

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 23 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LEGEND JOSIAH CROMER, by and through his parent and Guardian ad Litem, Freddie L. Cromer; LEGACY ERRINE-HELEN CROMER, by and through her parent and Guardian ad Litem, Freddie L. Cromer; KNOWLEDGE ELIJAH CROMER, by and through his parent and Guardian ad Litem, Freddie L. Cromer; SUPREME FREDDIE-LEE CROMER, by and through his parent and Guardian ad Litem, Freddie L. Cromer; DIVINITY BRIDGETTE CROMER, by and through his parent and Guardian ad Litem, Freddie L. Cromer; FREDDIE L. CROMER, Successor in Interest,

Plaintiffs - Appellees,

v.

EISNER HEALTH, erroneously named and served as Einsner Pediatric & Family Medical Center; IAN TILLEY; LILLIAN MORRIS; PENELOPE VELASCO; NATHANA LURVEY, M.D.,

Defendants - Appellants,

and

No. 25-4154

D.C. No.

2:24-cv-04731-WLH-SK

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

CAMERON WILKINSON, THOMAS
CACHUR, M.D., MOSES SALIBIAN,
M.D., OLIVIER URAYENEZA, M.D.,
SANDRA HUERTA, RN, SANDRA
VELASCO, RN, HERMINIA ESPINA, RN,
DOES 1-50, Inclusive, SOCAL
ANESTHESIA SOLUTIONS, INC.,
CONCEPTION REGACHO, MD,
DIGNITY HEALTH, doing business as
California Hospital Medical Center,

Defendants,

v.

UNITED STATES OF AMERICA,

Movant - Appellee.

Appeal from the United States District Court
for the Central District of California
Wesley L. Hsu, District Judge, Presiding

Submitted October 21, 2026**
Pasadena, California

Before: BUMATAY, VANDYKE, and MENDOZA, JR., Circuit Judges;
Dissent by Judge BUMATAY

Defendants-Appellants (“Defendants”) appeal the district court’s April 18,
2025, order granting the Government’s motion to remand this action to state court

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

and denying Plaintiffs-Appellees’ (“Plaintiffs”) motion to remand as moot.

Because we find that Defendants’ July 2, 2025, notice of appeal was not filed within the period required pursuant to 28 U.S.C. § 2107(a)–(b), we lack jurisdiction and dismiss this appeal as untimely.

We must first address the threshold question of jurisdiction. *See Garraway v. Ciuffo*, 113 F.4th 1210, 1214–15 (9th Cir. 2024). “By statute, U.S. Courts of Appeal have jurisdiction of appeals from all *final* decisions of the district courts of the United States.” *Id.* at 1215 (quoting 28 U.S.C. § 1291) (emphasis in original). “[D]istrict court orders denying absolute immunity constitute ‘final decisions’ for purposes of 28 U.S.C. § 1291.” *Hui v. Castaneda*, 559 U.S. 799, 804 n.4 (2010) (citations omitted); *see also Osborn v. Haley*, 549 U.S. 225, 238 (2007) (“Under the collateral order doctrine of *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), [the district court’s denial of immunity] qualifies as a reviewable final decision within the compass of 28 U.S.C. § 1291.”); *Blumberger v. Tilley*, 115 F.4th 1113, 1124 (9th Cir. 2024) (“[A]n order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 . . . shall be reviewable by appeal or otherwise.” (quoting 28 U.S.C. § 1447(d))); *see also City & County of Honolulu v. Sunoco LP*, 39 F.4th 1101, 1106 (9th Cir. 2022) (“We have jurisdiction to review the district court’s remand order under 28 U.S.C. §§ 1291, 1447(d).”).

The question is whether Defendants’ notice of appeal was timely. “Under 28 U.S.C. § 2107(a)’s plain language, ‘entry’ of an immediately appealable collateral order occurs when the district court files the order on the civil docket.” *McNeil v. Gittere*, 150 F.4th 1205, 1210–11 (9th Cir. 2025). In *McNeil*, we held as follows: “[E]ntry’ of an order occurs when the district court notes or records its order. And, in terms of this case, the district court enters a collateral order denying qualified immunity when the order is filed on the civil docket. We need look no further to define when an order is entered for purposes of filing a timely appeal.” *Id.* at 1208. Immunity determinations are paradigmatic collateral orders, *Plumhoff v. Rickard*, 572 U.S. 765, 772 (2014), so the district court’s April 18, 2025 order denying federal-officer immunity was immediately appealable on the same basis as the order denying qualified immunity in *McNeil*. “Entry” of the immediately appealable collateral order thus occurred on April 18, 2025 when the order was filed on the civil docket. Pursuant to 28 U.S.C. § 2107(a)–(b), Defendants’ notice of appeal was therefore due 30 days later, or 60 days later if the United States is treated as a party.¹ See *McNeil*, 150 F.4th at 1207 (“A timely notice of appeal in a

¹ The 60-day period under 28 U.S.C. § 2107(b) applies only when the federal government is a “part[y].” The United States asserts that it was not a party in the district court because the government merely moved to remand as a non-party; thus, the deadline could have been 30 days later (May 19, 2025) rather than 60 (June 17, 2025). The government does not ask the panel to resolve this question because the notice of appeal, filed July 2, 2025, was untimely under both deadlines.

civil case must be filed ‘within thirty days after the entry of [a] judgment, order or decree.’” (quoting 28 U.S.C. § 2107(a)); Fed. R. Civ. P. 54(a) (“‘Judgment’ as used in these rules includes a decree and any order from which an appeal lies.”). However, Defendants did not file their notice of appeal before this Court until July 2, 2025.

Defendants point out that in the order entered on April 18, 2025, the district court stayed execution of the remand for 60 days to allow the defendants to move for a stay pending appeal. They appear to suggest that the stay tolled the deadline for filing a notice of appeal, and note that on May 9, 2025, they filed a notice of motion and motion to stay pending appeal, which the district court subsequently denied on June 2, 2025. Defendants assert that the June 2, 2025, order was the final judgment as it was that order which transmitted the case back to state court. But a stay of the *execution* of an order does not toll the deadline to file the notice of appeal. *See McNeil*, 150 F.4th at 1208–09 (“Federal Rule of Appellate Procedure 4(a)(1)(A) requires that litigants file a notice of appeal ‘within 30 days after entry of the judgment or order appealed from.’ Rule 4(a)(7)(A) explains that ‘[e]ntry’ occurs ‘when the judgment or order is entered in the civil docket,’ unless ‘Federal Rule of Civil Procedure 58(a) requires a separate document.’” (alteration in original)). And we have previously recognized that a reviewable remand order can “also qualify as an appealable collateral order.” *California Dep’t of Water*

Res. v. Powerex Corp., 533 F.3d 1087, 1096 (9th Cir. 2008).

The dissent contends that “the better answer is that we should treat [a remand] as a final judgment” because, in its view, § 1447(d) *mandates* review. But the Supreme Court has clarified that “§ 1447(d) permits appellate review of the district court’s remand order—*without any further qualification.*” *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 239 (2021) (emphasis added). Thus, while § 1447(d) establishes the availability of appellate review, it does not exempt appeals from other requirements for obtaining that review or require treating appealable orders as final judgments. And as explained above, the immunity determination within the remand order means it is best characterized as a collateral order, thus subject to the timely-appeal requirements of U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4.

Here, Plaintiffs filed this medical malpractice and wrongful death action in California state court, and then, Defendants removed the case under the federal qualified health center immunity statute, 42 U.S.C. § 233(l)(2), and the federal officer removal statute, 28 U.S.C. § 1442(a)(1). The dissent’s “answer” is contrary to existing Ninth Circuit and Supreme Court authority with respect to appellate review of orders denying motions for remand in federal officer removal act cases.²

² There is a significant body of Ninth Circuit and Supreme Court case law that supports the majority’s view in the federal qualified-health-center immunity context and in remand orders more generally. *See, e.g., Blumberger*, 115 F.4th at

We recognize that the timeliness issue was uncertain, and thus dismissing this appeal on timeliness grounds may appear as a harsh result. However, this Court is unable to excuse timeliness, because the “timely filing of a notice of appeal in a civil case is a jurisdictional requirement.” *Ray Haluch Gravel Co. v. Cent. Pension Fund of Int’l Union of Operating Eng’rs & Participating Emps.*, 571 U.S. 177, 183 (2014) (quoting *Bowles v. Russell*, 551 U.S. 205, 214 (2007)).

Having determined that Defendants’ notice of appeal was untimely pursuant to 28 U.S.C. § 2107 and Federal Rule of Appellate Procedure 4(a)(1)(A), we decline to address the merits of the parties’ remaining arguments.

DISMISSED.

1124 (quoting 28 U.S.C. § 1447(d)) (“In other words, we may review a remand order if removal occurred ‘pursuant to section 1442.’”); *Doe v. Cedars-Sinai Health Sys.*, 106 F.4th 907, 912 (9th Cir. 2024) (quoting *DeFiore v. SOC LLC*, 85 F.4th 546, 554 (9th Cir. 2023)) (“‘[U]nlike garden-variety remand orders for lack of subject-matter jurisdiction or defects in removal procedure, which are not appealable,’ remand orders rejecting federal officer removal under § 1442(a)(1) are appealable under 28 U.S.C. § 1447(d).”); *Friedenberg v. Lane County*, 68 F.4th 1113, 1118 (9th Cir. 2023) (“Because this case was removed, in part, under § 1442, the district court’s remand order is reviewable on appeal.”); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Richardson–Merrell Inc. v. Koller*, 472 U.S. 424, 431 (1985); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)) (“We have also recognized, however, a narrow class of collateral orders which do not meet this definition of finality, but which are nevertheless immediately appealable under § 1291 because they ‘conclusively determine [a] disputed question’ that is ‘completely separate from the merits of the action,’ ‘effectively unreviewable on appeal from a final judgment,’ . . . and ‘too important to be denied review’”).

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Cromer et al. v. Eisner Health et al., No. 25-4154
BUMATAY, Circuit Judge, dissenting:

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The question in this case is when a remand order under 28 U.S.C. § 1447(d)—the federal-officer removal provision—is “ent[ered]” for purposes of the time to file a notice of appeal under 28 U.S.C. § 2107. We have two possible answers here. One answer might be the district court’s April 18, 2025, order, which granted the government’s motion to remand the case to the state court. The twist here is that the district court didn’t actually order the remand with the April 18th order. Instead, the district court gave Eisner Health an opportunity to seek a stay pending appeal and “temporarily stayed” its order for 60 days. So the second possible answer is the June 2, 2025 order, in which district court denied the stay motion and “therefore, order[ed] the case be remanded to the Los Angeles Superior Court, consistent with the terms of its [April 18] Remand Order.” With the June 2 order, the district court filed a separate transmittal order.

To me, the answer to this question depends on whether a remand order is more like a collateral order, which is appealable when the district court files the order on the civil docket, *McNeil v. Gittere*, 150 F.4th 1205, 1210–11 (9th Cir. 2025), or is it more like a “final judgment,” which is generally subject to the separate document rule and isn’t entered until the entry of the separate judgment on the civil docket, Fed. R. Civ. P. 58. *Rajabian v. Mercedes-Benz USA, LLC*, 154 F.4th 1145, 1152 (9th Cir. 2025).

While the majority thinks a remand functions like a collateral order, the better answer is that we should treat it as a final judgment for several reasons.

First, appellate courts *must* review remand orders denying federal officer immunity. 28 U.S.C. § 1447(d). The collateral order doctrine, on the other hand, is a judicially created exception to the “final decision[]” rule in 28 U.S.C. § 1291. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1066 (9th Cir. 2000). The collateral order doctrine applies only in disputes over whether we should review a district court’s decision at all. But we have no reason to ask whether we may review federal-officer remand orders when Congress has made that choice. What’s more, our jurisdiction to review this case comes from § 1447(d), not from § 1291. *See Friedenbergs v. Lane Cnty.*, 68 F.4th 1113, 1118–19 (9th Cir. 2023) (reviewing a remand order based on § 1447(d) in a similar case). So I would hold that the collateral order doctrine can’t apply if Congress has spoken.

Second, a remand order “ends the litigation . . . and leaves nothing for the court to do but execute [it]” for purposes of federal adjudication. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978) (simplified). That’s more like a final judgment. That a remand order is not a ruling on the merits does not transform it into a collateral order. While the Supreme Court acknowledged that “remand orders . . . do not meet the traditional definition of finality,” *Quackenbush v. Allstate*

Ins. Co., 517 U.S. 706, 715 (1996), it nevertheless treated them as final judgments because they no doubt end the litigation in federal court, *id.* at 714 (“When a district court remands a case to a state court, the district court disassociates itself from the case entirely, retaining nothing of the matter on the federal court’s docket.”). And other circuits see remand orders as final judgments. *See, e.g., Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 614 (4th Cir. 2001) (“Remand orders that are not subsumed under the § 1447(d) prohibition may be appealed pursuant to 28 U.S.C. § 1291, which provides for appeals of final judgments.”). *McNeil* dealt with the opposite—when federal litigation unnecessarily continued without appellate intervention. 150 F.4th at 1207.

Third, we have held that we “must be cautious in applying this doctrine, because once one order is identified as collateral, all orders of that type must be considered collaterally.” *Comm’r v. JT USA, LP*, 630 F.3d 1167, 1172 (9th Cir. 2011). The Supreme Court has also “described the conditions for collateral order appeal as stringent.” *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994). Neither we nor the Supreme Court have squarely ruled that the doctrine applies here. *See Quackenbush*, 517 U.S. at 715 (stating that prior “opinion[s] nowhere address[] whether any class of remand order might be appealable under the collateral order doctrine”). The majority identifies no case saying otherwise. The majority’s lengthy string cite merely identifies cases getting at whether we may

review federal officer immunity remand orders at all. Of course we can. *See* 28 U.S.C. § 1447(d). If anything, these cases support my view that Congress has already decided that an appeal of a remand order is set by statute—not some judicial-made exception to § 1291.

Because the remand order here is not a collateral order and is more like a final judgment, *McNeil* does not govern. Rather, the Federal Rules of Civil Procedure and Appellate Procedure define the timing of entry for purposes of triggering the appellate review clock. And because the separate document was not entered until the June 2 order, that's the operative date to start the clock on filing the notice of appeal. Since the majority does not reach the merits, I do not either. But I would have at least heard Eisner Health out.

I respectfully dissent.