No. 19-1189

IN THE
Supreme Court of the United States

BP P.L.C., ET AL., PETITIONERS

v.

MAYOR & CITY COUNCIL OF BALTIMORE, RESPONDENT

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

BRIEF OF RESPONDENT MAYOR & CITY COUNCIL OF BALTIMORE IN OPPOSITION

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QUESTION PRESENTED

Whether 28 U.S.C. § 1447(d) allows a defendant to obtain appellate review of all otherwise unreviewable jurisdictional grounds for a district court's remand order by including federal-officer jurisdiction (28 U.S.C. § 1442) or civil-rights jurisdiction (28 U.S.C. § 1443) among the grounds for removal.

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I. JURISDICTION

The court of appeals entered judgment on March 6, 2020. No party sought rehearing. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

II. STATUTORY PROVISION INVOLVED

Section 1447(d) of Title 28 of the United States Code states:

> 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.

III. STATEMENT

The Mayor and City Council of Baltimore ("City" or "Baltimore") filed the underlying lawsuit against Petitioner oil and gas companies in Maryland state court under Maryland law. Petitioners removed, and the district court remanded for lack of federal subject-matter jurisdiction, rejecting all eight grounds for removal asserted by Petitioners. After this Court denied a stay of remand pending appeal, *Mayor and City Council of Baltimore v. BP p.l.c.*, No. 19A368, 140 S. Ct. 449 (mem.) (2019), the Fourth Circuit, applying decades-old circuit precedent that is consistent with decisions of eight of the nine circuits that have addressed the issue, held that 28 U.S.C. § 1447(d) precluded appellate jurisdiction over any challenge to the district court's remand order, except Petitioners' challenge based on the federal-officer

removal statute, 28 U.S.C. § 1442. The court then affirmed the district court's ruling that there was no basis for federal-officer jurisdiction.

This identical issue—the limited scope of appellate review of remand orders under 28 U.S.C. § 1447(d)—was recently decided in the same manner by the Ninth Circuit. The court concluded that its construction, like the Fourth Circuit's, was consistent with the nearly "unanimous judicial interpretation of § 1447(d) as permitting review of only the grounds for removal identified in [its] exception clause," i.e., federal-officer removal. *See Cty. of San Mateo v. Chevron Corp.*, 960 F.3d 586, 597 (9th Cir. 2020) (Ikuta, J.).

Less than one year ago, this Court denied certiorari in another Fourth Circuit case raising the identical question presented. *Rheinstein v. Att'y Grievance Comm'n of Md.*, 140 S. Ct. 226 (2019) (mem.). The issue in *Rheinstein*, as here, was whether on appeal from an order remanding a case to state court for lack of subject-matter jurisdiction, Section 1447(d) authorizes appellate courts to review any jurisdictional grounds for removal rejected in the remand order other than federal-officer jurisdiction. Petition for Writ of Certiorari, *Rheinstein v. Att'y Grievance Comm'n of Md.*, 140 S. Ct. 226 (2019) (No. 19-140), 2019 WL 3496290. The Petition in this case raises the same arguments as the petition in *Rheinstein*. The only relevant change since last Term is that two more published appellate decisions (this case and the Ninth Circuit's decision in *County of San Mateo,* 960 F.3d 586) have reaffirmed the prevailing view and have ruled that Petitioners' contrary interpretation is incorrect. This Court should again deny certiorari.

There are three principal reasons why, as in *Rheinstein*, this Court should deny the Petition.

First, the purported circuit split identified by Petitioners is insignificant at best. Before 2015, "every circuit court that had addressed this issue agreed" that Congress intended Section 1447(d) to limit appellate judicial review of remand orders to the specific grounds listed in its exception clause. *Cty. of San Mateo*, 960 F.3d at 597 (collecting cases). The Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, and Eleventh circuits have each issued published, precedential, decisions reaching that same conclusion based on the plain text and evident purposes of Section 1447(d). The Tenth Circuit reached the identical conclusion in an unpublished decision, *Sanchez v. Onuska*, 2 F.3d 1160 (Table), No. 93–2155, 1993 WL 307897 (10th Cir. Aug. 13, 1993), and the Tenth and First Circuits are considering that issue in *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.) Inc.*, 405 F. Supp. 3d 947, 975–78 (D. Colo. 2019), *appeal docketed*, No. 19-1330 (10th Cir. Sept. 9, 2019) and *Rhode Island v. Chevron Corp.,* 393 F. Supp. 3d 142 (D.R.I. 2019), *appeal docketed*, No. 19-1818 (1st Cir. Aug. 20, 2019), respectively, in factual and procedural contexts nearly identical to this case and *County of San Mateo*.

Only the Seventh Circuit has issued a published decision containing any analysis that construed Section 1447(d) differently. *See Lu Junhong v. Boeing Co.*, 792 F.3d 805 (7th Cir. 2015). The Seventh Circuit has not had occasion since *Lu Junhong* to revisit or apply its analysis. While two other appellate opinions from the Fifth and Sixth Circuits followed *Lu Junhong* in limited respects, neither

independently analyzed the Section 1447(d) issue. It is questionable whether those cases have precedential value, moreover, as they are inconsistent with, and in some instances ignore, other cases from those same circuits that adhere to the prevailing view. *See infra* pp. 15–19. A single outlier opinion from the Seventh Circuit and two cases of questionable import from the Fifth and Sixth Circuits that follow it without any independent analysis do not demonstrate a real or substantial split of authority sufficient to warrant certiorari review.

Second, the issue raised by Petitioners is not likely to recur with any frequency. The recent or still-pending cases cited by Petitioners that raise or potentially raise that issue involve these same Petitioners (or a subset of them) in similar lawsuits brought by public entities under similar state law tort theories. Thus far, no circuit court has departed from the Fourth and Ninth Circuits in its treatment of Petitioners' Section 1447(d) arguments. Other than those similar cases, there is no commonly recurring scenario in which this limited, technical issue of appellate jurisdiction arises.[1]

[1] Petitioners narrowly limit their current petition to a single issue concerning the meaning of 28 U.S.C. § 1447(d). They do not seek review of the Fourth Circuit's rejection of federal-officer jurisdiction as a ground for removal under 28 U.S.C. § 1442 on the merits. Nor do they challenge the standard the Fourth Circuit applied in reaching that conclusion. Petitioners' strategic decision is understandable, because every court that has considered the federal-officer question in the context of other public climate change related litigation against Petitioners and other oil and gas companies has similarly concluded that those companies are not entitled to removal under Section 1442. *See, e.g*, Pet. 14a–30a; *Cty. of San Mateo*, 960 F.3d at 597–603; *Bd. of Cty. Comm'rs of Boulder Cty.*, 405 F. Supp. 3d at 975–78; *Rhode Island v. Chevron Corp.,* 393 F. Supp. 3d at 152; *Massachusetts v. Exxon Mobil Corp.*, No. 19-12430-WGY, 2020 WL 2769681, at *12 (D. Mass. May 28, 2020).

Third, the Fourth Circuit's interpretation of Section 1447(d), shared by almost every circuit to address the issue, is consistent with the statutory text and strict limitations Congress has historically placed on appellate review of remand orders. The only exceptions Congress has carved out from the otherwise absolute statutory bar on appellate review, outside of the class action context,[2] are for removals based on the federal civil-rights removal statute, 28 U.S.C. § 1443, in 1964, and the federal-officer removal statute, 28 U.S.C. § 1442, in 2011. Section 1447(d) plainly states that only "an order remanding a case . . . pursuant to section 1442 or 1443 of this title" is reviewable, meaning that only the district court's command with respect to one or both of those sections is reviewable.

When Congress amended Section 1447(d) in 2011 to add the federal officer exception, it "did not give any indication that it intended to overrule the then-unanimous interpretation of § 1447(d) as limiting judicial review of a remand order to the grounds listed in the exception clause." *Cty. of San Mateo*, 960 F.3d at 597. "[R]ather[, it] intended to incorporate [the circuit courts' unanimous] interpretation of § 1447(d)." *Id.* (original alterations omitted) (citation omitted). There is no reason why this Court should grant certiorari to review the Fourth Circuit's correct analysis of this infrequently arising issue.

[2] Under 28 U.S.C. § 1453, an appellate court "may accept an appeal from an order of a district court granting or denying a motion to remand a class action," notwithstanding Section 1447(d).

IV. FACTUAL AND PROCEDURAL BACKGROUND

1. The City filed its complaint on July 20, 2018, in Maryland state court, alleging eight claims under Maryland law against Petitioners and five other defendants. The City alleges Defendants have known for decades about the direct link between fossil fuel use and global warming, yet engaged in a coordinated campaign to conceal that knowledge; to discredit the growing body of scientific evidence documenting the catastrophic future impacts of fossil-fuel-triggered climate change; and to promote continued and expanded use of their products without providing warnings about these known dangers. The City asserted common law claims for public and private nuisance; trespass; strict liability for design defect and failure to warn; and negligent design defect and failure to warn; and one statutory claim under the Maryland Consumer Protection Act, Md. Code, Com. Law §§ 13-101–13-501.

2. Petitioners removed the case to the United States District Court for the District of Maryland on July 31, 2018, asserting eight different theories of subject-matter jurisdiction: (1) that Baltimore's state law claims are "governed by" federal common law under *American Electric Power Co. v. Connecticut*, 564 U.S. 410 (2011); (2) that Baltimore's claims raise disputed and substantial issues of federal law that must be adjudicated in a federal forum under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005); (3) that Baltimore's claims are completely preempted by the Clean Air Act, 42 U.S.C. §§ 7401–7671q, and/or

other federal statutes and the Constitution; and that removal jurisdiction is provided by (4) the Outer Continental Shelf Lands Act, 43 U.S.C. § 1349(b); (5) the federal-officer removal statute, 28 U.S.C. § 1442(a)(1); the alleged relation between Baltimore's claims and (6) federal enclaves; (7) prior bankruptcy proceedings, 28 U.S.C. §§ 1334(b), 1452(a); and (8) admiralty jurisdiction. Baltimore moved to remand.

3. On July 10, 2019, the district court granted Baltimore's remand motion, rejecting each of Petitioners' stated grounds for removal. With respect to federal-officer jurisdiction, the court held in relevant part that removal under Section 1442 was improper because Petitioners failed to show that their "charged conduct was carried out 'for or relating to' the alleged official authority." Pet. 70a. The court reasoned that Petitioners were "sued for their contribution to climate change by producing, promoting, selling, and concealing the dangers of fossil fuel products," and "ha[d] not shown that a federal officer controlled their total production and sales of fossil fuels, nor [that] there [was] any indication that the federal government directed them to conceal the hazards of fossil fuels or prohibited them from providing warnings to consumers." *Id.* The court further concluded that the "attenuated connection" between Petitioners' allegedly tortious conduct and anything done under "the asserted official authority" was insufficient to confer jurisdiction under the federal-officer removal statute. *Id.* at 70a–71a.

4. Petitioners sought a stay of remand pending appeal. The district court denied the stay on July 31, 2019, holding that under the Fourth Circuit's

longstanding precedent, and consistent with "the majority of other circuits [that] have reached the same conclusion," "when a case that was removed on several grounds is remanded, appellate jurisdiction of the remand extends only to those bases for removal that are reviewable." Pet. 89a. Turning to Petitioners' arguments concerning federal-officer jurisdiction, the only reviewable part of the remand order, the district court concluded that Petitioners "ha[d] not demonstrated a substantial likelihood of success on the merits of this issue, or even that removal of this case under the federal officer removal statute raises a complex, serious legal question," and thus denied the stay. *Id.* at 90a.

5. Petitioners next sought a stay pending appeal from the Fourth Circuit, which that court denied summarily on October 1, 2019. Pet. 95a–96a. That day, Petitioners filed an application for a stay pending appeal with Chief Justice Roberts, sitting as Circuit Justice for the Fourth Circuit. The application was referred to the full Court, which denied the application on October 22, 2019. *See BP p.l.c.*, 140 S. Ct. 449.

6. The Fourth Circuit affirmed the district court's remand order on March 6, 2020, holding in relevant part that "the only ground for removal that is made reviewable by § 1447(d) here is federal officer removal under § 1442." Pet. 7a. The court held that this Court's decision in *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199 (1996), "did not interpret the scope of § 1447(d), let alone involve a remand order" and did not "purport to establish a general rule governing the scope of appellate jurisdiction for every statute that uses [the word 'order']." *Id.* at 9a. The

Fourth Circuit further held that applying *Yamaha* "in the § 1447(d) context would mandate review of issues that are ordinarily unreviewable, period—even following a final judgment." *Id.*

V. REASONS TO DENY THE PETITION

A. The Purported Split of Authority Is Insubstantial and Does Not Merit Certiorari Review.

The Fourth Circuit's decision is consistent with a nearly unbroken line of circuit precedent construing 28 U.S.C. § 1447(d) as barring appellate review of remand orders. Those decisions were unanimous from the enactment of Section 1447(d) in 1949 until the Seventh Circuit's 2015 outlier decision in *Lu Junhong*, 792 F.3d 805, including after 2011, when Congress added federal-officer jurisdiction to civil-rights jurisdiction as the sole carve-outs from Section 1447(d) in the Removal Clarification Act of 2011, Pub L. No. 112-51, 125 Stat. 545 (2011). The only cases to have followed *Lu Junhong* have cited it without discussion and are inconsistent with their own circuits' case law. *See infra* pp. 15–19.

1. The Near-Unanimous Weight of Appellate Authority Holds That Section 1447(d) Prohibits Appellate Review of Any Ground for Federal Jurisdiction Other than 42 U.S.C. §§ 1442 or 1443.

From Congress's first codification of an exception to Section 1447(d)'s preclusion of appellate review in 1964 until the Seventh Circuit's decision in *Lu Junhong* in 2015, the eight circuit courts to consider the scope of appellate jurisdiction under that statute all reached the same conclusion: "[W]hen a case is removed on several grounds, appellate courts lack jurisdiction to review any ground other than the one specifically exempted from § 1447(d)'s bar on review." Pet. 7a. *Lu*

Junhong was the first decision to diverge from that consensus. In that case, the Seventh Circuit relied almost exclusively on *Yamaha*, which construed an entirely different statute that serves an entirely different purpose, ignoring the language, history, and policies of Section 1447(d) itself. *Lu Junhong* remains the sole outlier that offers any reasoning for adopting the position that Petitioners advocate. Given the near-unanimity of the courts of appeal in interpreting Section 1447(d), there is no meaningful conflict for this Court to resolve.

The most recent appellate decision on this issue is *County of San Mateo*, a similar case brought by public entities in California against many of the Petitioners here. 960 F.3d at 593–94. On an appeal from an order remanding the case, the *County of San Mateo* defendants argued, as Petitioners do here, that Section 1447(d) authorizes appellate review of all jurisdictional grounds asserted on removal rather than the federal-officer ground only, and that *Yamaha* and the Removal Clarification Act had abrogated the Ninth Circuit's prior holding in *Patel v. Del Taco, Inc.*, 446 F.3d 996 (9th Cir. 2006).[3] The Ninth Circuit rejected those arguments and agreed with the Fourth Circuit's analysis and opinion. The court noted *inter alia* that at the time of the Removal Clarification Act in 2011, "every circuit court that had addressed this issue agreed with our reading of § 1447(d)," and that "[a]lthough *Yamaha* was decided in 1996, no circuit court had applied *Yamaha* to § 1447(d) or discussed its

[3] The Ninth Circuit continued to apply the rule expressed in *Patel* well after *Yamaha* and the Removal Clarification Act. *See Clark v. Kempton*, 593 F. App'x 667, 668 (9th Cir. 2015); *Carter v. Evans*, 601 F. App'x 527, 528 (9th Cir. 2015); *McCullough v. Evans*, 600 F. App'x 577, 578 (9th Cir. 2015); *U.S. Bank Nat'l Ass'n v. Azam*, 582 F. App'x 710, 711 (9th Cir. 2014).

applicability in that context." *Cty. of San Mateo*, 960 F.3d at 597. Thus, when Congress amended Section 1447(d) to add a federal-officer exception in addition to the civil-rights exception, "it was against a backdrop of unanimous judicial interpretation of § 1447(d) as permitting review of only the grounds for removal identified in the exception clause." *Id.* The Ninth Circuit refused to presume that the 2011 amendments "overrule[d] the then-unanimous interpretation of § 1447(d)," because "Congress did not give any indication that it intended" to do so. *Id.*

The Second, Third, Fifth, Sixth, Eighth, and Eleventh Circuits have each adopted the same interpretation as the Fourth and Ninth Circuits in published opinions both before and after *Yamaha* and the Removal Clarification Act in 2011.[4]

- **Second Circuit**: *State Farm Mut. Auto. Ins. Co. v. Baasch*, 644 F.2d 94, 97 (2d Cir. 1981) (per curiam) ("Insofar as the appeal challenges denial of removal under [Section 1441(a)], it is dismissed for want of appellate jurisdiction. Insofar as it can be read as objecting to denial of removal under [Section 1443], the order is affirmed.").
- **Third Circuit**: *Davis v. Glanton*, 107 F.3d 1044, 1047 (3d Cir. 1997) (reviewing remand order as to Section 1443 and holding that "insofar as the [appellants'] appeal challenges the district court's rulings under [Section 1441], we must dismiss the appeal for want of appellate jurisdiction");

[4] As explained below in Section IV.A.2, three-judge panels in each of the Fifth and the Sixth Circuits have purported to follow *Lu Junhong* without reasoning or acknowledging that their decisions were inconsistent with their own long-standing precedent. Neither circuit has reviewed *en banc* their older authority adopting the majority position, which remain good law.

Pennsylvania ex rel. Gittman v. Gittman, 451 F.2d 155, 157 (3d Cir. 1971) (same); *see also Wilmington Sav. Fund Soc'y, FSB v. Velardi*, 803 F. App'x 572, 573 (3d Cir. 2020) (finding "jurisdiction to review the remand order to the extent [the defendant-appellant] asserted that removal was proper under § 1443," but not to the extent the appeal challenged other grounds for remand order); *Claus v. Trammell*, 773 F. App'x 103, 103 (3d Cir. 2019) (same); *Pennsylvania v. Carroll*, 764 F. App'x 134, 135 (3d Cir. 2019) (same).

- **Fifth Circuit**: *City of Walker v. Louisiana through Dep't of Transp. & Dev.*, 877 F.3d 563, 566 n.2, 567 n.4 (5th Cir. 2017) (reviewing remand order as to Section 1442 and Class Action Fairness Act but finding no appellate jurisdiction over "the entire remand order," noting "[t]his court has rejected similar arguments in the past"); *Robertson v. Ball*, 534 F.2d 63, 65 (5th Cir. 1976) ("As to the part of the remand order dealing with § 1441(b) removal, then, the appeal must be dismissed. The removal effected under § 1443 stands in a different posture, however." (citation omitted)); *see also Gee v. Texas*, 769 F. App'x 134, 134 (5th Cir. 2019) ("Where a party has argued for removal on multiple grounds, we only have jurisdiction to review a district court's remand decision for compliance with [Sections 1442 or 1443]."); *but see Decatur Hosp. Auth. v. Aetna Health, Inc.*, 854 F.3d 292 (5th Cir. 2017) (reviewing procedural defect in removal where removal jurisdiction premised in part on Section 1442).

- **Sixth Circuit**: *Detroit Police Lieutenants & Sergeants Ass'n v. City of Detroit*, 597 F.2d 566, 567–68 (6th Cir. 1979) (reviewing remand order as to Section 1443, but "conclud[ing] that, to the extent that removal is based upon Section 1441, the remand order of the district court is not reviewable on appeal"); *but see Mays v. City of Flint, Mich.*, 871 F.3d 437, 442 (6th Cir. 2017) (reviewing remand order as to removal under Section 1441 and 1442).
- **Eighth Circuit**: *Jacks v. Meridian Res. Co.*, 701 F.3d 1224, 1229 (8th Cir. 2012) ("[W]e do lack jurisdiction to review the district court's determination concerning the availability of federal common law to resolve this suit . . . . Nonetheless, we retain jurisdiction to review the district court's remand on the issue of whether the federal officer removal statute, [Section 1442(a)(1)], applies."); *Thornton v. Holloway*, 70 F.3d 522, 524 (8th Cir. 1995) (same regarding removal under Section 1443).
- **Eleventh Circuit**: *Alabama v. Conley*, 245 F.3d 1292, 1293 n.1 (11th Cir. 2001) (dismissing appeal to the extent it challenged remand order based on Sections 1441 and 1447(c), but retaining jurisdiction to determine whether removal based on Section 1443 was improper); *see also Dixit v. Dixit*, 769 F. App'x 879, 880 (11th Cir. 2019) (dismissing appeal in part because the court "lacked jurisdiction to review the district court's conclusion that it lacked diversity or federal question jurisdiction," and reviewing remand order only to extent remand was based on Section 1443); *State v. Weber*, 665 F. App'x 848, 851 (11th Cir. 2016) ("Where an appellant challenges a district court's

> remand order based on the court having removal jurisdiction under both §§ 1441 and 1443, . . . we dismiss the appeal to the extent it challenged the district court's remand order under § 1441.").

The Tenth Circuit has also reached this conclusion in an unpublished opinion, which held that where a defendant removes under Sections 1441 and 1443, "the portion of the remand order . . . concerning the § 1441(c) removal is not reviewable and must be dismissed for lack of jurisdiction." *Sanchez*, 1993 WL 307897, at *1. The Tenth Circuit is now considering that same issue in a briefed and argued case that is factually and procedurally analogous to the present case.[5]

2. The Few Cases That Have Diverged from the Near-Universal Construction of Section 1447(d) Are of Limited Precedential Value.

In contrast to the overwhelming weight of authority discussed above, only the Seventh Circuit in *Lu Junhong*, 792 F.3d 805, has issued a precedential decision that supports Petitioners' construction of Section 1447(d). The Seventh Circuit has had no occasion to revisit that decision since 2015.[6]

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[5] In *Board of County Commissioners of Boulder County,* 423 F. Supp. 3d 1066, the district court denied a motion to stay its prior remand order in a case involving climate-related injuries to public infrastructure, finding in relevant part that the oil and gas company defendants (including Petitioner Exxon Mobil Corp.) could only appeal the portion of its order rejecting the defendants' insubstantial assertion of federal-officer removal jurisdiction. The court "f[ound] it likely that the Tenth Circuit will follow the weight of authority and find that the only ground subject to appeal is federal officer jurisdiction under § 1442, consistent with its unpublished opinion in *Sanchez*." *Id.* at 1070. The Tenth Circuit has taken the *Boulder County* case under submission, following oral argument.

[6] Although the Seventh Circuit has cited *Lu Junhong* four times, none of those cases involved a dispute over the scope of appellate jurisdiction under Section 1447(d), and each of them would have been decided the same way under the prevailing view

In *Lu Junhong*, the Seventh Circuit held that when a lawsuit is removed pursuant to Section 1442 and later remanded, Section 1447(d) authorizes "appellate review of the *whole* order, not just of particular issues or reasons." 792 F.3d at 811. In reaching this conclusion, the Seventh Circuit relied on *Yamaha*, where this Court held that appellate jurisdiction under Section 1292(b) "applies to the order certified to the court of appeals, and is not tied to the particular question formulated by the district court." *Yamaha*, 516 U.S. at 205. Although *Yamaha* involved a materially different statutory scheme, the Seventh Circuit held that the case dictated its construction of Section 1447(d). *Lu Junhong*, 792 F.3d at 811.

Petitioners also cite *Mays v. City of Flint, Michigan*, 871 F.3d 437 (6th Cir. 2017), and *Decatur Hospital Authority v. Aetna Health, Inc.*, 854 F.3d 292 (5th Cir. 2017), in support of their purported circuit conflict. But those cases fall far short of establishing the "entrenched conflict on an important and frequently recurring question of federal law" that Petitioners describe. Pet. 4.

In *Mays*, the Sixth Circuit applied *Lu Junhong* with no analysis and a bare citation to *Lu Junhong*. 871 F.3d at 442. But *Mays* does not add to the split of authority for at least two reasons. First, the appellees there conceded in their statement of jurisdiction that all jurisdictional grounds asserted in the defendants' removal petition were reviewable on appeal because one of those grounds was federal-

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construing Section 1447(d) at issue here. *See Betzner v. Boeing Co.*, 910 F.3d 1010, 1014 (7th Cir. 2018); *Hammer v. U.S. Dep't of Health & Human Servs.*, 905 F.3d 517, 525 (7th Cir. 2018), *reh'g denied* (Nov. 21, 2018); *Panther Brands, LLC v. Indy Racing League, LLC*, 827 F.3d 586, 590 (7th Cir. 2016); *United States ex rel. Garbe v. Kmart Corp.*, 824 F.3d 632, 642 (7th Cir. 2016).

officer jurisdiction. Plaintiff-Appellees' Corrected Brief on Appeal, *Mays v. City of Flint, Mich.*, 871 F.3d 437 (No. 16-2484), 2017 WL 541950, at *1 (6th Cir. Feb. 1, 2017). Perhaps for that reason, the Sixth Circuit panel overlooked that circuit's own precedent in *Detroit Police Association*, 597 F.2d at 567–68, which applied the prevailing view and held that Section 1447(d) limits review to federal-officer and civil-rights grounds for jurisdiction only. Second, if this same question were to arise again in the Sixth Circuit, the new panel would be bound by the earlier *Detroit Police Association* decision. *See United States v. Reid*, 888 F.3d 256, 258 (6th Cir. 2018) (when a later decision of the court conflicts with a prior published decision, court is bound by the holding of the earlier case). *Mays* is thus of questionable validity and carries no precedential weight, even in the Sixth Circuit.

Petitioners also cite *Decatur Hospital Authority*, 854 F.3d 292, but that case arose in a unique procedural context and includes internally inconsistent language that the Fifth Circuit has since clarified to bring the circuit in line with the prevailing view. In *Decatur Hospital Authority*, the district court remanded on the ground that the defendant's notice of removal was untimely under 28 U.S.C. § 1447(c), without reaching the merits of federal subject-matter jurisdiction. The defendant appealed, contending that its removal was timely and that subject-matter jurisdiction was available under 28 U.S.C. §§ 1441 and 1442. The Fifth Circuit held that it had authority to consider the timeliness of removal because the defendant had included federal-officer jurisdiction under Section 1442 as one basis for removal. *Id.* at 296 (citing *Lu Junhong*, 792 F.3d at 812). But the court also stated, consistent with the

prevailing view, that an appellate court "cannot review a remand order (or a portion thereof) expressly based on a Section 1447(c) ground" (i.e., procedural defect or lack of subject-matter jurisdiction) unless that ground is "specifically exempt from Section 1447(c)'s bar." *Decatur Hosp. Auth.*, 854 F.3d at 296.

The court further stated that its holding was consistent with the earlier Fifth Circuit panel decision in *Robertson*, where the court had held that "the express invocation by the district court of the § 1447(c) grounds for remand of a removal [based on diversity] robs this court of any power 'through appeal or otherwise,' to review the merits of the remand order" except to the extent the order rejected an assertion of Section 1443 civil-rights jurisdiction. *Robertson*, 534 F.2d at 65. The court in *Decatur Hospital Authority* did not purport to overrule *Robertson* (nor could it have). To the contrary, it expressly relied on *Robertson*, although it reached an arguably anomalous result in holding that it could review a procedural defect under Section 1447(c) that was unrelated to Sections 1442 or 1443.

A more recent Fifth Circuit opinion, *City of Walker*, 877 F.3d 563 (5th Cir. 2017), explained that *Lu Junhong* was "in tension" with *Robertson*, and cited both *Robertson* and *Decatur Hospital Authority* for the proposition that the Fifth Circuit had "rejected . . . in the past" the argument that "the § 1447(d) exception for federal officer jurisdiction allows us to review the entire remand order." *Id.* at 569,

566 nn.2–3 (holding that defendant's separate invocation of federal-question jurisdiction was not reviewable).[7]

While there might have been some uncertainty about the Fifth Circuit's approach to the Question Presented before *City of Walker*, that uncertainty no longer exists. The Fifth Circuit's approach is consistent with the prevailing view: remand orders for lack of subject-matter jurisdiction may not be reviewed except to the extent they are expressly exempted from Section 1447(c)'s bar. There is no basis for concluding that the panel in *Decatur Hospital Authority;* or a subsequent Fifth Circuit panel, would decide the issue in the present case differently. *See also Gee v. Texas*, 769 F. App'x 134 ("Where a party has argued for removal on multiple grounds, we only have jurisdiction to review a district court's remand decision for compliance with [Sections 1442 and 1443]." (citing *City of Walker*, 877 F.3d at 566 n.2; *Robertson*, 534 F.2d at 65–66)).

For these reasons, there is no circuit split of any significance concerning the Question Presented. Nor does that Question Presented arise with sufficient frequency—except in the cluster of climate-change related cases being prosecuted by public entities against Petitioners and others, all of which thus far adopt the prevailing view—to warrant expenditure of this Court's time and resources on

[7] Petitioners appropriately concede that in *Decatur Hospital Authority* "the Fifth Circuit interpreted *Robertson* as precluding consideration of alternative grounds for removal but not other defects in removal unrelated to subject matter jurisdiction." Pet. 13.

plenary review.[8] In any event, no court that has considered Petitioners' invocation of federal-officer jurisdiction has found it meritorious.[9]

B. The Prevailing View of Section 1447(d), Applied by the Fourth Circuit, Correctly Interprets the Scope of Appellate Jurisdiction from Orders Granting Remand for Lack of Subject-Matter Jurisdiction.

The plain language in Section 1447(d) expresses Congress's intent to tightly limit the scope of appellate jurisdiction over remand orders that are based on lack of subject-matter jurisdiction and supports what this Court has "relentlessly repeated": "where the [remand] order is based on one of the grounds enumerated in 28 U.S.C. § 1447(c), review is unavailable no matter how plain the legal error in ordering the remand." *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 640, 642 (2006) (original alterations omitted); *Briscoe v. Bell*, 432 U.S. 404, 413 n.13 (1977) (same); *Gravitt v. Sw. Bell Tel. Co.*, 430 U.S. 723, 723 (1977) (same) (per curiam); *Thermtron Prods., Inc. v. Hermansdorfer*, 423 U.S. 336, 343 (1976), *abrogated in part on other grounds by Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 715 (1996); *see generally* Rhonda Wasserman, *Rethinking Review of Remands: Proposed Amendments to the Federal*

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[8] Petitioners have also pointed to two pending appeals in the Fifth Circuit where a dispute over the scope of Section 1447(d) jurisdiction has been raised. *Parish of Plaquemines v. Chevron USA, Inc.*, *appeal docketed*, No. 19-30492 (5th Cir. Jun. 14, 2019); *Parish of Cameron v. BP America Prod. Co.*, *appeal docketed*, No. 19-30829 (5th Cir. Oct. 4, 2019). These appeals, which are related to one another and which were brought by several of the Petitioners in this case, hardly demonstrate a frequently recurring question of federal law.

[9] *See Bd. of Cty. Comm'rs of Boulder Cty.*, 405 F. Supp. 3d at 976–77; *Rhode Island v. Chevron Corp.*, 393 F. Supp. 3d at 152; *Cty. of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934, 939 (N.D. Cal. 2018), *aff'd*, 960 F.3d 586 (9th Cir. 2020); *Massachusetts v. Exxon Mobil Corp.*, 2020 WL 2769681, at *12.

Removal Statute, 43 EMORY L.J. 83 (1994) (discussing history of denying appellate review of remand orders, and exceptions).

The Fourth Circuit's holding here is compelled by the letter and spirit of Section 1447(d)'s exception clause. To construe that clause differently would not only contradict the clear congressional dictate, but would expand what some members of this Court have rightly called "a hodgepodge of jurisdictional rules that have no evident basis even in common sense," in derogation of "the statute's clear bar on appellate review." *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 643 (2009) (Scalia, J., concurring).

The Fourth Circuit also rightly rejected Petitioners' assertion that this Court's decision in *Yamaha*, 516 U.S. 199, should control the scope of review under § 1447(d). *Yamaha* concerned 28 U.S.C. § 1292(b), which allows for interlocutory appeals certified by a district court. As the Fourth Circuit held, interpreting "order" to authorize plenary review makes sense under Section 1292(b), as that statute affects only the timing of review for issues that are otherwise appealable by right. Pet. 9a. "But giving the word 'order' the same meaning in the § 1447(d) context would mandate review of issues that are ordinarily unreviewable, period—even following a final judgment." *Id.*

1. The Plain Text and History of Section 1447(d) Demonstrate Congressional Intent to Carve Out a Narrow Exception from the Statutory Bar Against Appellate Review of Remand Orders.

The plain language of Section 1447(d) supports the prevailing view, applied by the Fourth Circuit here, which limits appellate jurisdiction over the district court's

order to whether Petitioners' removal was proper under Section 1442. The history of the statute, moreover, confirms that interpretation.

The second clause of Section 1447(d)—"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"—sets forth an exception to the general rule set forth in the first clause, that orders granting remand are "not reviewable on appeal or otherwise." This Court has long held that exception clauses, like the second clause in Section 1447(d), must be narrowly construed. *See, e.g.*, *United States v. Scharton*, 285 U.S. 518, 521–22 (1932). In that context, the most natural reading of the "except that" clause in Section 1447(d), read as a whole, is that Congress intended to make an exception to the general statutory prohibition against appellate review of remand orders "pursuant to Section 1442 or 1443," i.e., to the extent the court's ruling rejects civil-rights or federal-officer jurisdiction, the two grounds that Congress carved out from its general prohibition against appellate review because of unique concerns about the risks of anti-civil-rights and anti-federal-officer bias in the state courts. Not surprisingly, given the language, structure, and history of Section 1447(d), every circuit court to construe that narrowing language in the context of the exception clause as a whole, except for the Seventh Circuit, has concluded that the construction adopted by the Fourth Circuit below "follows from the clear text of § 1447(d)." *See Davis*, 107 F.3d at 1047 (reviewing remand order as to removal under Section 1443 and dismissing appeal "for want of appellate jurisdiction" as to removal under Section 1441)*; see also Jacks*, 701 F.3d at 1229

(holding that the court "lack[ed] jurisdiction" to consider remand order as to removal under Section 1441, but "retain[ed] jurisdiction" to review as to Section 1442, stating: "The plain language of § 1447(d) governs this final analysis.").

Petitioners' proposed construction—which focuses exclusively on the word "order"—would make every issue addressed in a remand order reviewable so long as either Section 1442 or Section 1443 were included among the jurisdictional grounds for removal, thus enabling the exception to swallow the rule and encouraging meritless assertions of civil-rights or federal-officer jurisdiction as a device to obtain appellate review of otherwise non-reviewable jurisdictional grounds for removal.

For well over a century, Congress has strictly limited appellate courts' jurisdiction to review any of the jurisdictional grounds rejected in an order of remand. As far back as the Judiciary Act of 1887, Congress declared that remand orders were not only unreviewable but were to be "immediately" executed upon issuance:

> Whenever any cause shall be removed from any State court into any circuit court of the United States, and the circuit court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the circuit court so remanding such cause shall be allowed.

Judiciary Act of March 3, 1887, ch. 373, § 2, 24 Stat. 552, 553. That prohibition against appellate review of remand orders was reenacted in 1888 and again in 1911, and was applied by this Court to cases removed under the general removal statute and specialized removal provisions, including when those provisions were silent on procedures following removal. *See, e.g.*, *United States v. Rice*, 327 U.S. 742, 752–53 (1946) (statute permitting removal by United States of certain cases involving Indian

land rights did not "impair or restrict the application of § 2 of the 1887 Act" and did not modify "what had been for forty years the established practice of denying review of orders remanding causes removed from state courts").

The 1887 Act's appellate review prohibition was omitted—apparently unintentionally—when Congress re-codified Title 28 of the United States Code in 1948. *See generally* Act of June 25, 1948, ch. 646, 62 Stat. 869. An amendatory act the following year added Section 1447(d), which re-codified the bar on review and first introduced its current, simplified formulation: "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." Act of May 24, 1949, ch. 139, § 84, 63 Stat. 89, 102. The Report of the House Committee on the Judiciary made clear that the new section was added "to remove any doubt that the former law as to the finality of an order to remand to a State court is continued." H.R. Rep. No. 81-352, at 15 (1949).

When Congress enacted the landmark Civil Rights Act of 1964, it amended Section 1447(d) to allow review of remand orders to the extent they reject civil-rights jurisdiction under Section 1443 as a basis for removal. Section 1447(d)'s first clause (the general prohibitory language enacted in 1949) was left unchanged, and the exception clause was added to permit review of remand orders. The amended provision thus read:

> 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 1443 of this title shall be reviewable by appeal or otherwise.

Civil Rights Act of 1964, Pub. L. No. 88-352, Title IX, § 901, 78 Stat. 241, 266.

"[E]very circuit court that had addressed this issue agreed" that this version of the statute "limit[ed] judicial review of a remand order to the grounds listed in the exception clause." *Cty. of San Mateo*, 960 F.3d at 597 & n.8 (collecting cases). Congress maintained the same language in the Removal Clarification Act of 2011, which amended Section 1447(d) to add "1442 or" before the words "1443 of this title," with no other changes. The current version of the provision thus reads:

> 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.

28 U.S.C. § 1447(d); Pub. L. No. 112-51, § 2(d), 125 Stat. 545, 546.

As the Ninth Circuit explained in *County of San Mateo*, nothing in the Act's language or legislative history indicates an intent to alter the "then-unanimous" interpretation of review available under Section 1447(d). 960 F.3d at 597.

Petitioners contend that when Congress enacted the Removal Clarification Act in 2011 to include federal-officer jurisdiction under Section 1442 alongside civil-rights jurisdiction under Section 1443 as the sole exceptions to the rule prohibiting appellate review of district court remand orders, Congress intended to rewrite 130 years of statutory history and, for the first time, to make every ground for jurisdiction reviewable if either of those two carved-out grounds were cited in a defendant's removal petition. But "when judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its . . . judicial interpretations as well." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006)

(citation omitted). That is why "[a]bsent a clear statutory command to the contrary, [this Court] assume[s] that Congress is aware of the universality of the practice of denying appellate review of remand orders when Congress creates a new ground for removal." *See Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 128 (1995) (original alterations omitted) (citation omitted) (holding that remand for lack of jurisdiction in case removed under bankruptcy removal statute was unreviewable under Section 1447(d)); *Rice*, 327 U.S. at 752 (Congress "must be taken to have been aware of" "what had been for forty years the established practice of denying review of orders remanding causes removed from state courts" when it added new statutory basis for removal); *Guerrero-Lasprilla v. Barr,* 140 S. Ct. 1062, 1072 (2020) ("We normally assume that Congress is 'aware of relevant judicial precedent' when it enacts a new statute." (quoting *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010))).

Likewise here, when Congress amended Section 1447(d) to add the words "1442 or" before the word "1443," it understood and incorporated the law in every circuit that had "been for forty years the established practice"—that appellate review of remand orders would continue to be limited to the carved-out grounds for jurisdiction (first civil-rights, and after 2011, federal-officer as well). *See Rice*, 327 U.S. at 752. To alter the accepted meaning of Section 1447(d), Congress needed to clearly express its intent to abrogate the unanimous rulings of the courts of appeals. Yet it certainly did not.[10]

[10] The House Judiciary Committee report on the Act stated that the Act's purpose was "to ensure that any individual drawn into a State legal proceeding based on that individual's status as a Federal officer has the right to remove the proceeding to a

No court of appeals, including in the cases cited by Petitioners, has held that Congress intended the Removal Clarification Act to overrule the prior authority interpreting the scope of appellate jurisdiction under Section 1447(d). To the contrary, as the Ninth Circuit held in *County of San Mateo*, Congress did not intend to abrogate the on-point authority, but instead sought to carry it forward without modification. 960 F.3d at 597.

The text and history of Section 1447(d) are clear and reflect more than a century of unbroken congressional intent. The rule adopted in almost every circuit and applied in this case, that the scope of appellate review from remand orders for lack of subject-matter jurisdiction extends only to the bases for jurisdiction within the statute's express exceptions, is the correct interpretation. This Court's intervention is not warranted.

2. Applying this Court's Construction of 28 U.S.C. § 1292(b) to the Materially Different Context of Section 1447(d) Would Lead to Absurd Results.

The assertion by Petitioners and by the Seventh Circuit in *Lu Junhong* that *Yamaha*'s interpretation of Section 1292(b) should be applied to the Section 1447(d) context would lead to absurd results and was rightly rejected by the Fourth Circuit.

In *Yamaha*, this Court considered the scope of appellate jurisdiction under the federal interlocutory appeal statute, 28 U.S.C. § 1292(b). That statute allows a court

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U.S. district court for adjudication," and that the Act was proposed in "respon[se] to recent Federal court cases that reflect an inter- and intra-circuit split as to whether State 'pre-suit discovery' laws qualify as civil actions or criminal prosecutions that are removable under § 1442." H.R. Rep. No. 112-17, at 1–2 (2011). Nothing in the legislative history of the measure referenced the appellate jurisdiction question at issue here.

of appeals "in its discretion, [to] permit an appeal to be taken from" an interlocutory order "not otherwise appealable" when the district court certifies "that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). This Court held that in such certified interlocutory appeals, "it is the *order* that is appealable, and not the controlling question identified by the district court," so once appellate jurisdiction is asserted over a certified order, it extends to "any issue fairly included within the certified order." *Yamaha*, 516 U.S. at 205.

As the Fourth Circuit held, interpreting "order" to authorize plenary review may be appropriate under Section 1292(b), as that statute affects only the timing of review for issues that would otherwise be appealable as of right after a final decision. Pet. 9a. "But giving the word 'order' the same meaning in the § 1447(d) context would mandate review of issues that are ordinarily unreviewable, period—even following a final judgment." Pet. 9a; *see also Yates v. United States*, 574 U.S. 528, 537 (2015) ("identical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute"); *FAA v. Cooper*, 566 U.S. 284, 294 n.4 (2012) (term "'actual damages' has taken on different meanings in different statutes").

The Fourth Circuit explained that although *Yamaha* "interpreted the word 'order' within the meaning of the interlocutory appeal statute, 28 U.S.C. § 1292(b)" and held that "appellate jurisdiction under that statute 'applies to the *order* certified

to the court of appeals, and is not tied to the particular question formulated by the district court,'" the Court "did not purport to establish a general rule governing the scope of appellate jurisdiction for every statute that uses that word." 952 F.3d at 459–60. That was so "for good reason:"

> Section 1292(b) governs *when* an appellate court may review a particular question within its discretion. Section 1447(d), by contrast, limits *which* issues are "reviewable on appeal or otherwise." Put another way, § 1292(b) permits appellate review of important issues before final judgment, but it does not make otherwise non-appealable questions reviewable.

Id. at 460.[11] Petitioners' position would do just the opposite, *requiring* courts of appeals to consider issues that are normally not reviewable under any circumstances, whether on reconsideration by the district court, direct appeal, or writ. That result is plainly inconsistent with the text, structure, and purpose of the statute.

Petitioners' approach must assume that Congress intended not only to benefit defendants who legitimately assert civil-rights or federal-officer jurisdiction as a basis for removal (to protect them against anti-federal bias among state court juries,

[11] Amicus Chamber of Commerce of the United States argues that other statutes have been interpreted to allow for complete review of all issues raised in an interlocutory order—specifically, 28 U.S.C. § 1453(c)(1), which allows for appeals from orders remanding cases removed under CAFA, and 28 U.S.C. § 1292(a)(1), which allows appeals from injunctive orders. But those statutes are different too. Section 1292(a)(1) is distinguishable from Section 1447(d) for the same reason as Section 1292(b): it determines when an appellate court may review a particular question within its discretion, unlike Section 1447(d), which limits the issues that are reviewable on appeal. *See* Pet. 8a–9a. And the CAFA statute, 28 U.S.C. § 1453(c)(1), has been construed as *not* authorizing appellate review of jurisdictional grounds other than CAFA itself in an appeal from an order of remand. *See City of Walker*, 877 F.3d at 567 ("jurisdiction to review a CAFA remand order stops at the edge of the CAFA portion of the order").

see, e.g., *Watson v. Philip Morris Co.*, 551 U.S. 142, 150 (2007)), but also to protect defendants with *meritless* civil-rights and federal-officer jurisdiction claims by allowing them to cite those grounds for removal as a hook for obtaining appellate review of all other asserted grounds for federal jurisdiction. Congress could not have had such an illogical intent. If a defendant *properly* removes under Sections 1442 or 1443 and other grounds, yet the district court *erroneously* rejects federal-officer or civil-rights jurisdiction and remands, the court of appeals will have authority to reverse that remand order (because removal was proper under Sections 1442 or 1443). Petitioners contend that if a defendant *improperly* removes under Sections 1442 or 1443 and the district court correctly *rejects* federal-officer or civil-rights jurisdiction, the court of appeals could still reverse the remand order based on any other jurisdictional ground presented. The only defendant that could benefit in that scenario is one that asserts a baseless civil-rights or federal-officer removal argument to obtain appellate rights the defendant would lack but for the improper removal under Sections 1442 or 1443. That outcome would not advance Congress's goals in protecting agents of the federal government and victims of civil rights violations from litigation in a potentially biased state court proceeding. It only protects defendants that, in the view of both the district court and the court of appeals, are not entitled to remove under Sections 1442 or 1443, but that assert without merit that they are.

In *Lu Junhong*, the Seventh Circuit acknowledged that one purpose of Section 1447(d) was to avoid the delay in reaching the merits of a dispute that would inevitably result from jurisdictional appeals. 792 F.3d at 813. Nevertheless, the court

concluded that "[t]he marginal delay from adding an extra issue to a case where the time for briefing, argument, and decision has already been accepted is likely to be small." *Id.* While the court acknowledged that some litigants might cite Sections 1442 or 1443 in a notice of removal "when all they really want is a hook to allow appeal of some different subject," it found that possibility unlikely since "a frivolous removal leads to sanctions, potentially including fee-shifting" under 28 U.S.C. § 1447(c). *Id.*

The Seventh Circuit substantially overstated the deterrent effect of a potential award under Section 1447(c), which vests district courts with discretion, upon remanding a case, to "require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." *See Martin v. Franklin Capital Corp.*, 546 U.S. 132, 134, 141 (2005) (attorney's fees may only be awarded on a showing that the defendant "lacked an objectively reasonable basis for seeking removal"). Section 1447(c)'s fee-shifting provision only applies once a case is actually remanded. If a defendant were to obtain appellate review of all jurisdictional grounds based on the frivolous assertion of federal-officer or civil-rights jurisdiction, and then had the remand reversed on appeal based on one of the otherwise non-reviewable jurisdictional grounds, the case would *not* be remanded and Section 1447(c) would therefore be inapplicable. Even if the appellate court rejected every jurisdictional ground for removal, including a frivolous assertion of federal-officer jurisdiction, a defendant under the Seventh Circuit's approach would avoid sanctions if any of those other meritless jurisdictional grounds were non-frivolous. Because the unlikely risk of sanctions would be no deterrent at all, the Seventh Circuit's approach would

inevitably "produce appeals and reversals, encourage gamesmanship, and . . . diminish the likelihood that results and settlements will reflect a claim's legal and factual merits," all of which clear jurisdictional rules are meant to prevent. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("administrative simplicity is a major virtue in a jurisdictional statute").

This case illustrates the point: Petitioners devoted the overwhelming majority of their subject-matter-jurisdiction briefing in the District of Maryland and Fourth Circuit to grounds other than federal-officer jurisdiction. Petitioners do not even ask this Court to consider the merits of their rejected federal-officer removal arguments if certiorari is granted, but rather invite the Court to "address the *remaining* grounds for removal and reverse the judgment below." Pet. 20 (emphasis added). Petitioners all but admit that, having failed to persuade any court that their federal-officer removal arguments are meritorious, "all they really want is a hook to allow appeal of some different subject," just as *Lu Junhong* predicted. *See* 792 F.3d at 813.

VI. CONCLUSION

For the foregoing reasons, the Petition should be denied.

Dated: June 29, 2020

Respectfully Submitted,

/s/ Victor M. Sher
Victor M. Sher