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High Court Cert Spotlights Varying Tests For Federal Removal

By **Varun Aery** (July 25, 2025, 4:41 PM EDT)


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On June 16, the U.S. Supreme Court granted certiorari in Chevron USA Inc. v. Plaquemines Parish, a petition appealing a U.S. Court of Appeals for the Fifth Circuit decision regarding whether corporate defendants may remove state cases to federal court pursuant to the federal officer removal statute.[1]

A divided Fifth Circuit panel ruled 2-1 that while the defendants had "acted under" federal authority, their charged conduct did not "relate to" their federal contracts, which was necessary for removal.[2]

The Supreme Court's decision is expected to resolve a key circuit split surrounding the statute's "relating to" prong. However, as discussed below, important considerations also exist for when corporate defendants "act under" federal authority.

Title 28 of the U.S. Code, Section 1442, the federal removal statute, is intended to shield private parties acting pursuant to the federal government's direction from being sued in state court, by allowing them to remove to a neutral federal forum.[3]

A defendant seeking removal must show that it: (1) acted under federal authority; (2) carried out the alleged conduct relating to the federal authority; and (3) will assert a colorable federal defense.

Notably, if one defendant successfully removes under this statute, the entire action with all defendants must be removed to federal court, regardless of whether other defendants consent to removal.[4]

In recent months, four federal circuits have examined removal disputes under the statute's first two prongs, each offering key insights to corporate defendants seeking to exercise their removal rights.

Government of Puerto Rico v. Express Scripts Inc.

On Oct. 18, 2024, in Government of Puerto Rico v. Express Scripts Inc., the U.S. Court of Appeals for the First Circuit rejected a plaintiff's attempt to prevent federal officer removal through a disclaimer. The plaintiff sued insulin drug manufacturers and a pharmaceutical benefit manager in the Commonwealth of Puerto Rico Court of First Instance, alleging they jointly sought to inflate insulin drug prices.[5]

The PBM removed the state case to the U.S. District Court for the District of Puerto Rico, based on its

contractual obligations to provide health-insurance benefits to federal employees, including those who purchase insulin.[6]

The district court, however, granted the plaintiff's motion to remand the case to state court, because the plaintiff's complaint explicitly disclaimed "relief relating to any federal program ... or any contract related to a federal program."[7]

The First Circuit reversed, noting that there are two types of disclaimers: express disclaimers that properly "eliminate any basis for federal officer removal" and "artful pleading" that improperly thwarts a defendant's removal rights.[8] The latter, the court said, are not credible.[9]

The plaintiff's disclaimer fell into the second category, because it directly contradicted the defendant's theory of removal that its services to federal employees were "indivisible from ... services for private entities," and under the statute, courts must credit the defendant's theory.[10]

To that end, the PBM had adequately alleged that it "performed the charged conduct on behalf of a federal officer," satisfying the "acting under" prong.[11]

Maryland v. 3M Co.

On March 7, the U.S. Court of Appeals for the Fourth Circuit issued a similar opinion in Maryland v. 3M Co., when it held that plaintiffs may not circumvent federal officer removal by bifurcating related actions.

Maryland and South Carolina filed two suits each against 3M Co. over alleged per- and polyfluoroalkyl substances contamination.[12] One complaint pertained to 3M's consumer products, while the other focused on 3M's production of aqueous film-forming foam, or AFFF, for the U.S. military.

3M removed all four lawsuits on federal officer grounds, maintaining that any PFAS from 3M's consumer products was "indistinguishably commingled with the PFAS from 3M's Military AFFF."[13]

The U.S. District Court for the District of Maryland and the U.S. District Court for the District of South Carolina disagreed. Both remanded the consumer products actions back to state courts, finding that Maryland and South Carolina expressly disclaimed any connection to 3M's military AFFF in their bifurcated litigation.[14]

The Fourth Circuit reversed, noting the states could not "immunize their complaints" from removal for two reasons.

First, under the statute, a plaintiff "is no longer the master of its complaint" such that it can preclude removal "merely because the complaint is glossed only in state law."[15] Instead, courts examine the defendant's removal papers to assess whether the defendant properly removed the state action to federal court.[16]

Second, as the First Circuit held, federal courts "must credit a removing defendant's theory" of removal; courts cannot "blindly accept" a plaintiff's position.[17]

Focused on the "relating to" prong, the Fourth Circuit determined that 3M's charged conduct sufficiently related to delegated federal authority because "any remediation would necessarily implicate work that

3M did for the federal government."[18]

Notably, the Fourth Circuit, like the majority of federal circuits, utilizes a lenient standard for assessing this prong.[19] Meanwhile, the June petition seeking to review the Fifth Circuit opinion alleges that the Fifth Circuit has "put itself in a class of one by adopting a particularly demanding sub-variant of the discarded causal-nexus test," which requires a causal connection between the charged conduct and the asserted federal authority.[20]

Mohr v. Trustees of the University of Pennsylvania

While the First and Fourth Circuit opinions highlight the utility of the statute, a U.S. Court of Appeals for the Third Circuit opinion notes its limitations, potentially creating a controversy.

In Mohr v. Trustees of the University of Pennsylvania, patients of a state university hospital sued the university's trustees for violating state privacy laws because the hospital reportedly shared their sensitive health information kept in online patient portals with Facebook.

The trustees removed, arguing that the hospital was acting under federal authority because federal Medicare regulations incentivize healthcare providers to operate and maintain patient portals to ensure patients have access to their health information.

In its Feb. 21 ruling, the Third Circuit disagreed, holding that "simply because a private party has a contractual relationship with the federal government does not mean that it is acting under that federal authority."[21] The trustees needed to show, for example, that the hospital was operating the patient portals on behalf of the government to remove under federal officer grounds.[22]

Takeaways

These recent cases offer important considerations to corporate defendants seeking to remove state cases to federal court on federal officer grounds.

First, defendants, not plaintiffs, are the masters of removal actions. Courts must credit the defendant's theory of removal, which, as the Fourth Circuit said in Maryland v. 3M Co., need not be "airtight ... on the merits."[23] Instead, a defendant need only "plausibly [allege] that its charged conduct was related to its federal work."[24]

Second, defense counsel should challenge pleading provisions that amount to anything less than an express disclaimer of federal officer jurisdiction, including attempts to bifurcate state law claims, which may effectively be a tactic to undermine the defendant's removal rights.

As the First Circuit explained in Government of Puerto Rico, plaintiffs often incorporate disclaimers into their complaints simply to block removal and keep their cases in state court.[25]

Third, federal officer removal exists where a corporate defendant is carrying out a delegated governmental duty.[26] Corporate defendants need to show in their removal papers either that the government directed their activities or that they offered services that the government would otherwise perform itself.[27]

Unlike removal based on federal question or diversity jurisdiction, a corporate defendant need not

obtain the consent of all defendants to remove a state case to federal court. Federal officer jurisdiction authorizes a single defendant to remove an entire action, even if only one of the claims against the removing defendant involve delegated federal officer duties.[28]

Finally, defense counsel should monitor how the Supreme Court resolves the Plaquemines Parish case in the next term. Should the court adopt the stricter causal nexus standard, or some variant, defendants will encounter additional hurdles when removing to federal court.

By contrast, embracing the lenient standard recognized by the majority of federal circuits will expand defendants' removal rights, allowing greater access to federal courts.

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[1] Plaquemines Par. v. BP Am. Prod. Co., 103 F.4th 324 (5th Cir. 2024), cert. granted sub nom. 2025 WL 1678985 (U.S. June 16, 2025) (No. 24-813).

[2] Plaquemines Par. v. BP Am. Prod. Co., 103 F.4th 324, 335, 340-41 (5th Cir. 2024).

[3] Gov't of Puerto Rico v. Express Scripts Inc., 119 F. 4th 174, 184 (1st Cir. 2024).

[4] Id. at 185.

[5] Id. at 179.

[6] Id. at 183.

[7] Id. at 189.

[8] Id. at 187-188 (emphasis in original).

[9] Id. at 187.

[10] Id. at 189.

[11] Id.

[12] Maryland v. 3M Co., 130 F. 4th 380 (4th Cir. 2025).

[13] Id. at 386.

[14] Id. at 386-87.

[15] Id. at 389.

[16] Id.

[17] Id.

[18] Id. at 390.

[19] Petition for Writ of Certiorari, Chevron U.S.A. Inc. v. Plaquemines Parish (No. 24-813), at 24 (collecting cases).

[20] Id. at 27.

[21] Mohr, 93 F. 4th at 106.

[22] Id. at 105.

[23] Maryland, 130 F. 4th at 390 (quoting Jefferson Cnty., Ala. v. Acker, 527 U.S. 423, 432 (1999)).

[24] Id.

[25] Gov't of Puerto Rico, 119 F. 4th at 187.

[26] Mohr, 93 F. 4th at 105.

[27] Compare Gov't of Puerto Rico, 119 F. 4th at 183 (government-mandated contractual provisions warrant removal) with Mohr, 93 F. 4th at 105 (participating in government-funded programs does not).

[28] Gov't of Puerto Rico, 119 F. 4th at 182, 185; Maryland, 130 F. 4th at 389-90.