code Sections 3479 and 3480. (*Id.* ¶¶ 260-273). Very generally, Plaintiff alleges that Defendants engaged in knowingly unreasonable and/or unlawful conduct that substantially contributed to the opioid epidemic in California. Plaintiff claims that Defendants colluded with opioid manufacturers to increase sales by giving the manufacturers' opioids preferred status on their formularies and refusing to place limits on their approval for use in exchange for receiving rebate and fee payments. (*Id.* ¶¶ 16, 27-28, 100, 269-271). Additionally, Plaintiff claims that Defendants assisted manufacturers by engaging in misleading opioid marketing efforts and operating mail order pharmacies that dispensed opioids for prescriptions written by high-volume prescribers, despite Defendants knowing that these prescriptions were not being written for medically legitimate purposes. (*Id.* ¶¶ 30, 46-47, 51, 53, 60, 97, 110, 220-222, 226-229, 269).

On October 11, 2023, Defendants timely removed this action from LASC based on federal question jurisdiction, including federal officer jurisdiction under 28 U.S.C. § 1442(a). (ECF No. 1). On November 10, 2023, Plaintiff timely moved to remand. (ECF No. 32 ("Mot.")). Defendants opposed on December 6, 2023. (ECF No. 35 ("Opp.")). On December 20, 2023, Plaintiff replied. (ECF No. 37 ("Reply")).

II. LEGAL STANDARD

The "[f]ederal courts are courts of limited jurisdiction." *Corral v. Select Portfolio Servicing, Inc.*, 878 F.3d 770, 773 (9th Cir. 2017) (internal citation omitted). Therefore, a removing party must demonstrate that an action falls within the categories of federal subject matter jurisdiction to avoid remand. *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 33–34 (2002). Congress has provided that the federal "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "The general rule, referred to as the 'well-pleaded complaint rule,' is that a civil action arises under federal law for purposes of § 1331 when a federal question appears on the face of the complaint." *City of Oakland v. BP PLC*, 969 F.3d 895, 903 (9th Cir. 2020) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)).

However, another such basis for removal arises for federal officers, who are permitted to remove civil actions filed against them in state court if "the United States or any agency thereof or any officer (or any person acting under that officer)" is sued "in an official or individual capacity, for or relating to any act under color of such office . . . ." 28 U.S.C. § 1442(a)(1). While § 1442 is colloquially described as "federal officer removal," as the statute explains, it may also extend to private persons under certain circumstances. *Id.*

To remove an action to federal court pursuant to federal officer jurisdiction under 28 U.S.C. § 1442(a)(1), a private person must establish: "(a) it is a person within the meaning of the statute; (b) there is a causal nexus between its actions, taken pursuant

to a federal officer's directions, and [the] plaintiff's claims; and (c) it can assert a colorable federal defense." *Cnty. of San Mateo v. Chevron Corp.*, 32 F.4th 733, 755 (9th Cir. 2022) (hereinafter "*Mateo III*") (citing *Riggs v. Airbus Helicopters, Inc*., 939 F.3d 981, 986–87 (9th Cir. 2019)). To establish a sufficient causal nexus, a private person must demonstrate "(1) that the person was 'acting under' a federal officer in performing some 'act under color of federal office,' and (2) that such action is causally connected with the plaintiff's claims against it." *Id.* (citing *Goncalves ex rel. Goncalves v. Rady Child.'s Hosp. San Diego*, 865 F.3d 1237, 1244–50 (9th Cir. 2017)). Federal courts are generally directed to interpret § 1442 broadly in favor of removal. *Goncalves*, 865 F.3d at 1244. However, Defendants seeking removal "still bear the burden of proving by a preponderance of the evidence that the colorable federal defense and causal nexus requirements for removal are factually supported." *Saldana v. Glenhaven Healthcare LLC*, 27 F.4th 679, 684 (9th Cir. 2022) (quoting *Lake v. Ohana Mil. Cmtys., LLC*, 14 F.4th 993, 1000 (9th Cir. 2021).

III. DISCUSSION

Plaintiff challenges Defendants' arguments for removal on two bases. First, there is no federal question jurisdiction in this Action because Plaintiff raises a state law claim that does not require resolution of a federal question. (Mot. at 7). Second, federal officer removal does not apply because Plaintiff's nuisance claim does not address the administration of federal health plans. (*Id.* at 23).

A. Federal Question Jurisdiction

In determining whether federal question removal is proper, the Ninth Circuit has held that "[a]n action arises under federal law only if federal law 'creates the cause of action' or 'a substantial question of federal law is a necessary element.'" *Coeur d'Alene Tribe v. Hawks*, 933 F.3d 1052, 1055 (9th Cir. 2019) (quoting *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1383 (9th Cir. 1988)). Where federal law does not create the cause of action, federal question jurisdiction will lie only where "a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013). "'When a claim can be supported by alternative and independent theories—one of which is a state law theory and one of which is a federal law theory—federal question jurisdiction does not attach because federal law is not a necessary element of the claim.'" *State of Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 675 (9th Cir. 2012) (quoting *Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 346 (9th Cir. 1996)).

Here, Plaintiff's cause of action arises under California law. (Compl. ¶¶ 260-273). The question in dispute is, therefore, whether Plaintiff's claim requires resolution of a federal issue. Defendants argue that "whether the Removing Defendants owed and breached duties under the" federal Controlled Substances Act (CSA) is "necessarily raised by Plaintiff's public nuisance claim. (Opp. at 27). Plaintiffs disagree, arguing that (1) the CSA does not provide a federal cause of action, and (2) violation of the CSA is not

necessary to prove their public nuisance claim under California law. (Mot. at 19). The Court here agrees with Plaintiff.

Plaintiff's complaint asserts a single cause of action for public nuisance under California Civil Code Sections 3479 and 3480. (*Id.* ¶¶ 260-273). In removing the case, Defendants rely on the Complaint's references to the federal CSA. For instance, Defendants reference Plaintiff's allegation that ". . . Defendants are part of the closed system and are required to comply with the provisions of the federal Controlled Substances Act ("CSA") and its implementing regulations and California law, including the California Uniform Controlled Substances Act (CA Health and Safety Code, Division 10)." (Compl. ¶ 215). Additionally, Plaintiff alleges "[a]s dispensers of opioids, ESI and OptumRx were required to ensure that adequate safeguards were in place to dispense opioids in a safe and effective manner, provide effective controls and procedures to deter and detect theft and diversion, and comply with federal controlled substances laws, such as the requirement to maintain effective controls against diversion. *See, e.g.,* 21 U.S.C. 801, *et seq*., CA Health and Safety Code, Division 10, Uniform Controlled Substances Act. ESI and OptumRx failed to meet these obligations." (*Id.* ¶ 217).

As an initial matter, Plaintiff is correct to note that the CSA does not provide a federal cause of action. *United States v. Real Prop. & Improvements Located at 1840 Embarcadero, Oakland, California*, 932 F. Supp. 2d 1064, 1072 (N.D. Cal. 2013) (collecting cases on this point). Thus, if there is federal question jurisdiction in this case, then the Court must look to the four-factor test for determining whether a federal

court may exercise federal question jurisdiction over a state law claim. *Gunn v. Minton*, 568 U.S. 251, 258 (2013). Because a federal issue is not "necessarily raised" in this case, the Court declines to exercise federal question jurisdiction.

A federal issue is necessarily raised when the issue is "pivotal" to the case. *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 675 (9th Cir. 2012). Defendants argue that Plaintiff's state law claim necessarily raises a federal question because "Plaintiff's claim against the Removing Defendants requires it to establish that the Removing Defendants breached duties under federal law by failing to prevent diversion and report suspicious prescribers." (ECF No. 1 at 25). Plaintiff responds that they do not have to prove a federal CSA violation to prove their public nuisance claim for two reasons. First, "California law does not require the People to prove violation of *any* statute or regulation to prove public nuisance." (Mot. at 19). Second, "even to the extent that unlawful conduct may be relevant to the People's public nuisance claim, the People still need not prove violations of the federal CSA." *Id.* at 20.

Here, the Court agrees with Plaintiff that even to the extent that the unlawful conduct may be relevant to the public nuisance claim, Plaintiff does not need to prove violations of the federal CSA to prevail on the public nuisance claim. This is so because California law independently requires retail pharmacies to maintain effective controls against diversion of the controlled substances they dispense, Cal. Health and Safety Code § 11106(d)(3), including by reasonably ensuring that the prescriptions they fill are issued for legitimate medical purposes during professional treatment. Cal. Health and Safety Code

§ 11153(a); 16 Cal. Code Reg. § 1761(b). Thus, the Court agrees with Plaintiff that a federal issue is not necessarily raised because Plaintiff can prevail on its public nuisance claim by reference to duties imposed by California law alone.

Additionally, even if Plaintiff relies on federal law to establish Defendants' duty—as elements of a common law public nuisance claim—it does not necessarily create a federal question. As the Supreme Court has held, "[a] complaint alleging violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim "arising under the Constitution, laws, or treaties of the United States." *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 817 (1986). The Supreme Court there reasoned that Congress's choice to provide "no federal remedy for the violation of this federal statute is tantamount to a congressional conclusion that the presence of a claimed violation of the statute as an element of a state cause of action is insufficiently 'substantial' to confer federal-question jurisdiction." *Id.* at 814.

Accordingly, the CSA is not proper grounds for the removal of this action. Unless removal was appropriate pursuant to the federal officer removal statute, remand is warranted.

B. Federal Officer Removal

Plaintiff next argues that its public nuisance claim in the Complaint did not address the administration of federal health plans. (Mot. 23). Because the Complaint does not address this issue, the three elements of federal officer removal are wholly inapplicable since "the People did not at the time of

removal (and still do not) raise any claim addressing Defendants' administration of federal health plans." (*Id.* at 24). Second, Plaintiff argues that its post-removal Amended Complaint makes explicit that their "state-law public nuisance claim does not address Defendants' administration of federal government health care plans." (*Id.* at 27).

By contrast, Defendants argue that "Express Scripts is entitled to remove this case under the federal officer removal statute, 28 U.S.C. § 1442(a)(1), because Plaintiff seeks to hold Express Scripts liable for actions it is required to perform at the direction and supervision of the federal government. Pursuant to a contract with the U.S. Department of Defense (DoD), Express Scripts PBM provides formulary services and other PBM services to the DoD health care program known as TRICARE . . . ." (ECF No. 1 at 4). Likewise, OptumRx is entitled to remove this Case based on its PBM contract with the federal Veterans Health Administration (VHA)." (*Id.* at 5).

To remove an action to federal court pursuant to federal officer jurisdiction under 28 U.S.C. § 1442(a)(1), a private person must establish: "(a) it is a person within the meaning of the statute; (b) there is a causal nexus between its actions, taken pursuant to a federal officer's directions, and [the] plaintiff's claims; and (c) it can assert a colorable federal defense." *Mateo III*, 32 F.4th at 757.

Here, the Court finds two problems with Defendants' application of federal officer jurisdiction to this Case. First, the Ninth Circuit has found federal officer jurisdiction does not arise where a private person "enters into an arm's length business arrangement with the federal government or supplies it with

widely available commercial products or services." *Mateo III*, 32 F.4th at 757. Similarly, mere "compliance with the law (or acquiescence to an order) does not amount to acting under a federal official who is giving an order or enforcing the law." *Id*. This remains true "even if the regulation is highly detailed and even if the firm's activities are highly supervised and monitored." *Id.* (quoting *Watson v. Philip Morris Co., Inc.*, 551 U.S. 142, 151 (2007)). Given these limitations, courts may not interpret federal officer jurisdiction in a way that would "expand the scope of the statute considerably, potentially bringing within its scope state-court actions filed against private firms in many highly regulated industries." *Id.*

Here, Defendants' relationships with the federal government closely resemble the contractual relationships at issue in *Mateo III*. In *Mateo III*, the Ninth Circuit held that defendant energy companies were not acting under a federal officer where the plaintiffs' claims touched upon fuel supply and lease agreements with the federal government because these were arm's-length business arrangements, not the private performance of federal government functions. 32 F.4th at 757-8. By Defendants' own statement in this case, "DoD is statutorily obligated to contract with private entities and establish an 'effective, efficient, integrated pharmacy benefits program" for TRICARE members." (Opp. at 13). Although Express Scripts is contractually obligated to "establish and maintain a nationwide retail pharmacy network" in accordance with standards set by the DoD, nothing in Defendants' papers suggests that these contracts were anything but arm's-length business arrangements. The fact that the contracts track "highly detailed" regulations is inapposite for the question whether federal officer removal applies.

However, even if the contracts were *not* at arms-length, courts in the Ninth Circuit have recognized that when the federal officer removal statute is at issue, a plaintiff may expressly waive claims that would give rise to potential federal defenses. *See, e.g., Fisher v. Asbestos Corp.*, 2014 WL 3752020 (C.D. Cal. July 30, 2014); *Lockwood v. Crane Corp.*, 2012 WL 1425157 (C.D. Cal. Apr. 25, 2012). If the plaintiff does so, its waiver is "sufficient to eviscerate [a defendant's] grounds for removal." *Hukkanen v. Air and Liquid Systems Corporation*, 2017 WL 1217075. at *2 (C.D. Cal. March 31, 2017); *see also*, *People of the State of Calif. v. Eli Lilly and Co.*, No. 2:23-cv-01929-SPG-SK, 2023 WL 4269750, at *7 (C.D. Cal. June 28, 2023) ("Plaintiff's disclaimer, and later repeated waivers, negate any causal nexus that might otherwise have existed between Plaintiff's claims and the Removing Defendants' conduct on behalf of government officers."). Indeed, this is the case even if the waiver is submitted post-removal. *See Fisher v. Asbestos Corp. Ltd.*, No. 2:14-cv-02338-WGY (FEMx), 2014 WL 3752020, at *4 (C.D. Cal. Jul. 30, 2014) (crediting post-removal waiver in federal officer jurisdiction case).

Here, Plaintiff's Amended Complaint includes an explicit disclaimer. (ECF No. 31 ¶ 34) ("This lawsuit relates to the Defendants' conduct in the non-federal market which resulted in the increased use, abuse, and diversion of opioids. The allegations in this Complaint do not include and specifically exclude Defendants' provision of PBM or mail order pharmacy services pursuant to contracts with the Department of Defense, the Office of Personnel Management, the U.S. Department of Veteran Affairs, the Veterans Health Administration, or any other federal agency. . . .). Because an explicit disclaimer is

sufficient to "eviscerate" Defendants' grounds for removal, remand here is appropriate.

C. Stay of Execution

Lastly, Defendants request that the Court stay execution of the remand order or mailing the remand order to the state court for at least thirty days to preserve the Defendants' right to appeal, and then maintain the stay if the Defendants do appeal. (Opp. at 30). The Court declines this request for the following reasons.

District courts possess discretionary power to stay a case. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). However, in the context of a stay pending appeal, district courts apply a standard akin to the standard for a preliminary injunction. *See Lair v. Bullock*, 697 F.3d 1200, 1203 n.2 (9th Cir. 2012). Specifically, courts consider the following: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparable injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Golden Gate Rest. Ass'n v. Cnty. of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008) (internal citation omitted). In the Ninth Circuit, these factors operate like a "sliding scale," such that "if there is a probability or strong likelihood of success on the merits, a relatively low standard of hardship is sufficient." (*Id.* at 1116-19) (internal citations omitted). By contrast, "if the balance of hardships tips sharply in favor of the party seeking the stay, a relatively low standard of likelihood of success on the merits is sufficient." (*Id.* at 1119) (internal citations omitted).

Looking at these factors, the Court concludes a stay is not warranted here. Defendants have not made a strong showing that they are likely to succeed on the merits, for the same reasons highlighted above. Nor have the Defendants addressed any possible hardship in their moving papers. Meanwhile, Plaintiff argues that the harm to the public interest from the delay is great, since the "public nuisance the People seek to abate is an ongoing public health crisis of unprecedented dimensions." (Reply at 19). In light of this and the above, the factors weigh against a stay.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Remand is **GRANTED**. This action is **REMANDED** to the Los Angeles County Superior Court.

IT IS SO ORDERED.

Dated: February 28, 2024

/s/ Sherilyn Peace Garnett
HON. SHERILYN PEACE GARNETT
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed: Aug. 29, 2025]

No. 24-1972

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

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

Plaintiff - Appellee,

v.

EXPRESS SCRIPTS, INC.; et al.,

Defendants - Appellants,

and

EXPRESS SCRIPTS
ADMINISTRATORS, LLC; et al.,

Defendants.

ORDER

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

The panel has voted to deny the petition for panel rehearing and to deny the petition for rehearing en banc.

The full court has been advised of the petition for rehearing and rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing and the petition for rehearing en banc are DENIED (Doc. 61).

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 com— mitted, 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, includeing 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.