FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-10746

THE TOWN OF PINE HILL, ALABAMA,

Plaintiff-Appellee,

versus

3M COMPANY,

Defendant-Appellant,

DAIKIN AMERICA, INC., et al.,

Defendants.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 2:24-cv-00284-KD-N

Before NEWSOM, KIDD, and WILSON, Circuit Judges.

WILSON, Circuit Judge:

We vacate our prior opinion in this case and substitute the following opinion in its place.

The Town of Pine Hill (Pine Hill) sued 3M Company (3M) for state-law claims related to contamination of the Alabama River from products containing per- and poly-fluoroalkyl substances (PFAS). 3M removed this case to federal court, asserting jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). Pine Hill moved to remand to state court because it had disclaimed any relief from any contamination stemming from aqueous film forming foam (AFFF) products, which 3M produced for the United States military. The district court agreed that remanding to state court was appropriate and explained that the heart of Pine Hill's claims was 3M's manufacturing and supplying of PFAS products to Alabama paper mills, which was not undertaken in color of federal office.

After review, and with the benefit of oral argument, we find that the district court erred in its review of 3M's removal allegations. The court should have credited 3M's theory of the case, and if it had done so, it would have found that 3M sufficiently alleged facts supporting jurisdiction under the federal officer removal statute. Thus, we vacate the district court's decision and remand for further proceedings in the district court.

I.

3M produces products containing PFAS that were sold to International Paper Company. At International Paper's paper mills, workers discharged PFAS-containing wastewater into the Alabama

River and its tributaries. Pine Hill obtains its raw water from the Alabama River, which it then treats to provide drinking water to its residential and commercial customers. PFAS are difficult to remove from the drinking water with Pine Hill's current water filtration system. To properly remove PFAS from the water and monitor PFAS levels, Pine Hill must install a new filtration system.

Pine Hill sued 3M[1] in Alabama state court, alleging claims of negligence, wantonness, private nuisance, public nuisance, and trespass. Pine Hill expressly disclaimed any federal causes of action related to PFAS contamination from AFFF sources. After being served with Pine Hill's complaint, 3M removed to the Southern District of Alabama, asserting jurisdiction under the federal officer removal statute,[2] 28 U.S.C. § 1442(a)(1).

In its notice of removal, 3M explained that products containing PFAS were used in AFFF, which is a firefighting foam that the military developed. Because the military could not create enough AFFF to meet its own needs, it required help from chemical manufacturers like 3M to maintain a sufficient supply. The military developed detailed specifications for chemical manufacturers like 3M to follow. 3M manufactured and sold AFFF to the military for over

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[1] Pine Hill also sued other defendants who are not parties to this appeal.

[2] 3M also asserted diversity jurisdiction, which the district court found did not exist. 3M does not appeal that determination.

thirty years, including to Maxwell Air Force Base near Montgomery, Alabama.[3]

3M alleged that AFFF was released from Maxwell Air Force Base, which was located "roughly the same distance from Pine Hill along the Alabama River" as the paper mills. Referencing a government report in its notice of removal, 3M noted that the groundwater at Maxwell contained PFAS from AFFF release areas and flowed towards the Alabama River. The PFAS from the paper mill commingled with PFAS from AFFF sources and likely contributed to the alleged contamination of Pine Hill's water. 3M also asserted that because of the inability to isolate the location of where the PFAS contamination came from—either an AFFF or non-AFFF source—3M could invoke the federal government contractor defense.

Pine Hill moved to remand to state court, arguing that the AFFF disclaimer negated the causal connection requirement under the federal officer removal test. The court found that remanding the case to state court was appropriate and held that the heart of Pine Hill's claims was 3M's manufacturing and supplying of PFAS products to Alabama paper mills, and that conduct was not undertaken in color of federal office. 3M timely appealed.

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[3] Private individuals, states, and public water providers have sued 3M for product liability claims related to the use of AFFF products at various government locations where the PFAS compounds were released into local groundwater, contaminating the drinking water. Several lawsuits have been centralized into a Multidistrict Litigation (MDL) in the District of South Carolina.

II.

"We review *de novo* issues of removal jurisdiction." *State v. Meadows*, 88 F.4th 1331, 1338 (11th Cir. 2023).

III.

The federal officer removal statute allows removal of a civil action commenced in state court to federal district court for "[t]he 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." 28 U.S.C. § 1442(a)(1).

Government contractors may use this defense, but they "must satisfy a three-pronged test to determine whether it may effect removal." *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1142 (11th Cir. 2017). First, the contractor "must show that it is a person within the meaning of the statute who acted under a federal officer." *Id.* Second, the contractor "must show that it performed the actions for which it is being sued under color of federal office." *Id.* Third, the contractor "must raise a colorable federal defense." *Id.*

3M argues that the district court erred in holding the federal officer removal statute did not apply here because 3M has plausibly alleged in its notice of removal that it has met the three-pronged test. We will address each prong in turn.

A.

Under the first prong, the contractor must show that it is "any person acting under [a federal] officer." 28 U.S.C. § 1442(a)(1). To meet this standard, the contractor must show that it was engaged in an effort "to assist, or to help carry out, the duties or tasks of the federal superior." *Caver*, 845 F.3d at 1143 (quoting *Watson v. Philip Morris Cos., Inc.*, 551 U.S. 142, 152 (2007)) (emphasis omitted). And "the relationship between the private person and the federal officer must be one of 'subjection, guidance, or control.'" *Id.* (quoting *Watson*, 551 U.S. at 151).

3M argues that it meets the first prong of the test required for removal because it acted under federal authority when it was manufacturing AFFF for the government according to the military specifications that used PFAS. Pine Hill responds that 3M is not currently acting under federal authority because 3M has phased out production of AFFF. Pine Hill relies on this court's decision in *Meadows* to say that the federal officer removal statute does not apply to former federal officers and past conduct and alternatively, 3M is still acting under the authority of a federal officer because of its numerous government contracts. But we do not need to dive into whether *Meadows* controls our analysis.[4] Instead, we agree that 3M is still acting under the authority of the federal officer.

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[4] We pause to note that the Supreme Court has never delved into whether the federal officer removal statute would apply if a person or company acting under a federal officer was sued civilly for past conduct. Instead, the Supreme

Official government reports reflect that as of the time of this writing, 3M has been awarded more than 2000 federal contracts worth tens of millions of dollars since the start of fiscal year 2026 alone. *See* USASpending, 3M Profile, https://perma.cc/5SM8-H7X8. Hundreds of those contracts require 3M to manufacture goods, following custom specifications provided by the government. *See id.* Thus, 3M qualifies for acting-under status—provided 3M shows that it is assisting in a basic government task under the control of the government. And 3M has done so.

First, in manufacturing customized goods for the government like it did for AFFF, 3M is "help[ing] federal officers fulfill a basic governmental task that the government otherwise would have had to perform." *Caver*, 845 F.3d at 1143.[5] Second, 3M's rela-

Court essentially assumes that companies can invoke the federal officer removal statute when companies are being sued for past conduct that they carried out while acting under a federal officer. *See, e.g.*, *Willingham v. Morgan*, 395 U.S. 402, 409 (1969); *Watson v. Philip Morris Co.*, 551 U.S. 142, 151–52 (2007). This assumption suggests that the Supreme Court allows the doctrine to apply to cases in which the conduct occurred well before the litigation commenced. And its continued silence, even in its most recent decision, *Chevron USA Inc. v. Plaquemines Parishes*., suggests that those who were acting under federal officers, even for past conduct, may still rely on the federal officer removal statute. 608 U.S. --, 146 S. Ct. 1052, 1063 (2026).

[5] Even though 3M is no longer manufacturing AFFF for the military, that has no impact on our analysis. The statute's language states that the case must be against a contractor acting under a federal officer "for or relating to *any act* under color of such office." 28 U.S.C. § 1442(a)(1) (emphasis added). And we have "'liberally construe[d]' this portion of § 1442(a)(1)." *Caver v. Cent. Ala.*

tionship with the government qualifies as one of "subjection, guidance, or control." *Id.* (quoting *Watson*, 551 U.S. at 151). By requiring 3M to manufacture products to the government's own specifications, the federal government controls what product 3M makes for its current contracts and for its AFFF contracts. Both in its AFFF contracts and its current contracts, 3M has crossed the line from merely complying with regulation requirements to performing work "on behalf of the government." *Caver*, 845 F.3d at 1144.

We find 3M has sufficiently alleged that it is "acting under" a federal officer because their purpose is "to assist, or to help carry out, the duties or tasks of the federal superior." *Watson*, 551 U.S. at 152 (emphasis omitted). Thus, 3M met the first prong of the federal officer removal statute.

B.

Under the second prong, the contractor "must show a causal connection between what the officer has done under asserted official authority" and the claims in the suit filed against it. *Caver*, 845 F.3d at 1142 (internal quotation marks omitted). The court "must determine whether that act was taken under color of law," which "requires only a []'connection' or 'association' between the act in question and the federal office." *Id.* at 1144. "[A] removing defendant need not show that his federal duties specifically required or

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Elec. Coop., 845 F.3d 1135, 1142 (11th Cir. 2017) (quoting *Watson*, 551 U.S. at 147). Requiring that the acts targeted in the suit be identical to those in which the removing party is currently engaged would not square with the statute's broad sweep.

strictly caused the challenged conduct." *Plaquemines*, 146 S. Ct. at 1060. As a result, "the hurdle erected by this requirement is quite low." *Caver*, 845 F.3d at 1144 (citation modified).

We credit the government contractor's theory of the case. *Jefferson Cnty. v. Acker*, 527 U.S. 423, 432 (1999). And we must determine what the "act" in question is by looking at the "gravamen" of the claims. *Meadows*, 88 F.4th at 1344; *see also Plaquemines*, 146 S. Ct. at 1061.

3M argues that the district court impermissibly narrowed the scope of Pine Hill's charged conduct to 3M's manufacturing of PFAS products and its supply of those products to International Paper for use in its Alabama paper mills. The court should have credited 3M's theory of the case that the resulting contamination related back to the PFAS contamination as a whole and not only the sale of the PFAS products to paper mills. Pine Hill disagrees and asserts that the district court correctly focused on the supply of PFAS products to paper mills and not the AFFF production.

We agree with 3M. When reviewing the complaint, the court does not look at the discrete acts alleged in the complaint but examines "the 'act' anchoring removal" and how it is defined by the "'claim' brought against the defendant." *Meadows*, 88 F.4th at 1344. Here, Pine Hill's state-law claims all focus on the effect of PFAS contamination to its water supply. While Pine Hill states that the act is the PFAS contamination from paper mills, its claims center on a much broader act—the overall PFAS contamination of the Alabama River.

Because the gravamen of Pine Hill's complaint is much broader than it explicitly alleges, 3M correctly argues that it has plausibly alleged that there is a clear connection between the alleged contamination and 3M's federal conduct. To support this, 3M points to the allegation that 3M provided AFFF to Maxwell Air Force Base, which is near one of the paper mills that Pine Hill alleges is a possible source of PFAS contamination. And since we are considering 3M's allegations from its notice of removal, we credit 3M's theory of the case and agree that 3M has properly alleged a connection. *See Acker*, 527 U.S. at 432.

Pine Hill contests this conclusion by saying that 3M has not shown that it sold AFFF to Maxwell Air Force Base or that there is any evidence to show that the AFFF from Maxwell polluted the Alabama River.[6] While 3M does not directly state that it provided AFFF to Maxwell, it does allege that it sold that product to the military for over thirty years, so it is a logical inference at this stage that 3M plausibly supplied the product to Maxwell. Further, the government inspection report that 3M includes in its notice of removal identifies that the groundwater at Maxwell contained PFAS from AFFF release areas and flowed towards the Alabama River. Considering 3M's allegations in its notice of removal, the PFAS contamination could have occurred from 3M's supply of AFFF which was produced for the government. Thus, 3M has plausibly

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[6] 3M also states in its notice of removal that Pine Hill has filed a lawsuit in the MDL for the PFAS contamination related to the AFFF from Maxwell Air Force Base and other military facilities.

alleged that there is a clear connection between the alleged contamination and 3M's federal conduct.

Again, resisting this conclusion, Pine Hill argues that its disclaimers in its complaint unambiguously sever the causal connection because 3M's conduct for the military (production of AFFF) is distinct from what Pine Hill seeks to hold 3M accountable for (supplying consumer grade PFAS to the paper mills). Here are the relevant provisions from Pine Hill's complaint:

> 40. Pine Hill does not allege contamination of drinking water sources occurred through Aqueous Film-Forming Foam. Contamination found in Pine Hill's drinking water and drinking water source includes PFAS not found in Aqueous Film-Forming Foam.
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> 73. Pine Hill is not seeking to recover through this Complaint any relief for contamination or injury related to Aqueous Film Forming Foam that contains PFAS.

We have not addressed whether an express waiver of certain claims can sever the causal nexus requirement for this second prong. But the First Circuit has explained that the disclaimer doctrine can be distinguished into two categories: "(1) express disclaimers of the claims that serve as the grounds for removal; and (2) mere artful pleading for purposes of circumventing federal officer jurisdiction." *Gov't of Puerto Rico v. Express Scripts, Inc.*, 119 F.4th 174, 187 (1st Cir. 2024) (internal quotation marks omitted).

A valid disclaimer must fully eliminate any ground for federal officer removal so that if the case is remanded a state court would not need to decide whether the defendant acted under federal authority. *Id.* This can include disclaimers that clearly exclude certain factual scenarios—such as limiting the relevant time or location—so that the alleged injuries could not have occurred under a federal officer's direction. *Id.*

By contrast, disclaimers that amount to artful pleading do not effectively preclude removal. *Id.* at 187–88. "A disclaimer that requires a state court to determine the nexus 'between the charged conduct and federal authority' is not a valid means of precluding removal." *Id.* at 188 (quoting *Willingham*, 395 U.S. at 409). An ineffective disclaimer occurs when the plaintiff has disavowed claims based on the defendant's actions that would fall under the color of office but still seeks to recover based on those official acts. *Id.* So "courts must determine whether, despite the disclaimer, the facts of the case make it likely that the plaintiff will hold a defendant liable for its official acts for which it possesses a colorable federal defense." *Id.*

We find the First Circuit's reasoning to be persuasive. While we agree with the First Circuit that disclaimers can sever the connection requirement at the second prong, the disclaimer must be more than a strategy to avoid the federal officer removal statute. And here, we find that Pine Hill's disclaimers amount to artful pleading because 3M plans to assert that one of the causes of the PFAS contamination is from AFFF that was released at Maxwell Air

Force Base. Allowing Pine Hill's disclaimer to be dispositive on the question of causation would require an Alabama state court "to determine the nexus between the charged conduct and [3M's] federal authority" which the First Circuit persuasively explains "is not a valid means of precluding removal." *Id.* at 188 (internal quotation marks omitted).

Unsurprisingly, 3M has been litigating this issue in several jurisdictions because of its prominent role as an AFFF producer for the military for several decades. *See, e.g.*, *Illinois ex rel. Raoul v. 3M Co.*, 111 F.4th 846, 847 (7th Cir. 2024); *New Hampshire v. 3M Co.*, 132 F.4th 556, 557 (1st Cir. 2025); *Maine v. 3M Co.*, 159 F.4th 129, 130 (1st Cir. 2025); *Maryland v. 3M Co.*, 130 F.4th 380, 385–86 (4th Cir. 2025).[7] We find that our decision is in good company with the

[7] The two First Circuit cases were resolved on different grounds. First, when New Hampshire sued 3M, the First Circuit affirmed the district court's grant of a motion to remand to state court because 3M's removal was untimely. *New Hampshire v. 3M Co.*, 132 F.4th 556, 561–63 (1st Cir. 2025). Then, when Maine sued 3M, the First Circuit reversed the district court's grant of a motion to remand because it held that 3M had met the requirements of the federal officer removal statute. *Maine v. 3M Co.*, 159 F.4th 129, 138–39 (1st Cir. 2025). The First Circuit focused on the third prong—that 3M had a colorable federal defense. *Id.* at 139.

The Seventh Circuit affirmed the grant of a motion to remand to state court based on a concession at oral argument. *Illinois ex rel. Raoul v. 3M Co.*, 111 F.4th 846, 849 (7th Cir. 2024). Illinois "clearly and unequivocally conceded at oral argument that it would not seek relief against 3M for mixed PFAS contamination," and if any "morsel of contamination" came from the military

Fourth Circuit in that a disclaimer is not dispositive on whether the federal officer removal statute applies. *See Maryland*, 130 F.4th at 390.

Thus, 3M met the second prong of the federal officer removal statute.

C.

For the third prong, the contractor must raise a colorable federal defense. *Caver*, 845 F.3d at 1142. Like the second prong, this is not a high bar. *Id.* at 1145. "The colorable federal defense need only be plausible; its ultimate validity is not to be determined at the time of removal." *Id.* (internal quotation marks omitted).

3M asserts that it would invoke the federal government contractor defense that limits the state tort liability of government contractors. Government contractors are not subject to state tort liability when "(1) the United States approved reasonably precise specifications; (2) the equipment conformed to those specifications; and (3) the supplier warned the United States about the dangers in the use of the equipment that were known to the supplier but not to the United States." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 512 (1988).

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base, then Illinois would be barred from recovery. *Id.* This is akin to an express disclaimer that protects the state court from deciding whether the defendant acted under federal authority.

We agree that 3M's notice of removal plausibly alleges the three requirements.[8] First, 3M plausibly alleges that the "Naval Sea Systems Command participated in the design of AFFF" where it "created (and has updated) detailed specifications governing the product's formulation, performance, testing, storage, inspection, packaging, and labeling," and that such specifications were "reasonably precise." Second, 3M plausibly alleges that 3M's products "appeared on the D[epartment of Defense] Qualified Products List, which could have happened only if Naval Sea Systems Command had first determined that [it] conformed to the" required specifications of the military. Third, 3M plausibly alleges it did not know of any dangers that the government wasn't already aware of because the government knew that "AFFF contains PFAS and may contain or break down into PFOS and/or PFOA; that AFFF constituents can migrate through the soil and potentially reach groundwater; and that it has been reported that this may raise environmental or human health issues." Because it is plausible that the PFAS contamination at issue could have come from Maxwell Air Force Base,

[8] Pine Hill asks us to look outside the record to the MDL court's determination that 3M did not use the approved precise specification for the AFFF. As 3M notes, Pine Hill only facially challenged 3M's notice of removal, so we only look at the complaint and the notice of removal. Further, the MDL court explained that factual disputes existed at the summary judgment stage so 3M could not establish the defense at that time. *In Re Aqueous Film-Forming Foams Prods. Liab. Litig.*, No. 2:24-CV-03794, 2026 WL 883873, at *3 (D.S.C. Mar. 31, 2026). "The Court did not rule, however, that 3M could *never* establish the defense." *Id.*

it is plausible that 3M could be shielded from liability if it is found that the PFAS contamination was from AFFF sources.

Pine Hill pushes back by arguing that the issue here involves the contamination of the Alabama River by PFAS products supplied to the paper mills. But because it is plausible that AFFF from the Maxwell Air Force Base at least partially contaminated the Alabama River—the source where Pine Hill draws its water supply—Pine Hill cannot escape the implication of the federal defense.

Thus, 3M has met the third prong of the federal officer removal statute.

IV.

The district court erred in finding that 3M's removal wasn't proper under the federal officer removal statute. Thus, the district court's order remanding the case to state court is **VACATED** and we **REMAND** for further proceedings in the district court.

NEWSOM, Circuit Judge, concurring in the judgment:

I concur in the judgment vacating the district court's decision and remanding for further proceedings. Needless to say, I agree with the majority's revised analysis of 28 U.S.C. § 1442(a)(1)'s "acting under" requirement, which largely adopts the approach I outlined in my earlier concurrence. *See* Maj. Op. at 6–8. I write separately because in one important respect the path I would take to vacatur remains different (if only slightly) from the majority's.

The majority correctly explains that a private party asserting jurisdiction under the federal-officer removal statute "must satisfy a three-pronged test." Maj. Op. at 5 (quoting *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1142 (11th Cir. 2017)). I'll call those three the "acting under" prong, the "relates to" prong, and the "colorable federal defense" prong. *See id.* The majority and I are now sympatico on the acting-under prong. Our remaining divergence pertains to the relates-to prong.

As a baseline, I agree with the majority that to satisfy the second, relates-to requirement a removing defendant must show some form of "'causal connection between what the officer has done under asserted official authority' and the claims in the suit filed against it." Maj. Op. at 8 (quoting *Caver*, 845 F.3d at 1142). Importantly, though—and the majority recognizes as much—the Supreme Court recently embraced a *very* generous causation standard that "sweeps broadly": The removing defendant need show only "some relation" to the alleged harm that is not "tenuous, remote, or peripheral." *Chevron USA Inc. v. Plaquemines Parish*, 146 S. Ct. 1052, 1060–61 (2026).

I agree with the majority that 3M has met the *Plaquemines*-construed relates-to requirement, *see* Maj. Op. at 9, but for slightly different reasons.

I

As a preliminary matter, I think it's important to clarify the burden the defendant faces at the removal stage. Here, Pine Hill insists that because there's no smoking-gun evidence "that any military-grade AFFF manufactured by 3M was supplied to or used at Maxwell [Air Base]" and subsequently made its way into the Alabama River, 3M has failed to prove by a "preponderance" the facts necessary to meet the relates-to requirement. Br. of Appellee at 9, 13, 20–22.

To be sure, a defendant bears *some* burden to show its entitlement to invoke the federal-officer removal statute, but I think that Pine Hill's "preponderance" standard sets too high a bar. I say so for two reasons. First, the Supreme Court has clarified that "demanding an airtight case on the merits in order to show the required causal connection" would "defeat the purpose of the removal statute." *Jefferson Cnty. v. Acker*, 527 U.S. 423, 432 (1999), *superseded by statute on other grounds by* Removal Clarification Act of 2011, Pub. L. No. 112-51, 125 Stat. 545. Requiring 3M (at the pleadings stage) to prove by a preponderance of the evidence that its federal activities—opposed to, for example, its sales to private paper mills—caused the river's pollution would likewise encroach into the "merits" and thereby usurp the jury's factfinding role. Second, and relatedly, Pine Hill's merits-sounding standard contradicts the general statutory prescription that "[a] defendant . . . desiring to remove any civil action" file a "notice of removal" that "contain[s] *a short and plain statement* of the grounds for removal." 28 U.S.C. § 1446(a) (emphasis added); *cf. Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014) (holding that a removing party need not submit evidence to support its amount-in-controversy allegation).

At the pleadings stage, it seems to me, 3M need only make a plausible showing that at least some of the alleged pollution of the Alabama River is attributable to its Maxwell-related AFFF sales. And it has done so. In support of its notice of removal, 3M cited (1) government documents that list 3M's products on the Navy's Qualified Products list, (2) a report "identifying PFAS in groundwater resulting from multiple AFFF release areas on the Maxwell base," (3) a note in the same report observing that groundwater "flowed in the direction of the Alabama River," and (4) a scientific study that indicates PFAS levels in the Alabama River increase as one gets closer to Maxwell. Given those data, it's at the very least plausible that the AFFF released from Maxwell came from 3M and that the groundwater that flowed in the direction of the river actually reached it. That's enough.

II

As for the "merits" of the relates-to prong, I don't think it's necessary to conclude, as the majority does, that Pine Hill's attempt to disclaim any damages relating to 3M's sale of AFFF to the federal government "amount[s] to artful pleading." Maj. Op. at 12. I think there's a path of less resistance.

The parties vigorously debate the "gravamen" of Pine Hill's complaint. *Compare* Br. of Appellant at 32–34, *with* Br. of Appellee at 23–26. The town asserts that it's suing 3M solely for its conduct in providing PFAS to paper mills, and as proof it cites its disclaimer of any damages related to 3M's sale of military-grade AFFF to Maxwell. *See* Br. of Appellee at 29–30. Pine Hill's point, of course, is that because its suit is properly understood to focus exclusively on 3M's private-sector manufacturing, it doesn't "relate[] to" its government work in the relevant sense. 3M, by contrast, insists that no matter what sort of relief Pine Hill purports to swear off, a fair reading of the town's complaint betrays a broader and more general focus on 3M's pollution of the Alabama River. *See* Br. of Appellant at 32–34. And the connection between *that* injury and 3M's manufacturing activities for Maxwell Air Base, the company says, is anything but "tenuous, remote, or peripheral." *Plaquemines Parish*, 146 S. Ct. at 1061.

As I see it, no matter how Pine Hill's complaint is conceptualized, the town's suit meets the statutory standard. Even, that is, if we accept Pine Hill's framing—that the gravamen of its complaint is solely about the damages resulting from 3M's paper-mill sales—the suit is still inescapably "relate[d] to" 3M's AFFF sales to the government. The reason is that product liability doesn't exist in the air. Rather, to prevail on (for instance) its negligence claim under Alabama law, the town will have to prove, among other elements, that 3M's conduct proximately caused an injury. *See Hilyer v. Fortier*, 227 So. 3d 13, 22 (Ala. 2017). And to do so, it will necessarily have to prove what portion of its alleged loss is attributable to which of 3M's activities. The need to allocate causation and harm among those activities means that liability for the one necessarily implicates liability for the other.

Perhaps a simplified example will make it more concrete: Imagine that 75% of the actual share of pollution is attributable to private-sector paper-mill sales, and 25% to federal-sector AFFF sales—with respect to which 3M claims a federal defense. Imagine further that the pollution causes $10 million of damage. Theoretically, because it has a defense to $2.5 million of that liability, 3M should have to pay only $7.5 million. But if a state-court jury attributes 100% of the pollution to 3M's private-sector activities, and none to its government activities, then the company will be on the hook for the full $10 million. In that scenario, 3M would be deprived of its right to litigate its federal defense in federal court, which is the whole point of the federal-office removal statute.

* * *

So again, I continue to agree with the majority's bottom line: The district court erred in rejecting 3M's effort to invoke the federal-office removal statute. It's just that I continue to reason my way to that conclusion a little bit differently.

KIDD, Circuit Judge, concurring in the judgment:

The majority's opinion expands the scope of the federal officer removal statute, 28 U.S.C. § 1442, to encompass lawsuits against *current* federal contractors *regardless of whether their current status is temporally related to the claims at issue*. This expansive reading creates a mismatch between the temporal scope of the contractor's status and the temporal scope of the conduct giving rise to the action. This mismatch method is inconsistent with our precedents.

Nevertheless, I agree that 3M satisfies the prerequisites necessary to remove this lawsuit under the federal officer removal statute. But I reach that conclusion based on a straightforward application of *Caver v. Central Alabama Electric Cooperative*, 845 F.3d 1135 (11th Cir. 2017). Along the way, I explain why *Georgia v. Meadows*, 88 F.4th 1331 (11th Cir. 2023), does not apply to this federal contractor case.

A. *The Mismatch Method*

"The first question for federal officer removal is whether [the contractor] was a person 'acting under' a federal officer *when it took the actions complained of in this case*." *Caver*, 845 F.3d at 1142 (emphasis added). Although the majority glosses over the language I now emphasize, prior decisions of our Court have found it necessary to consider. *See id.*; *City of Brunswick ex rel. Mayor & Bd. of Comm'rs v. Honeywell Int'l, Inc.*, No. 23-13200, 2026 WL 2224648, at *8–12 (11th Cir. Aug. 3, 2026) (published decision).

By contrast, the majority finds sufficient that 3M is "still acting under" a federal officer because of its current federal contracts without regard to whether it was acting under a federal officer at the time of the challenged conduct. Maj. Op. at 6–8. The majority cites 3M's numerous federal contracts for the 2026 fiscal year. *Id.* at 7. The majority reasons that, in general, these current contracts "require 3M to manufacture goods, following custom specifications provided by the government." *Id.*

In my view, the fact that 3M is currently a federal contractor is irrelevant in this case. It would be relevant if we were considering a case that alleged *ongoing* activity as the basis for the lawsuit. But this case is based on allegations of *past* activity. So, the relevant inquiry is whether the company was a federal contractor *at the time of the past activity*.

The majority attempts to minimize the impact of its expansive reading of the statute by pushing the analytical load onto the statute's second prong: "Even though 3M is no longer manufacturing AFFF for the military, that has no impact on [the] analysis" because of the broad sweep of the second prong, "for or relating to any act under color of such office," 28 U.S.C. § 1442(a)(1). Maj. Op. at 7–8 n.5. But this also misses the mark. It conflates the first and second prongs of the statute, which the Supreme Court has cautioned us not to do. *See Chevron USA Inc. v. Plaquemines Parish*, 146 S. Ct. 1052, 1063 (2026) (advising against conflating the first and second prongs of § 1442(a)(1) because it creates redundancy).

Instead, in the second prong, we determine whether the lawsuit against the removing defendant is "for or relating to any act under color of *such office*" that the removing defendant is "acting under." 28 U.S.C. § 1442(a)(1) (emphasis added). Thus, courts must view the challenged conduct in the lawsuit in relation to "such office" that they considered in the first prong. *Id.*; *see also Honeywell*, 2026 WL 2224648, at *8 (assessing, in the second prong, whether "the actions taken under federal control are 'closely connected' to the plaintiff's claims" (citation modified)).

The Supreme Court's recent decision in *Plaquemines* illustrates my point. There, the Supreme Court held that Chevron could remove a lawsuit targeting Chevron's wartime production of crude oil. *Plaquemines*, 146 S. Ct. at 1057. For the first prong, the Supreme Court adopted the Fifth Circuit's conclusion that Chevron "'act[ed] under' a federal officer when it refined crude oil into avgas for the military pursuant to a federal contract." *Id.* at 1060 n.2. The Supreme Court then framed its inquiry at the second prong as "whether th[e] suit, which implicates Chevron's wartime production of crude oil, is 'for or relating to' Chevron's wartime refining of crude oil into avgas for the military." *Id.* at 1060 (quoting 28 U.S.C. § 1442(a)(1)). Because "Chevron's wartime crude-oil production was closely connected to its wartime avgas refining," Chevron satisfied the second prong. *Id.* The Supreme Court did not look to the dozens[1] of federal contracts that Chevron had been

[1] *Advanced Search*, USAspending.gov, https://www.usaspending.gov/search?hash=2712485f0e2230607c7d9456d1a7fa3e

awarded in the fiscal year the case was decided—that is irrelevant. Instead, the determination of the first prong limited the assessment of the second prong. *Id.* at 1060–63.

By overlooking the temporal scope of the first prong, the majority fails to assess which "*such office*" of the federal government 3M was "acting under." 28 U.S.C. § 1442(a)(1) (emphasis added). This creates a mismatch: Is the current "such office" the same "such office" that the contractor was acting under at the time of the challenged conduct?

Previously, we have required a match—we have looked to the specific federal "officer" or "agency" that the removing defendant is alleged to have been "acting under" at the time of the challenged activity. *See Watson v. Philip Morris Cos.*, 551 U.S. 142, 151 (2007); *see also Caver*, 845 F.3d at 1143–44 (finding that the removing defendant was "acting under" the United States Department of Agriculture Rural Utilities Services); *Honeywell*, 2026 WL 2224648, at *8–12 (finding that the removing defendants were "acting under" the Environmental Protection Agency). This matching makes sense. As *Plaquemines* informs us, whom the removing defendant was "acting under" in the first prong informs whether the lawsuit is "for or relating to any act under color of such office." 146 S. Ct. at 1060–63; 28 U.S.C. § 1442(a)(1).

[https://perma.cc/2VT9-7CNZ] (listing Chevron USA Inc.'s government contracts for the 2026 fiscal year).

But now the majority holds that a mismatch in temporal scope satisfies the federal officer removal statute. I respectfully decline to join the majority's mismatch method for interpreting the statute.

B. Meadows

The mismatch that I have discussed is due largely to the majority's decision not to address *Meadows*, which held that the federal officer removal statute does not apply to former federal officers. 88 F.4th at 1338; Maj. Op. at 6. But the mismatch is unnecessary because *Meadows* addressed federal *officers* seeking removal under § 1442(a)(1). 88 F.4th at 1338. It did not say a single word about persons "acting under" federal officers. *See generally id.*

Meadows first considered the statutory text of § 1442(a)(1) to conclude that "[t]he ordinary meaning of 'officer' does not include 'former officer.'" *Id.* at 1338–39. In support, the Court relied upon *United States v. Pate*, 84 F.4th 1196, 1201–02 (11th Cir. 2023) (en banc). *Id.* at 1338–40. In *Pate*, the defendant was convicted of violating 18 U.S.C. § 1521, which prohibits filing retaliatory liens on the property of "an individual described in" 18 U.S.C. § 1114, which includes "any officer or employee of the United States . . . or any person assisting such an officer or employee." 84 F.4th at 1199–1200. The en banc Court held that § 1114 does not "include *former* officers or employees of the United States." *Id.* at 1201. But because *Pate* involved only former "officer[s] or employee[s]" under § 1114, the Court declined to decide the "temporal scope" of § 1114's clause for "any person assisting such an officer or employee." *Id.* at

1205 n.3. *But see id.* at 1214–15 (Grant, J., dissenting) (highlighting the resulting inconsistency); *see also id.* at 1225–26 (Lagoa, J., dissenting) (same).

Similarly, *Meadows* involved only a former officer seeking removal under § 1442(a)(1)'s "any officer" language. 88 F.4th at 1338. *Meadows* did not concern (or even mention) the relevant language in our case, "any person acting under that officer," 28 U.S.C. § 1442(a)(1). *See generally Meadows*, 88 F.4th at 1338. Thus, as in *Pate*, the Court in *Meadows* did not have to decide the temporal scope of § 1442(a)(1)'s "acting under" language. *Id.*

Meadows reasoned that, while § 1442(a)(1) is silent on former officers, § 1442(b) addresses the "right of removal to a person 'who is, or at the time the alleged action accrued was, a civil officer of the United States.'" *Id.* at 1339 (quoting 28 U.S.C. § 1442(b)) (emphasis omitted). Because Congress referred to former officers in § 1442(b) but omitted any such reference in § 1442(a)(1) and did not modify the discrepancy, *Meadows* explains that § 1442(a)(1) must not apply to former federal officers. *Id.* at 1339–41. But § 1442 does not have a separate provision addressing persons formerly "acting under" federal officers. *See* 28 U.S.C. § 1442.

Next, *Meadows* reasoned that there was "no precedent from either the Supreme Court or this Court permitting removal under section 1442(a)(1) by a former officer." 88 F.4th at 1341. The same cannot be said for persons formerly "acting under" federal officers. As the majority notes, "the Supreme Court essentially assumes that companies can invoke the federal officer removal statute when companies are being sued for past conduct that they carried out while acting under a federal officer." Maj. Op. at 6–7 n.4 (first citing *Willingham v. Morgan*, 395 U.S. 402, 409 (1969); then citing *Watson*, 551 U.S. at 151–52; and then citing *Plaquemines*, 146 S. Ct. at 1063).

In summary, *Meadows* is distinguishable because its holding and supporting analysis are limited to former federal officers and do not address persons "acting under" federal officers.

Finally, I note that the majority's end run offers no guidance to the district courts in our Circuit, who will continue to have to decide whether *Meadows* extends to persons formerly "acting under" a federal officer, 28 U.S.C. § 1442(a)(1). So far, the district courts have concluded that *Meadows* does not apply. *See Georgia v. Kim*, 733 F. Supp. 3d 1378, 1379–80 (N.D. Ga. 2024) (finding that *Meadows* "does not address" the "acting under" provision of § 1442(a)(1)); *City of Irondale v. 3M Co.*, No. 2:24-cv-01327, 2025 WL 2419238, at *4–5 (N.D. Ala. Aug. 19, 2025) (declining to extend *Meadows* to § 1442(a)(1)'s "any person acting under" provision (citing *Kim*, 733 F. Supp. 3d at 1380)).

I agree with them. *See also Georgia v. Shafer*, 119 F.4th 1317, 1334–35 (11th Cir. 2024) (Grant, J., concurring); *Georgia v. Clark*, 119 F.4th 1304, 1317 (11th Cir. 2024) (Grant, J., concurring).

C. Caver

Since *Meadows* is distinguishable, the *Caver* analysis for the first prong is straightforward. As a reminder, in the first prong, we determine whether the removing defendant is "any person acting under [a federal] officer." 28 U.S.C. § 1442(a)(1). In the second prong, we determine whether the lawsuit against the removing defendant is "for or relating to any act under color of *such office*" that the removing defendant is "acting under." *Id.* (emphasis added).

In assessing the first prong of § 1442(a)(1), *Caver* explained that "[t]he first question for federal officer removal is whether [the contractor] was a person 'acting under' a federal officer when it took the actions complained of in th[e] case." 845 F.3d at 1142. To answer this question, we engage in the analysis that the majority undertakes: "To meet this [first prong], the contractor must show that it was engaged in an effort 'to assist, or to help carry out, the duties or tasks of the federal superior'. . . . And 'the relationship between the private person and the federal officer must be one of "subjection, guidance, or control."'" Maj. Op. at 6 (quoting *Caver*, 845 F.3d at 1143).

Applying *Caver* here, 3M satisfies the first prong for federal officer removal. 3M was "acting under" a federal officer "when it took the actions complained of in this case." *See Caver*, 845 F.3d at 1142. 3M "help[ed] carry out . . . the duties" of the Department of Defense by producing AFFF for the military. *See id.* at 1143. And 3M's relationship with the Department of Defense was one of "subjection, guidance, [and] control" because 3M produced AFFF pursuant to its specifications that required the use of PFAS. *See id.* Thus, as to the second prong, this lawsuit targeting 3M's alleged PFAS contamination of Pine Hill's water supply is "for or relating to" 3M's AFFF production for the Department of Defense. 28 U.S.C. § 1442(a)(1). It is that simple.

The logic of a straightforward *Caver* application is highlighted by a recent federal officer removal case that another panel of our Court considered. In *Honeywell*, we concluded that the defendants could remove a state lawsuit targeting the defendants' alleged failure to remediate pollution emanating from their plant site. 2026 WL 2224648, at *15. In assessing the first prong, the Court concluded that the defendants "acted under" the Environmental Protection Agency ("EPA") "when remediating the pollution on and around the [p]lant [s]ite." *Id.* at *8. The Court explained that the defendants were "carrying out remediation efforts" that the EPA was otherwise responsible for, and the EPA exercised a "significant level of control" over the defendants' remediation efforts. *Id.* at *11. Thus, for the second prong, the lawsuit targeting the defendants' alleged failure to remediate pollution emanating from their plant site was "related to" the defendants' remediation efforts governed by the EPA. *Id.* at *12–13. It was that simple.

* * *

I agree with the majority's conclusion that 3M satisfies the three prongs for federal officer removal. 28 U.S.C. § 1442(a)(1). But I believe the majority is incorrect to mismatch 3M's current status as a federal contractor with claims about its past actions. Therefore, I respectfully decline to endorse the majority's mismatch method.