

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

LENA CHILDS, an individual;
DONALD CHILDS, an individual; T.
CHILDS, a minor by and through her
guardian ad litem, Lena Childs; A.
CHILDS, a minor by and through her
guardian ad litem, Lena Childs,

Plaintiffs - Appellees,

v.

SAN DIEGO FAMILY HOUSING,
LLC, a California Limited Liability
Corporation; LINCOLN MILITARY
PROPERTY MANAGEMENT LP, a
Delaware Limited Partnership,

Defendants - Appellants,

and

INDEPTH CORPORATION, a
California Corporation,

Defendant - Appellee.

No. 24-1256

D.C. No.
3:19-cv-02329-
JM-SBC

OPINION

On Remand from the United States Supreme Court

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, District Judge, Presiding

Filed September 24, 2026

Before: Mary H. Murguia, Chief Judge, and Gabriel P.
Sanchez and Holly A. Thomas, Circuit Judges.

Opinion by Judge Sanchez

SUMMARY*

Federal Jurisdiction / Removal

On remand from the United States Supreme Court, the panel affirmed the district court’s order remanding a removed action to state court based on a lack of federal jurisdiction.

Donald and Lena Childs rented the “Saipan Property,” military housing within the Naval Amphibious Base Coronado. During their lease, the Childs dealt with water-intrusion and mold contamination issues that allegedly damaged their personal property and impacted their health. According to the Childs, defendants San Diego Family Housing, a public-private venture created by federal

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

statute, and Lincoln Military Property Management, the property manager, were aware of these issues and did not adequately remediate the problem. The Childs filed suit in state court, asserting negligence and other state law claims. Defendants removed the action to federal district court on the basis of federal enclave, federal agency, and federal officer jurisdiction. The district court concluded that it lacked jurisdiction over the action and remanded to state court.

The panel held that, although federal courts of appeals generally lack jurisdiction to review a district court's remand order based on lack of subject matter jurisdiction, an exception to this rule applied because defendants asserted federal officer jurisdiction as one of the grounds for removal. The panel therefore had jurisdiction to review the remand order in its entirety.

The panel affirmed the district court's conclusion that no basis for subject matter jurisdiction applied. First, regardless of the parties' competing versions of events as to how the Saipan Property came into the United States' possession, the Childs did not provide any evidence that the federal government had assented to exclusive jurisdiction over it so as to establish federal enclave jurisdiction.

Second, the district court lacked jurisdiction under the federal officer removal statute, 28 U.S.C. § 1442(a)(1). Consistent with the Supreme Court's remand for further consideration in light of *Chevron USA Inc. v. Plaquemines Parish, Louisiana*, 608 U.S. 1 (2026), the panel clarified the elements for federal officer removal and held that to satisfy the requirements for such removal, (1) the removing defendant must be the United States, a federal agency, a federal officer, or a person "acting under" a federal

officer, such as certain private parties hired to assist federal officers; (2) the suit must be for or relating to any act under color of such office; and (3) the removing defendant must assert a colorable federal defense. A removing defendant need not show that his federal duties specifically required or strictly caused the challenged conduct. Applying this standard, the panel concluded that defendants did not satisfy the federal officer removal statute because they did not show that they were involved in an effort to assist, or to help carry out, the duties or tasks of a federal superior, and that they therefore were “acting under” a federal officer in managing the Saipan Property.

Finally, the panel held that the district court did not have jurisdiction on the theory that San Diego Family Housing was a federal agency.

COUNSEL

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Assistant Attorney General; Civil Division, United States Department of Justice, Washington, D.C.; Tara K. McGrath, United States Attorney, Office of the United States Attorney, United States Department of Justice, San Diego, California; for Amicus Curiae the United States of America.

OPINION

SANCHEZ, Circuit Judge:

Plaintiffs Donald and Lena Childs rented military housing within the Naval Amphibious Base Coronado. During their lease, the Childs dealt with water-intrusion and mold contamination issues that allegedly damaged their personal property and impacted their health. According to Plaintiffs, Defendants San Diego Family Housing, a public-private venture created by federal statute, and Lincoln Military Property Management, the property manager, were aware of these issues and did not adequately remediate the problem. Plaintiffs filed the instant action in state court asserting negligence and other state law claims. Defendants removed the action to federal district court on the basis of federal enclave, federal agency, and federal officer jurisdiction. After assessing each of these grounds for removal, the district court concluded that it lacked jurisdiction over the action and remanded to state court. We conclude that no basis for federal jurisdiction applies and affirm.¹

¹ On June 29, 2026, the Supreme Court granted Defendants' petition for writ of certiorari, vacated our prior judgment, and remanded for further consideration in light of *Chevron USA Inc. v. Plaquemines Parish*,

I.

A.

Defendant San Diego Family Housing (“SDFH”) is a public-private venture between the Navy and Lincoln/Clark San Diego, LLC under the Military Housing Privatization Initiative (“MHPI”). *See* 10 U.S.C. §§ 2871–2885. SDFH contracted with Lincoln Military Property Management (“Lincoln”) to provide property management services to the Silver Strand I housing community, which includes military housing on Naval Amphibious Base Coronado (“NAB Coronado”). In 2016, Plaintiffs Donald and Lena Childs, with their minor children, leased a home from SDFH at 1333 Saipan Road, Coronado, California (“the Saipan Property”).

Soon after Plaintiffs moved into their home, the property began to suffer from repeated water intrusion and related mold contamination. According to Plaintiffs, these problems caused damage to their personal property and eventually impacted the family’s health, causing fatigue, shortness of breath, chronic headaches, and other symptoms. After reporting these issues to Defendants, Lincoln sent InDepth, a mold remediation company, to inspect the property. InDepth discovered visible mold in multiple areas of the home and allegedly told Plaintiffs that there “[was] no reason to run any tests” because the mold was visible. InDepth informed Lincoln of its findings, and Lincoln provided temporary relocation assistance to the family while InDepth performed remediation services.

After Plaintiffs were told that the remediation service was successfully completed, Plaintiffs requested

Louisiana, 608 U.S. 1 (2026). We now address our federal officer removal doctrine consistent with that remand.

documentation verifying that the mold had been addressed, which Lincoln allegedly refused to provide. Upon their return to the property, Plaintiffs engaged their own mold testing service provider who ran tests that indicated heightened levels of hazardous mold. Plaintiffs told Lincoln and InDepth about the test results and allege that Defendants dismissed their concerns and insisted that the home was habitable. Plaintiffs refused to remain at the property and, after rejecting alternative housing in the same community, Defendants immediately ceased paying the Childs' relocation costs. Defendants allegedly refused to acknowledge the presence of mold and took no further steps to properly remediate the property.

B.

In 2019, Plaintiffs brought suit in state court against SDFH, Lincoln, and InDepth, asserting claims for negligence, private nuisance, breach of contract, breach of the implied warranty of habitability, breach of the implied covenant of peaceful and quiet enjoyment, and constructive eviction. SDFH and Lincoln removed the action to federal court on the basis of federal enclave, federal officer, and federal agency jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1442(a)(1). Upon removal, SDFH and Lincoln moved to dismiss the action under a claim of derivative sovereign immunity pursuant to the *Yearsley* doctrine. *See Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18 (1940). The district court denied the motion, and Defendants appealed. We held that the district court's order rejecting dismissal was not an immediately appealable collateral order and dismissed the appeal. *See Childs v. San Diego Fam. Hous. LLC*, 22 F.4th 1092, 1099 (9th Cir. 2022).

Following remand, SDFH and Lincoln moved for summary judgment on the grounds that *Yearsley* provided them derivative sovereign immunity and that the legal effect of federal enclave jurisdiction precluded most of Plaintiffs' state law claims.² The United States then filed a Statement of Interest before the district court asserting that (1) *Yearsley* did not apply to Defendants, (2) the Saipan Property was not within a federal enclave, and (3) under this court's intervening precedent in *Lake v. Ohana Military Communities, LLC*, 14 F.4th 993 (9th Cir. 2021), the district court lacked federal officer or agency jurisdiction.

The district court ordered supplemental briefing and eventually rejected all of Defendants' proffered grounds for federal jurisdiction. Specifically, the district court found that Defendants failed to establish that the Saipan Property was within a federal enclave because there was no evidence that the United States had retained or assented to exclusive federal jurisdiction over the property. Next, the district court concluded that Defendants failed to show the requisite causal nexus between the challenged actions and the federal government's involvement in Defendants' housing management to establish federal officer jurisdiction under 28 U.S.C. § 1442(a)(1). Finally, the district court concluded that Defendants were unable to establish federal agency jurisdiction under the six-factor test of *In re Hoag Ranches*, 846 F.2d 1225, 1227–28 (9th Cir. 1988). The district court

² SDFH and Lincoln also challenged Plaintiffs' settlement with InDepth. The district court did not address the propriety of that settlement in its remand order, and Defendants do not seek review of this issue on appeal.

remanded the case to state court.³ Defendants timely appealed.

II.

Before reaching the merits of these claims, we must first assess our appellate jurisdiction to review the district court's remand order. Federal courts of appeals generally lack jurisdiction to review a district court's remand order based on lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(d) ("An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise," subject to certain exceptions); *see also Yakama Indian Nation v. State of Wash. Dept. of Revenue*, 176 F.3d 1241, 1248 (9th Cir. 1999) ("Remand orders based on a defect in removal procedure or lack of subject matter jurisdiction are immune from review even if the district court's order is erroneous."). Nonetheless, § 1447(d) provides for two exceptions to this bar. Under the statute, a remand order is reviewable for actions initially removed pursuant to the federal officer removal statute codified at § 1442. *See* 28 U.S.C. § 1447(d) ("[A]n 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."). In their notice of removal, SDFH and Lincoln asserted federal enclave jurisdiction under § 1331 as well as federal officer and federal agency jurisdiction under

³ In its remand order, the district court also ruled on Defendants' evidentiary objections, sustaining their objection to an unauthenticated parcel map of NAB Coronado, thereby declining to take judicial notice of the parcel map. The district court also sustained, in part, Defendants' objections to the declaration of a senior land surveyor, Lonie Cyr, determining that legal conclusions as to whether the federal government exercises exclusive jurisdiction over the Saipan Property were improper witness testimony.

§ 1442(a)(1). Because one of the asserted grounds for removal was § 1442, we have jurisdiction to review the remand order in its entirety. *Id.* § 1447(d); *see also BP P.L.C. v. Mayor and City Council of Balt.*, 593 U.S. 230, 238 (2021) (explaining that the scope of appellate jurisdiction extends to the “whole of [the district court’s] order” when a defendant cites § 1442 as a ground for removal).

III.

We review de novo the district court’s decision to remand a removed case and its determination that it lacks subject matter jurisdiction. *Lively v. Wild Oats Mkts., Inc.* 456 F.3d 933, 938 (9th Cir. 2006). The defendant bears the burden of proving that the requirements for removal jurisdiction have been met. *Leite v. Crane Co.*, 749 F.3d 1117, 1122 (9th Cir. 2014). On appeal, Defendants renew their contentions that subject matter jurisdiction exists under (1) 28 U.S.C. § 1331 because the Saipan Property is located within a federal enclave, (2) 28 U.S.C. § 1442 because SDFH and Lincoln operated under a federal officer’s oversight and control in dealing with the Childs’ complaints, and (3) 28 U.S.C. § 1442 because SDFH qualifies as a federal agency. We consider each of these arguments in turn.

A.

Federal enclave jurisdiction is dependent on the federal government’s exercise of exclusive legislative jurisdiction. *See Lake*, 14 F.4th at 1003–04; *Paul v. United States*, 371 U.S. 245, 263–64 (1963); *United States v. Jenkins*, 734 F.2d

1322, 1325–26 (9th Cir. 1983). The Enclave Clause of the Constitution authorizes Congress to

exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

U.S. Const. art. I, § 8, cl. 17. Beyond the Enclave Clause’s specified method of establishing exclusive federal jurisdiction through the purchase of land with a state’s consent, the Supreme Court has also recognized two other methods by which the federal government can acquire exclusive jurisdiction over land. First, Congress may condition the admission of a state to the Union on a cession of jurisdiction of land within that state. *Fort Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 526–27 (1885). And second, states themselves may cede legislative jurisdiction over land within their borders to the federal government. *Id.* at 540–42.

Defendants’ arguments for enclave jurisdiction over the Saipan Property do not involve a straightforward application of any of these methods. Instead, Defendants rely on an intricate web of state and federal statutes to support their theory. Therefore, to determine whether federal enclave jurisdiction exists over the Saipan Property requires a brief historical detour.

In 1897, California passed a law ceding “to the United States of America exclusive jurisdiction over all lands within this State now held, occupied, or reserved by the Government of the United States for military purposes or defense, or which may hereafter be ceded or conveyed to said United States for such purposes.” 1897 Cal. Stat. ch. 56, § 1.⁴ In 1940, Congress passed legislation applying to land acquired thereafter which required the federal government’s assent to exclusive or partial jurisdiction over federal property located within state boundaries. *See* 40 U.S.C. § 255 (1940) (re-codified at 40 U.S.C. § 3112); *Paul*, 371 U.S. at 264; *Adams v. United States*, 319 U.S. 312, 313 (1943). The 1940 Act provided that “it shall be conclusively presumed that no [exclusive or partial] jurisdiction has been accepted,” “[u]nless and until the United States has accepted jurisdiction over lands hereafter to be acquired.” 40 U.S.C. § 255 (1940). The 1940 Act mandated that the federal government indicate its acceptance of jurisdiction by “filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated.” *Id.* Following re-codification, the statutory text makes clear that “[i]t is not required that the Federal Government obtain exclusive jurisdiction in the United States over land or an interest in land it acquires.” 40 U.S.C. § 3112(a).

From 1941 to 1976, the United States acquired the lands now comprising NAB Coronado, including the Saipan

⁴ This state law also required the United States to provide “a sufficient description by metes and bounds” of the land and that “a map or plat of such lands” be filed in “the proper office of record in the county” in which the land is located. 1897 Cal. Stat. ch. 56, § 1. The statute was amended with minor modifications in 1943, *see* 1943 Cal. Stat. ch. 134 § 114, but was later repealed in 1947, *see* 1947 Cal. Stat. ch. 1532.

Property, in a series of land transactions as well as by dredging and filling portions of the San Diego Bay. The precise mode and date of the federal government's acquisition of the Saipan property, however, is contested by the parties.

The United States and Plaintiffs rely on a declaration by Lonie Cyr, a senior land surveyor for the Navy, who attests that the government did not acquire the lands where the Saipan Property is located until 1955 through civil condemnation.⁵ According to Plaintiffs and the United States, because the acquisition of land through civil condemnation occurred after the 1940 Act, federal enclave jurisdiction over the Saipan Property requires the federal government's assent to exclusive jurisdiction by "filing a notice of . . . acceptance with the Governor of [the] State or in such other manner as may be prescribed by the laws of the State where [the] lands are situated." 40 U.S.C. § 255 (1940). By this time, California had also enacted legislation conditioning any transfer of jurisdiction on, *inter alia*, the federal government's written assent and the State Lands Commission's declaration that the transfer was "in the interest of the State." 1951 Cal. Stat. ch. 875, § 1. Because Defendants have not offered any evidence that the federal government assented to exclusive federal jurisdiction over this property by filing notice or written consent, there can be no federal enclave jurisdiction under this theory.

⁵ Defendants' claim that this proffered fact was excluded by the district court is incorrect. The district court expressly overruled Defendants' objections concerning the factual contentions in the Cyr Declaration, such as how the property came into the United States' ownership. See *supra* note 3.

Defendants respond that the 1940 Act (and its notice-filing requirement) does not apply to the Saipan Property because the relevant parcel was not “acquired” through civil condemnation in 1955; it was instead “made” by the United States by dredging and filling the San Diego Bay to create a seaplane base between 1941 and 1943. According to Defendants, the United States “has sole ownership over land created in this manner,” and they rely on *United States v. F.E.B. Corp.*, 52 F.4th 916, 926–29 (11th Cir. 2022) to buttress their arguments.⁶ But, as the 1940 Act clarified, the United States’ acquisition and ownership of land does not require that the United States obtain exclusive jurisdiction over that land. *See* 40 U.S.C. § 255 (1940); 40 U.S.C. § 3112(a). Therefore, Defendants’ claim of enclave jurisdiction requires two predicates: (1) a factual predicate that the Saipan Property originated from the United States’ own dredging and filling operation from 1941 to 1943 and not the 1955 condemnation proceeding; and (2) a legal predicate that land created by the United States for its own use lies outside the scope of the 1940 Act because it was not “acquired” and instead passed exclusively to the United States based on California’s 1897 ceding statute. We need not resolve the parties’ dispute over the factual predicate because Defendants’ arguments fail to establish the legal predicate.

The 1940 Act does not itself define the term “acquire.” *See generally*, 40 U.S.C. § 255 (1940); *see also* 40 U.S.C.

⁶ That case involved a dispute about ownership of an island created by the Navy via dredging activities near Key West, Florida. The question presented was not about whether the United States held exclusive jurisdiction over the island, but whether the United States had a claim of ownership over the island pursuant to the Submerged Lands Act, 43 U.S.C. §§ 1301–1315.

§§ 3101–3177. “Where Congress does not furnish a definition of its own,” courts “generally seek to afford a statutory term its ordinary or natural meaning.” *HollyFrontier Cheyenne Refin., LLC v. Renewable Fuels Ass’n*, 594 U.S. 382, 388 (2021) (quotation and citation omitted). Under Black’s Law Dictionary, the term “acquire” means “[t]o gain possession or control of” or “to get or obtain” “by any means.” *Acquire*, Black’s Law Dictionary (12th ed. 2024); *see also Acquire*, Black’s Law Dictionary (3d ed. 1933) (“[t]o become the owner of property; to make property one’s own” “[t]o gain permanently”). Under both its contemporary and historical plain meanings, the term “acquire” contemplates the United States’ acquisition of land created by dredging and filling operations and therefore the Saipan Property falls within the scope of the 1940 Act’s requirements.

This plain meaning of the term “acquire” also accords with the purpose of the 1940 Act. The Act followed several Supreme Court decisions that addressed “controversies concerning the relation of federal and state powers over government property,” and, specifically, whether the federal government’s acquisition of property resulted in exclusive federal jurisdiction. *Adams*, 319 U.S. at 314 (collecting cases). Before enactment, federal government officials conducted a cooperative study which resulted in legislation “aimed at giving broad discretion to the various agencies in order that they might obtain only the necessary jurisdiction.” *Id.* The 1940 Act achieved this goal by enshrining a presumption against exclusive federal jurisdiction in the absence of express federal assent. *See* 40 U.S.C. § 255 (1940).

Defendants rely on a definition of “acquire” from an inapplicable statute relating to timber resources on federal

lands. *See* 16 U.S.C. § 620e (noting the definitions of § 620e apply only “[f]or purposes of sections 620 to 620j of this title [16 U.S.C. §§ 620–620j]”). And the relevant chapter at issue, Title 40, Subtitle II, Chapter 31, does not contain any provision which would suggest that the term “acquire” should be limited to lands obtained via transaction as opposed to creation by the government itself. *See generally*, 40 U.S.C. §§ 3101–3177.

Even if we were to credit Defendants’ contention that the land was created by the United States and therefore the 1940 Act does not apply because there was no “acquisition,” the California 1897 statute forecloses their argument. That statute provided for the transfer of exclusive jurisdiction only in lands “which may hereafter be ceded or conveyed to said United States for” military purposes or defense. 1897 Cal. Stat. ch. 56, § 1. If, under Defendants’ theory, the land was created by the United States through dredging and filling, the land cannot have been ceded or conveyed *by* the State of California *to* the United States.

Finally, Defendants presented a different theory for exclusive jurisdiction before the district court that merits brief discussion. Defendants posited below that the United States retains exclusive jurisdiction over lands created by dredging and filling operations under the Submerged Lands Act. *See* 43 U.S.C. § 1313(a). This, too, is incorrect. Although § 1313 carves out an exception to the Act’s general transfer of federal title and claims to submerged lands within the territorial boundaries of states, nothing in the text of § 1313 suggests that it extinguished state jurisdiction over submerged lands within its territories. *Id.* Indeed, Congress’ purpose in passing the Submerged Lands Act was “not for the Federal Government to retain exclusive jurisdiction over navigation of the waters above the submerged lands, but for

the Federal Government to retain concurrent jurisdiction over those waters.” *Barber v. State of Hawai’i*, 42 F.3d 1185, 1191 (9th Cir. 1994).

Accordingly, regardless of the parties’ competing versions of events as to how the Saipan Property came into the United States’ *possession*, Plaintiffs have failed to provide any evidence that the federal government has assented to exclusive *jurisdiction* over it so as to establish federal enclave jurisdiction.

B.

The district court did not err in determining that it lacked jurisdiction under the federal officer removal statute. Under the federal officer removal statute, a defendant may remove to federal court any

civil action or criminal prosecution that is commenced in a State court and that is against or directed to . . . [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 . . . for or relating to any act under color of such office.

28 U.S.C. § 1442(a)(1).

We first clarify our circuit’s interpretation of the federal officer removal statute in light of the Supreme Court’s recent decision in *Chevron USA Inc. v. Plaquemines Parish, Louisiana*, 608 U.S. 1 (2026). *Plaquemines* illuminates an error in our application of the federal officer removal statute. We clarify the elements for federal officer removal and then apply those elements to facts of this case.

(1)

We must first explain where our precedent went astray. Before *Plaquemines*, our cases explained that removal under 28 U.S.C. § 1442 required a defendant to show (1) that they are “person[s] within the meaning of the statute”; (2) that “there is a causal nexus between [their] actions, taken pursuant to a federal officer’s directions, and plaintiff’s claims”; and (3) that they “can assert a colorable federal defense.” *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006) (internal quotation marks omitted).

Within the causal nexus analysis, we required the defendant to show “(1) that the person was ‘acting under’ a federal officer in performing some ‘act under color of federal office,’ and (2) that such action is causally connected with the plaintiff’s claims against it.” *County of San Mateo v. Chevron Corp.*, 32 F.4th 733, 755 (9th Cir. 2022). The “acting under” element entailed a “relationship between someone acting under a federal officer and the federal officer” that “typically involves ‘subjection, guidance, or control.’” *Stirling v. Minasian*, 955 F.3d 795, 800 (9th Cir. 2020) (quoting *Fidelitad, Inc. v. Insitu, Inc.*, 904 F.3d 1095, 1099 (9th Cir. 2018)). And the “causal connection” element required demonstration that the defendant’s actions were “connected or associated, with acts under color of federal office.” *DeFiore v. SOC LLC*, 85 F.4th 546, 557 n.6 (9th Cir. 2023) (quoting *Latiolais v. Huntington Ingalls, Inc.*, 951 F.3d 286, 292 (5th Cir. 2020) (en banc)). Despite the “causal” label we employed, our precedent noted that the “causal connection” element did not require a strict causal connection. *Id.*

Plaquemines involved an environmental suit brought by coastal parishes in the State of Louisiana against Chevron for the company's production of crude oil in Louisiana's coastal zone during World War II. In *Plaquemines*, the Supreme Court articulated the three requirements for federal officer removal differently than this court:

First, the removing defendant must be the United States, a federal agency, a federal officer, or a person 'acting under' a federal officer, such as certain private parties hired to assist federal officers. Second, the suit must be 'for or relating to any act under color of such office.' Third, the removing defendant must assert 'a colorable federal defense.'

Plaquemines, 608 U.S. at 6 (citations omitted).

The Supreme Court primarily analyzed the "relating to" requirement of the officer removal statute. The Court explained that the "phrase 'relating to' sweeps broadly" and is ordinarily understood to mean "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Id.* at 11 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (quoting BLACK'S LAW DICTIONARY 1158 (5th ed. 1979))). A defendant must show "a connection that is not 'tenuous, remote, or peripheral'" but need not "show that his federal duties specifically required or strictly caused the challenged conduct" to satisfy the "relating to" requirement. *Id.* at 11-12 (citation omitted).

Applying this requirement, the Supreme Court held that Chevron's crude oil production "related to" its performance of its contractual duties to refine aviation gas ("avgas") for

the military's war efforts in World War II. *Id.* at 13-14. *Plaquemines* explained that "Chevron's contract [with the Government] did not have to expressly direct or invite Chevron's crude-oil production for that conduct to "relate to' its avgas refining." *Id.* at 14. It was enough that Chevron's crude oil production methods—which Plaintiffs challenged as environmentally unsound—enabled the company to "maximize production of crude oil" to service its avgas refining contracts with the Government, and that the Government had incentivized Chevron to maximize crude oil production during the wartime in various ways. *See id.* at 13 (citation modified). Chevron therefore "plausibly alleged a close relationship between its challenged conduct and the performance of its federal duties" for purposes of federal officer removal. *Id.* at 12.

Plaquemines also clarified the relationship between the "acting under" and "relating to" requirements under the federal officer removal statute. The Court rejected Louisiana's alternative theory that "the removal statute requires that the defendant was 'acting under' a federal officer in taking the specific actions challenged in the suit." *Id.* at 15. Louisiana accepted that "Chevron acted under a federal officer while engaged in avgas refining" but asserted that "the suit is not against a defendant 'acting under' an officer" because "Chevron did not produce crude oil pursuant to a federal contract." *Id.* The Court explained that this argument "impermissibly conflates" the "acting under" and "relating to" requirements of the officer removal statute because it leaves "the 'relating to' requirement with little, if any, independent function." *Id.* (citation omitted).

The Court observed that the federal officer removal statute "permits the removal of state-court suits against 'any officer (or any person acting under that officer)' that are 'for

or relating to any act under color of such office.” *Id.* (quoting 28 U.S.C. § 1442(a)(1)). The removal statute thus “contemplates removal of suits against officers or their agents for acts that were not done under color of their offices, so long as the suits ‘relat[e] to’ such acts.” *Id.*

Plaquemines viewed the “acting under” and “relating to” elements of § 1442(a)(1) as involving analytically distinct inquiries: (1) was the defendant “acting under” the color of office—*i.e.*, under the direction, guidance, or control of an officer (such as aviation gas refinement in *Plaquemines*), and (2) are the defendant’s acts challenged by plaintiffs (such as the production of crude oil) “related to” acts performed under the color of office.

Plaquemines illuminates that our federal officer removal doctrine has gone astray in certain respects. In our application of a causal nexus test, we conflated the requirements of the “acting under” element—to show federal subjection, guidance, or control—with the subject of the “related to” element—the challenged acts. We previously framed “the ‘central issue’ in the causal nexus analysis” as “whether a federal officer directed the defendant to take the *action challenged*.” *Lake*, 14 F.4th at 1005 (emphasis added) (citing *Riggs v. Airbus Helicopters, Inc.*, 939 F.3d 981, 987 (9th Cir. 2019) (citing *Fidelitad, Inc.*, 904 F.3d at 1099)); *see, e.g., Cabalce v. Thomas E. Blanchard & Assocs., Inc.*, 797 F.3d 720, 728 (9th Cir. 2015) (requiring the defendant to show “federal control . . . over the handling of the seized fireworks,” which was the subject of the suit).

Under *Plaquemines*, however, § 1442(a)(1) removal does not require that a federal officer direct the defendant to take the specific action challenged. To satisfy the “acting under” requirement of the removal statute, a defendant is not

required to show that they acted under a federal officer “in taking the specific actions challenged in the suit.” *Plaquemines*, 608 U.S. at 15. And to satisfy the “relating to” requirement, a defendant need not show that a federal officer “expressly direct[ed] or invite[d]” the challenged action. *Id.* at 14; *see also id.* at 21 (Jackson, J., concurring) (agreeing that the Fifth Circuit erred because it “faulted Chevron for failing to identify a specific contractual directive ‘pertaining to oil production.’”). Our causal nexus standard thus improperly merged the “acting under” and “related to” elements and imposed a more onerous requirement for defendants by demanding a causal relationship between the two.

Indeed, our prior opinion in this case illustrates this error. In our prior opinion, we required Defendants to show “federal control or direction over the relevant actions at issue here—mold testing and remediation” to satisfy the “acting under” element of the causal nexus test. *Childs v. San Diego Fam. Hous., LLC*, 150 F.4th 1151, 1161 (9th Cir. 2025), *vacated sub nom. San Diego Fam. Hous. v. Childs*, No. 25-1027, 2026 WL 1855130 (U.S. June 29, 2026). We concluded that the federal officer removal statute did not permit Defendants to remove this case to federal court based upon Defendants’ failure to show that they “acted pursuant to the Navy’s instructions with regard to mold inspection and remediation” on Plaintiffs’ properties. *Id.* at 1162.

Accordingly, we clarify the requirements for removal under 28 U.S.C. § 1442(a)(1) in accordance with *Plaquemines*. To satisfy the requirements for federal officer removal, (1) “the removing defendant must be the United States, a federal agency, a federal officer, or a person ‘acting under’ a federal officer, such as certain private parties hired to assist federal officers,” (2) the suit must be “for or relating

to any act under color of such office,” and (3) “the removing defendant must assert a colorable federal defense.” *Plaquemines*, 608 U.S. at 6 (internal quotation marks omitted). This articulation incorporates our requirement that defendants show that they are persons “within the meaning of the statute.” *Durham*, 445 F.3d at 1251. As *Plaquemines* makes clear, a causal nexus analysis is inconsistent with the requirements for federal officer removal, and a removing defendant need not show that his federal duties specifically required or strictly caused the challenged conduct.⁷ *Plaquemines*, 608 U.S. at 11.

(2)

We now turn to the facts of this case. Defendants have not satisfied the federal officer removal statute because they have not shown that they were “acting under” a federal officer in managing the Saipan property. 28 U.S.C. § 1442(a)(1). We disagree with Defendants’ contention that they acted under a federal officer merely because they “operate the Navy’s military housing under Navy contracts, oversight, guidance and direction, a task the Navy would otherwise have to do by itself.” Because we conclude that Defendants fail to satisfy the “acting under” requirement of

⁷ Our causal nexus requirement has also been a source of confusion because we have not required a strict causal connection. See *DeFiore*, 85 F.4th at 557 n.6; see also Petition for Writ of Certiorari at 26, *Chevron USA Inc. v. Plaquemines Par., La.*, 608 U.S. 1 (2026) (No. 24-813) (observing that the Ninth Circuit’s use of the phrase “causal nexus” stokes “confusion” because we have “watered down” our causation requirement).

the federal officer removal statute, we do not analyze the “relating to” or “colorable federal defense” requirements.⁸

To satisfy the “acting under” requirement, defendants must be “involve[d in] an effort to *assist*, or to help *carry out*, the duties or tasks of the federal superior.” *Watson v. Philip Morris Cos.*, 551 U.S. 142, 152 (2007). This relationship involves “subjection, guidance, or control.” *Id.* (quoting WEBSTER’S NEW INTERNATIONAL DICTIONARY 2765 (2d ed. 1953)). The Supreme Court has warned, however, that “the help or assistance necessary to bring a private person within the scope of the statute does *not* include simply *complying* with the law.” *Id.* Thus, it is not enough that a federal officer’s “regulation is highly detailed” or that a defendant’s activities “are highly supervised and monitored.” *Id.* at 153.

We have distilled *Watson*’s language into a set of four considerations. We consider (1) “whether the person is acting on behalf of the officer in a manner akin to an agency relationship,” (2) “whether the person is subject to the officer’s close direction, such as acting under the ‘subjection, guidance, or control’ of the officer,”⁹

⁸ All parties accept that Defendants are “persons” for purposes of § 1442(a).

⁹ We exclude *County of San Mateo*’s addition of the phrase “or in a relationship which ‘is an unusually close one involving detailed regulation, monitoring, or supervision.’” 32 F.4th at 756 (quoting *Watson*, 551 U.S. at 154). *Watson* did not hold that “detailed regulation, monitoring, or supervision” gives rise to an “acting under” relationship. Rather, the Court observed that some lower courts have held that “Government contractors fall within the terms of the federal officer removal statute, at least when the relationship between the contractor and the Government is an unusually close one involving detailed regulation, monitoring, or supervision” and declined to “further examine here (a

(3) “whether the private person is assisting the federal officer in fulfilling ‘basic governmental tasks’ that ‘the Government itself would have had to perform’ if it had not contracted with a private firm,” and finally, (4) “whether the private person’s activity is so closely related to the government’s implementation of its federal duties that the private person faces ‘a significant risk of state-court prejudice’” in light of the purpose of the federal officer removal statute. *County of San Mateo*, 32 F.4th at 756–57 (quoting *Watson*, 551 U.S. at 151–54).

The relative weights of these four considerations will vary depending on the circumstances of each case. Here, we conduct an analysis of these considerations tailored to the facts of this specific case. Weighing these four considerations, we conclude that Defendants have not shown that they acted under a federal officer.

Because this factor so clearly cuts against removal, we begin with the state-court prejudice consideration. Defendants have not shown that their activity of managing rental housing is “so closely related to the government’s implementation of its federal duties” that they face a “significant risk of state-court prejudice.” *County of San Mateo*, 32 F.4th at 757 (internal quotation marks omitted). Rather, as the U.S. Amici put it, this case is, at its core, a “landlord-tenant dispute.” Brief for the U.S. as Amicus Curiae in Support of Appellees, *Childs v. San Diego Family Housing, LLC*, No. 24-1256, Dkt. No. 30. Defendants point to no risk—nor do we discern any—that there is any “‘local prejudice’ against unpopular federal laws or federal

case where private contracting is not at issue) whether and when particular circumstances may enable private contractors to invoke the statute.” *Watson*, 551 U.S. at 154.

officials,” *County of San Mateo*, 32 F.4th at 756 (quoting *Watson*, 551 U.S. at 150), in the carrying out of these landlord responsibilities. Nor are matters of national importance at stake, and there is no direct conflict between state and federal governments. *Cf. Goncalves By & Through Goncalves v. Rady Child.’s Hosp. San Diego*, 865 F.3d 1237, 1246 (9th Cir. 2017) (noting the “strong ‘and distinctly federal interests’” at play there (citation omitted)). This case thus does not implicate Congress’s desire to “protect the Federal Government from state-court ‘interference with its operations.’” *Plaquemines*, 608 U.S. at 5 (quoting *Watson*, 551 U.S. at 150).

Turning to the remaining prongs of the *Watson* analysis, we also conclude that they do not support an “acting under” relationship. First, Defendants operated independently of the Navy rather than on the Navy’s behalf “in a manner akin to an agency relationship.” *County of San Mateo*, 32 F.4th at 756; *see also Goncalves*, 865 F.3d at 1246–47 (holding that a defendant acted under federal officer when it served “as the government’s agent”). Pursuant to the MPHI, the Government contracted with Defendants to manage the Saipan Property. Although direct oversight over the construction and renovation of housing was required by the MPHI, day-to-day management of the property was left to Defendants. *See* 10 U.S.C. § 2885. The Operating Agreement between the Government and Defendants states that Lincoln enjoyed “exclusive management and control of the business of [SDFH]” as well as “full authority to take all actions necessary or appropriate to pursue the business and carry out the purpose of the Company.” The Government’s hands-off approach to day-to-day operations ultimately counsels against a finding that Defendants acted as the Government’s agent in its management of the property. *Cf.*

Goncalves, 865 F.3d at 1246 (finding defendant to be acting as the Government’s agent where Office of Personnel Management (“OPM”) was “responsible for the overall administration of the program while *sharing* the day-to-day operating responsibility with the [contractors]” (emphasis added)).

Second, although Defendants present evidence of federal oversight, that oversight does not cross the line into subjection, guidance, or control. The Navy approves matters like cash flow, contracts, and capitalization, can direct Defendants to replace the property manager under certain conditions, reviews Defendants’ budget and work orders, meets with Defendants to discuss various properties, collects reports from Defendants, and sends “letter directives” that inform Defendants about the hazards of mold, testing efficacy, and expert body recommendations, and counsel compliance with statutory requirements under 10 U.S.C. § 2891a.¹⁰

At the same time, Defendants do not identify any relevant directive or mandate in the Navy’s letters during the period in question, much less any directive that federal law does not already require.¹¹ *See Watson*, 551 U.S. at 153

¹⁰ Defendants also invoke their ground lease, which preserves federal responsibility for pre-existing conditions in military housing and reverts the land and housing to the Government at the end of the lease. Yet we have explained that “the federal government’s willingness to lease federal property . . . to a private entity for that entity’s commercial purposes does not, without more, constitute the kind of assistance required to establish that the private entity is ‘acting under’ a federal officer.” *County of San Mateo*, 32 F.4th at 760.

¹¹ Defendants identify one letter directive that provides minimum standards for tenant displacement, but this letter postdates the date that Plaintiffs commenced this litigation.

(stating that “compliance” with “federal laws, rules, and regulations” does not by itself create an acting under relationship). And as we have explained, the “Navy’s consent power over aspects of the housing arrangement” merely illustrates “‘simple compliance . . . that does not meet the acting under standard.’” *Lake*, 14 F.4th at 1005 (quoting *Riggs*, 939 F.3d at 989).¹² Thus, although this factor is perhaps not as clear cut as the others, we conclude that Defendants’ evidence of federal oversight does not rise to the level of subjection, guidance, or control. *See Watson*, 551 U.S. at 151; *cf. Goncalves*, 865 F.3d at 1246 (holding that a third-party administrator of a federal health plan acted under a federal officer when the OPM exercised “direct and extensive control” over benefits contracts).

Defendants assert that their strongest evidence that demonstrates they were “acting under” a federal officer is a lease provision that ordered them to create a mold management plan. The lease provision states: “Lessee shall comply with the Lessee created ‘Mold Management Plan’ which shall be delivered to the Government for review and approval.” The mold management plan, in turn, created a policy to remediate and test mold. Defendants assert that they developed the mold management plan “in consultation” with the Navy and “based in part on U.S. Navy documents and policies,” and that the Navy “periodically audits” their compliance “through work order review.”

¹² Although *Lake*’s causal nexus discussion is irreconcilable with *Plaquemines*, compare *Lake*, 14 F.4th at 1005, with *Plaquemines*, 608 U.S. at 11, 14, *Lake*’s analysis of the “acting under” requirement remains relevant as to the nature of the “subjection, guidance, and control” factor more broadly. *See Lake*, 14 F.4th at 1005.

Defendants did not act under a federal officer within the meaning of the officer removal statute when they created and complied with the mold management plan. The lease provision certainly contains a directive—to create and follow a plan—but that directive leaves Defendants significant discretion to devise and implement their own plan. The lease provision specifies no requirements for that mold management plan. *Cf. Leite*, 749 F.3d at 1120 (defendants acted under a federal officer when the Navy provided “detailed specifications regulating the warning that equipment manufacturers were required to provide”). And the Navy’s power to withhold consent over the mold management plan does not show that the Navy controlled that plan’s specific contents. *See Lake*, 14 F.4th at 1005.

Defendants also do not suggest that the contents of the mold management plan deviated from basic procedures that Defendants would otherwise follow in any ordinary lease. Indeed, the mold management plan states that it seeks to ensure “compliance with applicable laws, regulations, project-related requirements and [Lincoln Military Housing] policies,” and we have held that a lease provision that “largely track[s] statutory requirements” counsels “[m]ere ‘compliance with the law’” rather than demonstrates a federal officer’s control over the contractor’s acts. *County of San Mateo*, 32 F.4th at 760 (citation modified) (quoting *Goncalves*, 865 F.3d at 1245). To hold that this open-ended directive—which requires Defendants to create and follow procedures to comply with applicable laws and policies—creates an acting under relationship would sweep in nearly every military contractors’ performance of their contractual duties as an act “under color” of federal office.

Finally, Defendants argue that their management of military housing assists the Navy in fulfilling “basic

governmental tasks” that the Government would have had to fulfill itself. *County of San Mateo*, 32 F.4th at 756–57 (quoting *Watson*, 551 U.S. at 153). Defendants suggest that this fact alone authorizes removal to federal court. Yet Congress crafted the MPHI to authorize private-public partnerships to assume day-to-day management and responsibility for military housing. *See Lake*, 14 F.4th at 1005–06. If Defendants were correct that fulfillment of a basic federal task was sufficient by itself to authorize removal, then every landlord-tenant dispute pertaining to housing authorized by the MPHI would end up in federal court. Defendants’ argument stands in tension with Congress’s purpose in enacting the MPHI.

Indeed, our caselaw recognizes that this factor alone is not enough to create an “acting under” relationship. *See Goncalves*, 865 F.3d at 1246; *County of San Mateo*, 32 F.4th at 757 (citing *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 399–400 (5th Cir. 1998)) (explaining that a contractor acted under a federal officer when it produced Agent Orange for the Vietnam War efforts because the government otherwise would have had to do so itself *and* because of the government’s “detailed specifications” and “on-going supervision”).

Although we interpret the federal officer and agency removal statute “broadly in favor of removal,” *Durham*, 445 F.3d at 1252, and “credit the defendant’s theory of the case,” Defendants “must allege facts, not mere legal conclusions, in compliance with the pleading standards established in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).” *Leite*, 749 F.3d at 1121, 1124. Defendants’ allegations do not show that they acted on behalf of the Navy “in a manner akin to an agency relationship” or that the Navy exercised “subjection,

guidance, or control” over Defendants. *County of San Mateo*, 32 F.4th at 756. Accordingly, Defendants have not satisfied the “acting under” requirement of the federal officer removal statute.

C.

Defendants finally contend that the instant case is removable pursuant to 28 U.S.C. § 1442(a)(1) because SDFH is a federal agency.¹³ To determine whether an entity is an “agency” under 28 U.S.C. § 451, this court considers the factors laid out in *In re Hoag Ranches*, 846 F.2d at 1227–28. These factors are (1) “the extent to which the alleged agency performs a governmental function,” (2) “the scope of government involvement in the organization’s management,” (3) “whether its operations are financed by the government,” (4) “whether persons other than the government have a proprietary interest in the alleged agency and whether the government’s interest is merely custodial or incidental,” (5) “whether the organization is referred to as an agency in other statutes,” and (6) “whether the organization is treated as an arm of the government for other purposes, such as amenability to suit under the Federal Tort Claims Act.” *Id.*

Regarding the first factor, Defendants note that “SDFH took over operations for a significant volume of military housing that was affordable to Navy servicemembers within

¹³ For purposes of § 1442(a)(1), a federal “agency” is defined as “any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.” 28 U.S.C. § 451; *see also Lake*, 14 F.4th at 1005 (applying § 451 to § 1442(a)(1)).

their [Basic Allowance for Housing (“BAH”)] . . . something the Navy previously provided on its own.” This argument, however, is foreclosed by *Lake*, where we explained that “leasing housing on a military installation under the MHPI” is not necessarily a “historically and exclusively governmental function” and “[m]erely leasing housing to a servicemember cannot itself be a governmental function” since “BAH can be used on or off a military base.” 14 F.4th at 1005.

Under the second factor, the government’s control over SDFH’s housing operations is limited. As in *Lake*, the “exclusive management and control” conferred to SDFH’s private managing member, Lincoln/Clark San Diego, LLC, coupled with the Navy’s “limited rights and responsibilities,” demonstrate that “the government only ever had limited control.” *Id.* at 1006. “At most, this factor does not weigh heavily in either direction” because an entity subject to federal regulation does not, by virtue of that regulation, become controlled by the federal government. *Id.* at 1006.

As to the third factor, which relates to government financing, Defendants highlight that the United States capitalized SDFH at a rate of nearly twice the private partner. But as we observed in *Lake*, “[a]n initial financial contribution does not show ongoing operational financing.” *Id.* at 1006. And Defendants have not presented any evidence that the United States continued to finance SDFH’s operations beyond its contributions during the development period.

Under the fourth factor, whether any person other than the government has a proprietary interest in the alleged agency, the answer is clearly yes. As noted above,

Lincoln/Clark San Diego, LLC, retains “exclusive management and control of the business of [SDFH].” *See id.* at 1006. Defendants’ reliance on *Acron Investments, Inc. v. Federal Savings & Loan Insurance Corp.*, is misplaced. In *Acron*, we concluded that the Federal Savings & Loan Insurance Corporation was a federal agency based on the government’s proprietary interest in the defendant government corporation. 363 F.2d 236, 239–40 (9th Cir. 1966), *cert denied*, 385 U.S. 970 (1966). *Acron*, however, is distinguishable because that case addressed the character of a government corporation in which the government had once owned all stock but had since retired it. *Id.* at 240. Here, the Government has never retained an equivalent interest in SDFH. Rather, any interest the Government retains in SDFH is merely “custodial” or “incidental” in light of Lincoln/Clark San Diego, LLC’s exclusive control over the venture’s business. *Hoag Ranches*, 846 F.2d at 1228; *see also Lake*, 14 F.4th at 1006 (finding the government’s interest in the defendant public-private venture insufficient to satisfy factor four).

With respect to the fifth factor, Defendants do not cite any statute that identifies SDFH or any public-private venture formed for the purpose of military housing as an agency. And Defendants concede that they do not satisfy factor six. Balancing these factors, we conclude that Defendants have not demonstrated that SDFH is a federal agency under 28 U.S.C. § 1442(a)(1).

IV.

In light of the foregoing, the district court correctly determined that Defendants have not carried their burden in demonstrating federal enclave jurisdiction under 28 U.S.C.

§ 1331 or federal officer or agency jurisdiction under 28 U.S.C. § 1442(a)(1).

AFFIRMED.