No. 26-1910

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Jason Crady and his wife Nicole Crady; Nicole Crady,
Plaintiffs-Appellees,

v.

3M Company, also known as
Minnesota Mining and Manufacturing Company,
Defendant-Appellant,

and

AGC Chemicals Americas, Inc.; Allstar Fire Equipment Co.; Archroma U.S., Inc.; CB Garmet, Inc., doing business as Crewboss; Dupont De Nemours, Inc., formerly known as DowDuPont Inc.; Ed M. Feld Equipment Co., Inc.; Fire-Dex, Inc.; Fire-Dex, LLC; Globe Holding Company, LLC; Globe Manufacturing Company, LLC; Honeywell International Inc.; Honeywell Safety Products USA, Inc.; Innotex Corp; Lakeland Industries, Inc.; Leo Ellebracht Company; Lion Apparel, Inc.; Majestic Fire Apparel, Inc.; Morning Pride Manufacturing, LLC; Phenix Fire Protec-tors, LLC; Southern Mills, Inc., doing business as Tencate Protective Fabrics, USA; TechTrade LLC; Veridian Limited, doing business as Veridian Fire Protective Gear; W.L. Gore & Associates, Inc.; Witmer Public Safety Group, Inc., doing business as The Fire Store; Sentinel Emergency Solutions, LLC; Conway Shield, Inc.,

Defendants.

On Appeal from the United States District Court
for the Eastern District of Missouri

Case No. 4:25-cv-1394-JAR (Hon. John A. Ross)

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

Adam R. Pulver
Nandan M. Joshi
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
apulver@citizen.org

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Counsel for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 & 29(a)(4), amicus curiae Public Citizen states that it has no parent corporation and that no publicly held corporation has an ownership interest in it.

Dated: October 28, 2026

Respectfully submitted,

/s/ Adam R. Pulver
Adam R. Pulver

Counsel for Amicus Curiae Public Citizen, Inc.

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INTEREST OF AMICUS CURIAE[1]

Amicus Curiae Public Citizen is a nonprofit consumer advocacy organization with members in all fifty states. Appearing before Congress, agencies, and courts on a wide range of issues, Public Citizen works for the enactment and enforcement of laws to protect consumers, workers, and the public. From its inception in 1971, Public Citizen has advocated for strong occupational health and safety protections and to hold corporations accountable for actions with deleterious impacts on worker health. In addition, Public Citizen has frequently appeared as amicus curiae in cases involving significant issues of federal jurisdiction, including questions relating to federal-officer removal jurisdiction.

Removal jurisdiction implicates the authority of state courts to provide remedies under state law for actions that threaten worker health and safety. Public Citizen is concerned that defendants often improperly invoke removal jurisdiction, including federal-officer removal jurisdiction

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[1] The parties have consented to the filing of this brief. No party's counsel authored this brief in whole or part, no party or party's counsel contributed money intended to fund the brief's preparation or submission, and no person other than amicus curiae, its members, or its counsel contributed money intended to fund the brief's preparation or submission.

under 28 U.S.C. § 1442(a)(1), to deny plaintiffs their choice of forum and in an effort to escape liability under state law. Public Citizen submits this brief because it is concerned that, if accepted, Appellant 3M's erroneous argument that § 1442 authorized removal in this case would vastly expand the class of cases removable under that provision.

SUMMARY OF ARGUMENT

The district court correctly rejected Appellant 3M's arguments that the federal-officer removal statute, 28 U.S.C. § 1442(a), provides jurisdiction in this case. Because Plaintiffs-Appellees Jason and Nicole Crady bring claims solely based on Jason Crady's exposure to carcinogenic products in his work as an emergency medical technician, paramedic, and firefighter, and have expressly disavowed any claims based upon exposure to military products, 3M cannot satisfy either the "related to" or colorable federal defense elements of federal-officer removal. 3M's contrary arguments on appeal are inconsistent with the statutory text and precedent.

First, as the Supreme Court and this Court have long recognized, the federal-officer removal statute provides jurisdiction only where there is a "close relationship between [a defendant's] *challenged conduct* and

the performance of its federal duties." *Chevron USA Inc. v. Plaquemines Parish*, 608 U.S. 1, 12 (2026) (emphasis added). Attempting to shift the focus of the statutory "relatedness" requirement, 3M suggests that the requirement can be satisfied where *un*challenged conduct relates to the performance of federal duties, so long as that unchallenged conduct contributes to the injury giving rise to the plaintiffs' suit. Focusing on the harm suffered by the plaintiffs, as opposed to the acts challenged by the plaintiffs, however, is inconsistent with both precedent and the text of § 1442. As Appellees explain in their brief, the conduct that they are challenging lacks a relationship with official acts.

Second, a federal defense can only be "colorable," and thus satisfy the requirements for federal-officer removal jurisdiction and Article III, if there is a claim in the case to which the federal defense could apply. As the district court correctly recognized here, because the federal-contractor defense is not a colorable federal defense to the claims actually present in this action, remand was required. As the Supreme Court recently confirmed in *Hencely v. Fluor Corp.*, 608 U.S. 31, 44–45 (2026), the federal-contractor defense bars only the imposition of state-law duties that conflict with the terms of a federal contract. There is no risk

of any such imposition here. That the state court may need to calculate what portion of Mr. Crady's injury was attributable to military products—and reduce 3M's liability based on that calculation—does not implicate the federal-contractor defense or any other federal law, as would be necessary to bring this case within the limits of Article III jurisdiction.

ARGUMENT

I. Removal under § 1442 requires a relationship between official acts and the conduct challenged by the plaintiff, not between official acts and the plaintiff's injury.

As explained in their brief, Plaintiffs in this case challenge 3M's manufacture, sale, and distribution of products for use in Mr. Crady's work as a firefighter. Appellees' Br. i, 8–10. 3M does not suggest that it was acting under the direction of a federal agency or officer in manufacturing, selling, or distributing *those* products. Nonetheless, 3M argues that jurisdiction under § 1442 exists because *unchallenged* action that 3M took under federal direction with respect to military-specification aqueous film forming foam ("MilSpec AFFF") *also* contributed to the injury underlying the Cradys' suit. 3M maintains that the relational element of the statute is satisfied because "any harm from

exposure to PFAS in MilSpec AFFF," which is not the basis of any of the Cradys' claims, "is 'indivisible' from exposure to other PFAS sources," over which the Cradys now sue. *See* 3M Br. 61; *see also id.* at 33–35.[2] That argument is incorrect.

As the Supreme Court recently reaffirmed, the relevant question for the "related to" requirement is whether there is "a close relationship between [a defendant's] *challenged conduct* and the performance of its federal duties"—not whether there is a close relationship between the plaintiff's injury and the performance of such duties. *Chevron*, 608 U.S. at 12 (emphasis added); *see also Griffin v. Optum, Inc.*, 175 F.4th 897, 903 (8th Cir. 2026) ("To satisfy the requirements for removal, the defendants also must establish that acts taken under the direction of a

[2] 3M also argues that Mr. Crady's "original complaint" could be read to encompass claims based on exposure to MilSpec AFFF. 3M Br. 32–33. But "the presence of jurisdiction, in removed as in original cases, hinges on the amended, now operative pleading." *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 39 (2025). This principle applies to federal-officer removal jurisdiction. *Horton v. General Electric Co.*, 190 F.4th 510, 516–18 (6th Cir. 2026*); California ex rel. Harrison v. Express Scripts, Inc.*, 154 F.4th 1069, 1077 (9th Cir. 2025). This Court should follow the lead of the Sixth and Ninth Circuits, which, citing *Royal Canin*, gave credit to a plaintiff's express, post-removal disclaimer, and assessed the elements of federal-officer removal jurisdiction based on "the actual claims" remaining in the case. *Horton*, 190 F.4th at 518; *see Harrison*, 154 F.4th at 1077.

federal officer 'relate to' their challenged conduct." (citing *Chevron*, 608 U.S. at 8–13)). The focus on the "challenged conduct" is consistent with several earlier cases holding that removal under § 1442(a)(1) requires a relationship "between the charged conduct and asserted official authority." *Jefferson Cnty. v. Acker*, 527 U.S. 423, 431 (1999) (quoting *Willingham v. Morgan*, 395 U.S. 402, 409 (1969)); *see Watson v. Philip Morris Cos.*, 551 U.S. 142, 147 (2007) (holding that removal is available only where the defendant, "in carrying out the acts that are the subject of the [plaintiff's] complaint, was acting under" a federal agency or officer (cleaned up)); *Maryland v. Soper (No. 1)*, 270 U.S. 9, 32 (1926) (holding that a federal officer could remove a criminal prosecution only if his "acts or his presence at the place in performance of his official duty constitute the basis … of the state prosecution"); *Minnesota ex rel. Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 715–16 (8th Cir. 2023) (rejecting invocation of § 1442(a)(1) where activities taken under federal-officer direction did not relate to "the activity in question" in the lawsuit).

This long-recognized principle derives from the statutory text, which "tells us what must relate to what." *Anne Arundel Cnty. v. BP P.L.C.*, 94 F.4th 343, 348 (4th Cir. 2024). Section 1442(a)(1) applies to

actions "against or directed to" federal officers or those acting under them "for or relating to any act under color of such office," and allows removal only by such persons. "It is the 'act' for which the defendant is being sued—not the plaintiff's entire civil action in a general sense—that must relate to the asserted federal duty." *Anne Arundel*, 94 F.4th at 348. Or, as the Eleventh Circuit put it, "the act anchoring removal must be defined by the claim brought against the defendant." *Georgia v. Meadows*, 88 F.4th 1331, 1344 (11th Cir. 2023) (cleaned up). Therefore, "to obtain removal under Section 1442(a)(1), a defendant must show it is being sued for an act or acts that it claims were done under—or related to acts done under—federal authority." *Anne Arundel*, 94 F.4th at 349. Where there is a "mismatch between the business practices that [a defendant] asserts were subject to federal control and supervision … and the business practices of which [the plaintiff] complains," the requirements of § 1442(a)(1) are not satisfied. *Connecticut v. Exxon Mobil Corp.*, 83 F.4th 122, 145 (2d Cir. 2023).

Thus, as several courts of appeals have explicitly held, it is not enough that a plaintiff's *injury* may have some relationship with official acts. *See Horton*, 190 F.4th at 519 ("The federal-officer-removal statute

requires an association, connection, or tie between the challenged *conduct* and the defendant's acts under color of federal office—not the plaintiff's injury." (citation omitted)); *District of Columbia v. Exxon Mobil Corp.*, 89 F.4th 144, 156 (D.C. Cir. 2023) (holding that the related-to element focuses on "the [plaintiff]'s theory of liability" rather than "the harm that gives rise to the relevant damages"); *Anne Arundel*, 94 F.4th at 348–49 (rejecting defendants' argument that the court should "focus on whether the acts that allegedly caused the injuries for which the [plaintiffs] seek to recover were directed by federal officers" (cleaned up)). Focusing on the injury would neither have a basis in the statutory text and nor serve the statutory purpose: providing a federal forum where a defendant faces liability for, or relating to, acts that it took on the federal government's behalf.

II. There can be no colorable federal-contractor defense, and thus no Article III jurisdiction, absent a claim based on acts taken in a defendant's capacity as a federal contractor.

The Cradys' explicit disclaimer of claims arising out of MilSpec AFFF also means that 3M cannot satisfy a separate requirement for federal-officer removal jurisdiction: "a 'colorable federal defense*' to the claim or claims against it*." *Doe v. BJC Health Sys.*, 89 F.4th 1037, 1041

(8th Cir. 2023) (emphasis added). While 3M invokes the federal-contractor defense recognized by the Supreme Court in *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988), 3M Br. 36–37, that defense does not colorably apply to any claim against 3M.

The "colorable federal defense" requirement for federal-officer removal does not derive from the text of § 1442. Rather, it is a constitutional requirement. As the Supreme Court explained in *Mesa v. California*, 489 U.S. 121 (1989), "it is the raising of a federal question in the officer's removal petition that constitutes the federal law under which the action against the federal officer arises for Art. III purposes." *Id.* at 136. "The removal statute itself merely serves to overcome the 'well-pleaded complaint' rule which would otherwise preclude removal even if a federal defense were alleged." *Id.*

The *Boyle* federal-contractor defense cannot provide the Article III hook in this case. As the Supreme Court recently explained, "*Boyle* created a defense for contractors only insofar as the suit challenge[s] a decision of the Government that the contractor merely carried out." *Hencely v. Fluor Corp.*, 608 U.S. 31, 146 S. Ct. 1086, 1097 (2026). That federal defense preempts a state-law claim only "when the state-imposed

duty 'is precisely contrary to the duty imposed by the Government contract.'" *Id.* at 1091 (quoting *Boyle*, 487 U.S. at 509).

As discussed above, the Cradys are explicitly *not* challenging any decision of the Government (or of anyone else) related to MilSpec AFFF. And the duties they seek to hold 3M liable for violating in connection with non-military products are not contrary to any duties imposed by any Government contracts. 3M "cannot assert a defense to claims 'that simply do not exist.'" *Harrison*, 154 F.4th at 1089 (quoting *Batchelor v. Am. Optical Corp.*, 185 F. Supp. 3d 1358, 1364–65 (S.D. Fla. 2016)).

Nonetheless, 3M argues that the federal-contractor defense is implicated because "a factfinder will have to determine … to what degree (if at all) Mr. Crady's illness was caused by MilSpec AFFF." 3M Br. 56–57. But the federal-contractor defense has no applicability to that determination. As the Sixth Circuit explained in rejecting a similar argument in *Horton*, "[q]uestions about where and when injuries occurred do not require courts to adjudicate a federal-contractor defense—e.g., to determine whether design decisions were made at the direction of the federal government. Determining where and when injuries occurred does not implicate a federal-contractor defense." 190

F.4th at 519. 190 F.4th at 519; *see also Harrison*, 154 F.4th at 1090 (holding that a need for a state court to calculate how much harm was caused by non-federal acts did not implicate a colorable federal defense). And here, a determination that MilSpec-AFFF contributed to Mr. Crady's injury would not result in the imposition of liability for MilSpec-AFFF-related conduct at all; it would simply reduce Mr. Crady's recovery based on *non*-government-related conduct.

Because a court will have no occasion to consider the federal-contractor defense at all, regardless of how much of Mr. Crady's injury it apportioned to MilSpec-AFFF, the federal-contractor defense does not provide the federal law under which this action arises. There is thus no basis for jurisdiction.

CONCLUSION

For the foregoing reasons, Public Citizen respectfully requests that the Court affirm the decision below.

Respectfully submitted,

s/ Adam R. Pulver
Adam R. Pulver
Nandan M. Joshi
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
apulver@citizen.org

October 28, 2026

Attorneys for Amicus Curiae

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29 and 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), it contains 2,253 words.

2. This brief complies with the typeface requirements of Federal R. App. P. 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO in 14-point Century Schoolbook.

3. This brief has been scanned for viruses and is virus-free.

October 28, 2026

/s/ Adam R. Pulver
Adam R. Pulver
Attorney for Amicus Curiae

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

October 28, 2026

/s/ Adam R. Pulver
Adam R. Pulver
Attorney for Amicus Curiae