

**In the Supreme Court of the United States**

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DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

*v.*

REBECCA KELLY SLAUGHTER, ET AL.

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**REPLY IN SUPPORT OF APPLICATION FOR STAY**

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No. 25A264

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

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## REPLY IN SUPPORT OF APPLICATION FOR STAY

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Just as this Court stayed orders reinstating removed members of other independent agencies, this Court should stay the order here reinstating a Commissioner of the Federal Trade Commission (FTC) whom the President has determined should not exercise any part of the executive power. The only salient difference between the modern-day FTC and the National Labor Relations Board (NLRB), Merit Systems Protection Board (MSPB), and Consumer Product Safety Commission (CPSC), is that the FTC exercises even more significant executive power than its counterparts. Under this Court's recent cases—*Seila Law LLC v. CFPB*, 591 U.S. 197 (2020), and *Collins v. Yellen*, 594 U.S. 220 (2021)—that means that FTC Commissioners, like members of the NLRB, MSPB, and CPSC, must be removable at will. Respondent tries to wield *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), to forever insulate FTC Commissioners from at-will removal. But *Seila Law* explained that *Humphrey's Executor* addressed the powers the Court ascribed to “the 1935 FTC,” *id.* at 218, and stated that “what matters is the set of powers the Court considered as the basis for its decision,” *id.* at 219 n.4. *Humphrey's Executor* is not a get-out-of-removal-free card for the FTC no matter how much executive power the agency actually exercises. Just

as the NLRB, MSPB, and CPSC exercise significant executive power, the modern-day FTC exercises core executive power, and its heads must be fully accountable to the President.

Meanwhile, respondent gives short shrift to an independent basis for a stay: As Judge Rao observed, courts lack equitable authority to reinstate removed principal officers. Indeed, *Humphrey's Executor* itself supports that point, since that was a suit for backpay on the heels of a long line of precedents establishing that courts lack the power to award reinstatement to removed executive officers. And, on the equities, this Court already recognized in *Trump v. Wilcox*, 145 S. Ct. 1415 (2025), and *Trump v. Boyle*, 145 S. Ct. 2653 (2025), that the government suffers irreparable harm from being forced to entrust executive power to someone the President has removed. Respondent's counterarguments rehash contentions this Court considered and rejected in *Wilcox* and *Boyle*. This Court should grant the application. It should also—as both sides agree—grant certiorari before judgment to resolve these recurrent questions in the current Term.

**A. The Government Is Likely To Show That Article II Authorizes The President To Remove FTC Members At Will**

Article II authorizes the President to remove, at will, “those who assist him in carrying out his duties,” including, at a minimum, principal officers who exercise “substantial executive power.” *Seila Law*, 591 U.S. at 215, 218. This Court thus determined in *Wilcox* and *Boyle* that the government was likely to show that Article II authorizes the President to remove NLRB, MSPB, and CPSC members at will. See *Boyle*, 145 S. Ct. at 2654; *Wilcox*, 145 S. Ct. at 1415. Those agencies plainly exercise significant and varied forms of executive power, from enforcement powers to rule-making to adjudicatory authority. Respondent correctly notes (Opp. 21-22) that *Wil-*

*cox* and *Boyle* do not conclusively resolve the merits, but they do resolve “how a court should exercise its equitable discretion.” *Boyle*, 145 S. Ct. at 2654. Respondent does not even try (Opp. 21-22) to identify any way in which the FTC’s exercise of executive power differs from the NLRB’s, MSPB’s, or CPSC’s. Because the FTC “exercises executive power in a similar manner as” those other agencies, *Wilcox* and *Boyle* “squarely contro[l].” *Boyle*, 145 S. Ct. at 2654.

Respondent instead argues (Opp. 10-13) that *Humphrey’s Executor* controls this case because the FTC is the same agency, with the same removal provision, at issue there. *Humphrey’s Executor*, however, explicitly limited its holding to “officers of the kind here under consideration.” 295 U.S. at 632. And *Seila Law* took *Humphrey’s Executor* “on its own terms,” explaining that “what matters is the set of powers the Court considered as the basis for its decision.” 591 U.S. at 219 n.4. The “contours of the *Humphrey’s Executor* exception” therefore “depend upon the characteristics of the agency before the Court”—the FTC “as it existed in 1935” and as it was described in the Court’s opinion. *Id.* at 215. While the “1935 FTC” or “New Deal-era FTC” as understood in *Humphrey’s Executor* was a “mere legislative or judicial aid,” *id.* at 218, today’s FTC, like the NLRB, MSPB, or CPSC, exercises substantial executive power, including the power to file enforcement actions, make rules, issue final decisions in administrative adjudications, investigate violations of the law, and even conduct foreign affairs, see Appl. 12-15.

*Seila Law* forecloses respondent’s contentions (Opp. 17-21) that the 1935 FTC exercised the same type of powers as the modern FTC and that *Humphrey’s Executor* considered the types of powers that the modern FTC exercises. *Humphrey’s Executor* considered the power to issue cease-and-desist orders that could only be enforced by courts, the power to make “reports and recommendations to Congress,” and the power

to submit “recommended dispositions to an Article III court.” *Seila Law*, 591 U.S. at 218-219. Today’s FTC, by contrast, possesses the power to file civil suits seeking monetary penalties and other remedies, to promulgate rules, and to issue final decisions in adjudications. See Appl. 12-15. *Seila Law* described the power to bring civil enforcement suits as a “quintessentially executive power not considered in *Humphrey’s Executor*.” 591 U.S. at 219. *Seila Law* likewise treated the power to “promulgate binding rules” or “unilaterally issue final decisions” in adjudications as the type of “significant” authority that requires removability at will. *Id.* at 218-220. If respondent were correct that *Humphrey’s Executor* considered all those powers, its statement that the 1935 FTC “occupie[d] no place in the executive department” and “exercise[d] no part of the executive power,” 295 U.S. at 628, would be inexplicable.

In the end, respondent does not dispute many ways in which today’s FTC wields more executive power than the 1935 FTC. For instance, she does not dispute (Opp. 17) that the FTC’s power to seek civil penalties post-dates *Humphrey’s Executor*. See Appl. 12. She admits (Opp. 18-19) that the 1935 FTC had to go to court to seek enforcement of its cease-and-desist orders, while similar orders issued by today’s FTC can become final without judicial involvement. See Appl. 13-14. And she concedes (Opp. 20-21) that, since 1935, Congress has empowered the FTC to negotiate international agreements. Respondent correctly notes (Opp. 21) that the FTC must conduct negotiations under the oversight of the Secretary of State. But ambassadors likewise act under the supervision of the Secretary of State, yet Article II empowers the President to remove them at will. In addition, the Secretary of State does not oversee the FTC’s provision of investigative “assistance to a foreign law enforcement agency.” 15 U.S.C. 46(j)(2). Such foreign-affairs activities fall well outside the scope of *Humphrey’s Executor*. See, e.g., *Seila Law*, 591 U.S. at 273 (Kagan, J., dissenting).

Respondent describes (Opp. 17) the FTC's new authorities as "outgrowths of [the FTC's] original powers, rather than dramatic transformations." But "quasi-legislative or quasi-judicial powers" such as making reports to Congress and recommendations to courts, *Humphrey's Executor*, 295 U.S. at 628, materially differ from "substantial executive power[s]" such as filing enforcement actions, promulgating binding rules, and issuing final decisions in adjudications, *Seila Law*, 591 U.S. at 218. In any event, this Court has "declined to extend" *Humphrey's Executor* to new contexts, *id.* at 215, and "even a modest extension is still an extension," *Ziglar v. Abbasi*, 582 U.S. 120, 147 (2017). Regardless of whether the differences between the 1935 FTC and the modern FTC are "dramatic," Opp. 17, they establish that *Humphrey's Executor* does not control this case. Rather, *Seila Law* and *Collins* control the resolution of the merits, and *Wilcox* and *Boyle* control the resolution of this application.

Respondent argues (Opp. 13-16) that *Seila Law* turned solely on the agency's single-member structure rather than its exercise of substantial executive power, that *Seila Law's* severability section supports removal restrictions for multimember agencies, and that independent agencies have a long historical pedigree. Indeed, even as respondent elsewhere treats (Opp. 21-23) the FTC as an agency unicorn subject to special protection by virtue of *Humphrey's Executor*, she simultaneously emphasizes (Opp. 15) that the FTC's "structure and removal protections are mirrored in statutes creating some 'two-dozen multimember independent agencies'"—among them the NLRB, MSPB, and CPSC. The respondents in *Wilcox* and *Boyle* made the same arguments about structural features of independent-agency statutes. See Opp. at 13-15, *Boyle, supra* (No. 25A11); *Wilcox* Opp. at 1, 14, *Wilcox, supra* (No. 24A966); Harris Opp. at 2, 11, *Wilcox, supra* (No. 24A966). The Court rejected those contentions in granting stays in those cases. For good reason: *Seila Law* establishes that a principal

executive officer who wields “substantial executive power,” whether as a sole agency head or as a member of a commission, must be removable at will. 591 U.S. at 218.

Finally, respondent doubly errs in her conception of severability. To start, she is incorrect to suggest (Opp. 5) that, if the removal restriction is unconstitutional, the entire statute falls with it. The FTC Act includes a severability clause stating that, if “any provision” “is held invalid,” “the remainder” of the Act “shall not be affected thereby.” 15 U.S.C. 57. Even apart from that severability clause, a court that confronts a constitutional flaw in a statute must try “to limit the solution to the problem.” *Seila Law*, 591 U.S. at 234 (opinion of Roberts, C.J.). In the removal context, that means disregarding the unconstitutional “removal provision,” not abolishing the whole agency. *Ibid.*; see *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 508-510 (2010); *Collins*, 594 U.S. at 270 (Thomas, J., concurring).

Further, respondent is incorrect to argue that the appropriate severability remedy for the constitutional violation is to invalidate the “post-1935 amendments to the FTC Act” granting the FTC new powers, not to disregard “the pre-1935 for-cause removal restriction.” Opp. 26 (emphasis omitted). As just explained, this Court has consistently addressed similar problems in other cases by disregarding the unconstitutional “removal provision,” not by rewriting the agency’s powers. *Seila Law*, 591 U.S. at 234 (opinion of Roberts, C.J.); see *Free Enterprise Fund*, 561 U.S. at 508-510. Courts lack the “editorial freedom” to “blue-pencil a sufficient number of [an agency’s] responsibilities” or to “restrict [an agency’s] enforcement powers.” *Free Enterprise Fund*, 561 U.S. at 509-510.

Respondent’s contrary approach would require this Court to invalidate dozens of statutes enacted since *Humphrey’s Executor*. See Appl. 4 (noting that the modern FTC exercises authority under more than 80 laws). Respondent’s willingness to raze

the agency to preserve her own job is difficult to reconcile with her professed concern (e.g., Opp. 5) for the FTC's institutional interests. And her suggestion that this Court strike down dozens of later statutes to save the FTC Act's earlier removal provision defies common sense and inverts the ordinary rule that later laws take precedence over earlier ones. Contrary to respondent's contention (Opp. 23-24), *Barr v. AAPC*, 591 U.S. 610 (2020), does not support her proposed remedy. In *AAPC*, where Congress first enacted a constitutional content-neutral speech restriction but later added an unconstitutional content-based exception, this Court cured the constitutional problem by invalidating the exception. See *id.* at 628-634 (plurality opinion). Unlike *AAPC*, however, this case does not involve "an unconstitutional amendment to a prior law," *id.* at 630; the constitutional problem inheres in the removal restriction, not in later statutes granting the FTC new powers. And while the remedy in *AAPC* involved invalidating a narrow exception, respondent's proposed remedy here would require invalidating around 80 statutes.

**B. The Government Is Likely To Show That Courts Lack The Power To Issue Equitable Relief Restoring Removed Executive Officers**

The government is independently likely to show that the district court exceeded its remedial authority by reinstating a principal executive officer removed by the President. After insisting (Opp. 3) that *Humphrey's Executor* is "controlling" on the merits, respondent largely ignores the precedents establishing that "a court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee, nor restrain the appointment of another." *White v. Berry*, 171 U.S. 366, 377 (1898); see, e.g., *In re Sawyer*, 124 U.S. 200, 210 (1888). Respondent cannot keep the one precedent she likes and jettison the rest.

Respondent objects (Opp. 27) that the lower-court orders did not really require

“reinstatement,” instead arguing that, because her removal was “illegal,” her office “never became vacant” and there was no need to “reinstatement” her. But “reinstatement” aptly describes the remedy of restoring an officer or employee to his position after a removal or firing is deemed to be unlawful. See, e.g., Independent Counsel Reauthorization Act of 1987, § 2, 101 Stat. 1305 (removed independent counsel “may be reinstated” by a court); 29 U.S.C. 160(c) (NLRB may award “reinstatement” to unlawfully fired employees). Regardless, whatever the label, a court may not grant equitable relief “to restrain the appointment or removal” of an officer. *White*, 171 U.S. at 377. The district court’s order improperly restrains respondent’s removal by declaring that respondent’s removal was “unlawful” and “without legal effect,” by declaring that respondent “remains a rightful member” of the FTC, and by enjoining the defendants from “removing” respondent, “interfering with” her performance of their duties, or denying her “access to any government facilities, resources, and equipment” needed to perform her duties. App., *infra*, 38a-39a.

Respondent quotes (Opp. 27) this Court’s statement in *Marbury v. Madison*, 1 Cranch 137 (1803), that “every right, when withheld, must have a remedy.” *Id.* at 147. But that principle does not supply courts with powers that they otherwise lack. A plaintiff may lack a judicial remedy because Congress has not created a cause of action, because the government has not waived its sovereign immunity, because the defendant enjoys absolute or qualified immunity, or because a case involves a political question—but that does not license courts to override those limits by fashioning new legal or equitable remedies. See *Egbert v. Boule*, 596 U.S. 482, 491 (2022); *Webster v. Doe*, 486 U.S. 592, 612-613 (1988) (Scalia, J., dissenting). In any event, the traditional remedy for this type of claim is back pay. Though respondent asserts (Opp. 30) that back pay is not “meaningful,” that assertion rests on the erroneous assumption

that she possesses a private, judicially enforceable interest in the future exercise of public authority. Thus, officers who have challenged their removal have traditionally sought back pay, not reinstatement injunctions. See *Bessent v. Dellinger*, 145 S. Ct. 515, 517 (2025) (Gorsuch, J., dissenting). At any rate, courts have no authority to fashion new remedies because they consider existing remedies inadequate, for “the question whether a given remedy is adequate is a legislative determination that must be left to Congress.” *Egbert*, 596 U.S. at 498.

Contrary to respondent’s suggestion (Opp. 28), a reinstatement order burdens the President’s exercise of executive power far more than a back-pay order. Only the former remedy compels the President to entrust executive power to someone he has sought to remove. “Perhaps the most telling indication of the severe constitutional problem with the [district court’s remedy] is the lack of historical precedent for [it].” *Free Enterprise Fund*, 561 U.S. at 505. Respondent has not identified a single case before this Administration in which a federal court has reinstated a principal executive officer removed by the President.

Respondent also errs in suggesting (Opp. 28-29) that the back-pay remedy would “render much of this Court’s removal jurisprudence pointless” and allow the President to “blow past any [removal] limitation.” The President has an independent duty to follow the Constitution and the law regardless of whether courts may review his actions or grant relief. See *Trump v. Hawaii*, 585 U.S. 667, 711-712 (2018) (Kennedy, J., concurring). And under the “presumption of regularity,” *United States v. Chemical Foundation*, 272 U.S. 1, 14 (1926), courts must presume that the President will obey valid restrictions on his removal power.

Unable to justify the injunction and declaratory judgment that the district court granted, respondent retreats (Opp. 29) to arguing that the court could have

awarded mandamus. “But it is unclear how [respondent] might defend the district court’s exercise of *equitable* remedial authority by pointing to a distinct *legal* remedy.” *Dellinger*, 145 S. Ct. at 518 (Gorsuch, J., dissenting). Respondent, in any event, cannot satisfy the requirements for mandamus relief; among other things, she has not shown that her right to relief is clear and indisputable. See Appl. 22-23.<sup>1</sup>

### C. The Equities Support A Stay

Just as the equities supported stays in *Wilcox* and *Boyle*, they support a stay here too: The Executive Branch is irreparably harmed by being saddled with a principal officer whom the President does not wish to entrust with executive power, and judicial reinstatement orders cause obvious damage to the separation of powers. Respondent attempts to distinguish (Opp. 32) those decisions on the ground that the removals there affected which party controlled the agency, while the removal here does not. But the Court did not rely on that fact in granting stays in either *Wilcox* or *Boyle*. Instead, the Court reasoned that “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty,” and that a “stay is appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers.” *Wilcox*, 145 S. Ct. at 1415. Those rationales apply equally here. In addition, in *Boyle*, the Court stayed the reinstatement of three Democratic members of the CPSC. See 145 S. Ct. at 2654. On respondent’s theory (Opp. 34), the Court should instead have stayed the reinstatement of only two of those

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<sup>1</sup> Respondent also errs in arguing (Opp. 27 & n.7) that the government failed to preserve its remedial argument below. The government raised the argument in both lower courts, see D. Ct. Doc. 33, at 17-27 (Apr. 23, 2025); C.A. Doc. 2126432, at 18-23 (July 21, 2025), and both courts passed on the issue, see Appl. App. 10a n.1, 71a-80a. The court of appeals also determined that circuit precedent foreclosed the government’s remedial argument in this posture, see *id.* at 10a n.1, meaning that additional development of the point would have been futile.

members, leaving the third member in place “to dissent, raise concerns, and identify issues for the public, Congress, and regulated parties.”

Even putting aside *Wilcox* and *Boyle*, respondent’s argument misconceives Article II, which grants the President “a free hand to supervise individual members,” not just the power to supervise the “agency as a whole.” *Free Enterprise Fund*, 561 U.S. at 504. Authority over the agency does not “substitute for authority over its members.” *Ibid.* Regardless of whether the President may supervise the FTC as a whole, he suffers irreparable harm from a judicial order that prevents him from removing (and thus from supervising) respondent.

In all events, respondent’s continued presence at the agency does meaningfully affect the agency’s activities. Respondent’s vote could be decisive when the other Commissioners disagree among themselves or when some of them recuse themselves, and respondent can perform some functions unilaterally. See Appl. 25. Respondent, moreover, does not address the prospect (Appl. 25-26) that, even when she does not act unilaterally and her vote is not decisive, regulated parties could argue that her reinstatement renders the agency’s actions invalid.

Respondent next complains (Opp. 34-35) that the President has not explained why he removed her when he did. But that argument just attacks the notion of removal *at will*. The Constitution does not require the President to provide his reasons for removing an officer. Contrast U.S. Const. Art. I, § 7, Cl. 2 (requiring the President to identify his “Objections” when vetoing a bill). And because the removal power is “conclusive and preclusive,” the President’s reasons for exercising the power “may not be regulated by Congress or reviewed by the courts.” *Trump v. United States*, 603 U.S. 593, 620-621 (2024) (emphasis added). Requiring the government to justify respondent’s removal before allowing the removal to take effect is wholly inconsistent

with the nature of the power that the Constitution grants the President.

Respondent identifies no irreparable injury she suffers because of her removal. To the contrary, unlike the removed officers in *Wilcox* and *Boyle*, she *disclaims* (Opp. 36) any “countervailing interest” in her “wish to hold onto employment, salary, and personal ‘political power.’” But a court may grant injunctive relief only if the movant faces irreparable harm, and respondent has all but conceded that she does not face any irreparable harm here. Respondent instead invokes (Opp. 36-39) Congress’s and the FTC’s interests in the enforcement of the removal restriction, but she “has no standing to vindicate the institutional harms to the FTC or whatever injury [she] believes has been inflicted on Congress.” Appl. App. 23a (Rao, J., dissenting).

Respondent cites the “presumption of constitutionality which attaches to every Act of Congress,” observing that, in light of that presumption, this Court ordinarily allows Acts of Congress to “remain in effect pending a final decision on the merits.” Appl. 38. But that presumption “does not apply” in interbranch disputes such as this one. *Morrison v. Olson*, 487 U.S. 654, 704 (1988) (Scalia, J., dissenting) (emphasis omitted). “[W]here the issue pertains to separation of powers, and the political branches are (as here) in disagreement, neither can be presumed correct.” *Id.* at 704-705. “As one of the interested and coordinate parties to the underlying constitutional dispute, Congress, no more than the President, is entitled to the benefit of the doubt.” *Id.* at 705. Respondent’s argument would have required denying relief in *Wilcox* and *Boyle*, which likewise concerned the constitutionality of statutory removal restrictions.

Respondent contends (Opp. 5) that, if the Court grants a stay, “the agency Congress created would be severely wounded and radically transformed.” But the dissent in *Wilcox* similarly argued that granting a stay would undermine “Congress’s idea of independent agencies,” preventing the NLRB and MSPB from “working as Congress

intended them to.” 145 S. Ct. at 1420 (Kagan, J., dissenting). The dissent in *Boyle* likewise objected that granting a stay would undercut “Congress’s design of a whole class of agencies” and would “negat[e] Congress’s choice of agency bipartisanship and independence.” 145 S. Ct. at 2655-2656 (Kagan, J., dissenting). And respondent’s refrain here ignores that Congress did not just create the FTC, but also transformed it over the years by authorizing it to exercise ever-greater types of executive power in ever-expanding circumstances. Appl. 12-15. Respondent’s appeal to Congress’s objectives is, in short, “another *déjà vu* and *déjà rejeté*”; this Court has “watched it parade past before” in earlier removal cases and “ha[s] not saluted.” *Oregon v. Ice*, 555 U.S. 160, 177 (2009) (Scalia, J., dissenting).

Finally, reprising her arguments on the merits, respondent contends (Opp. 31, 36) that her removal violates *Humphrey’s Executor* and that the public has an interest in compliance with that precedent. But the public has no interest in vindicating a broad reading of *Humphrey’s Executor* that this Court has already rejected in *Seila Law*—let alone in encouraging lower courts to disregard *Wilcox* and *Boyle* whenever different multimember agencies are at issue.

On the contrary, the public interest is best served by respecting the separation of powers reflected in Article II’s exclusive vesting of the executive power—“all of it,” *Seila Law*, 591 U.S. at 203—in the President. “The Framers ‘sought to encourage energetic, vigorous, decisive, and speedy execution of the laws by placing in the hands of a single, constitutionally indispensable, individual the ultimate authority that, in respect to the other branches, the Constitution divides among many.’” *Trump*, 603 U.S. at 610 (quoting *Clinton v. Jones*, 520 U.S. 681, 712 (1997) (Breyer, J., concurring in judgment)). “They deemed an energetic executive essential to ‘the protection of the community against foreign attacks,’ ‘the steady administration of the laws,’ ‘the pro-

tection of property,’ and ‘the security of liberty.’” *Ibid.* (quoting *Seila Law*, 591 U.S., at 223–224). To this end, “lesser officers must remain accountable to the President, whose authority they wield.” *Seila Law*, 591 U.S. at 213. That arrangement promotes democratic accountability in a single official elected by the entire Nation, provides for “a ‘vigorous’ and ‘energetic’ Executive,” *Trump*, 693 U.S. at 610, and preserves “the requisite responsibility and harmony in the Executive Department,” *Seila Law*, 591 U.S. at 214 (quoting Letter from James Madison to Thomas Jefferson (June 30, 1789), 16 *Documentary History of the First Federal Congress* 893 (2004)).

#### **D. This Court Should Grant Certiorari Before Judgment**

Unlike the removed officers in *Wilcox* and *Boyle*, respondent acquiesces (Opp. 39) in certiorari before judgment. Respondent correctly observes (*ibid.*) that it “is of imperative public importance” that the continuing status of *Humphrey’s Executor* “be resolved promptly.” Respondent also correctly notes (*id.* at 31) that, because the lower courts have interpreted *Humphrey’s Executor* “to squarely control questions pertaining to the for-cause removal provision of the FTC Act,” further percolation in the lower courts would serve no useful purpose.

Prolonged uncertainty about the scope of the President’s removal power is now affecting the work of much of the federal government. Lower courts are currently considering suits challenging the President’s at-will removal of members of seven independent agencies,<sup>2</sup> his at-will removal of members of three multimember agencies

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<sup>2</sup> *Harris v. Trump*, No. 25-5057 (D.C. Cir.) (MSPB); *Wilcox v. Trump*, No. 25-5057 (D.C. Cir.) (NLRB); *Grundmann v. Trump*, No. 25-5165 (D.C. Cir.) (Federal Labor Relations Authority); *U.S. Institute of Peace v. Jackson*, No. 25-5185 (D.C. Cir.) (U.S. Institute of Peace); *Slaughter v. Trump*, No. 25-5261 (D.C. Cir.) (FTC); *Boyle v. Trump*, No. 25-1687 (4th Cir.) (CPSC); *Brown v. Trump*, No. 25-cv-1764 (D.D.C.) (National Transportation Safety Board).

without express statutory tenure protection,<sup>3</sup> his at-will removal of inspectors general at eight federal agencies,<sup>4</sup> and his removal for cause of a member of the Board of Governors of the Federal Reserve System.<sup>5</sup> Lower courts are also considering suits concerning department heads' removal of inferior officers.<sup>6</sup> This Court's resolution of this suit could control many of those cases and provide important guidance in others.

Respondent argues (Opp. 40) that this Court should grant review only of the merits, not of the lawfulness of the district court's remedy. But the remedial issue is independently certworthy, both because the district court's decision conflicts with this Court's remedial precedents and because it severely intrudes on the President's Article II powers. Granting certiorari on that question would also provide a comprehensive review of the issues. Respondent states (Opp. 40) that the government points "to no division among the lower courts" on the remedial question. But nearly all officers challenging their removal by President Trump have sued in the U.S. District Court for the District of Columbia, and that court has interpreted D.C. Circuit precedent to authorize injunctive relief reinstating removed officers. See, e.g., Appl. App. 73a (citing *Severino v. Biden*, 71 F.4th 1038, 1042-1043 (D.C. Cir. 2023); *Swan v. Clinton*, 100 F.3d 973, 980 (D.C. Cir. 1996)). The absence of a circuit conflict is less significant where, as here, the relevant issue has arisen and will arise almost entirely in only one circuit.

The removed NLRB and MSPB officers in *Wilcox* have filed conditional peti-

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<sup>3</sup> *LeBlanc v. U.S. Privacy and Civil Liberties Oversight Board*, No. 25-5197 (D.C. Cir.) (Privacy and Civil Liberties Oversight Board); *Harper v. Bessent*, No. 25-5268 (D.C. Cir.) (National Credit Union Administration Board); *Samuels v. Trump*, No. 25-cv-1069 (Equal Employment Opportunity Commission).

<sup>4</sup> *Storch v. Hegseth*, No. 25-cv-415 (D.D.C.).

<sup>5</sup> *Cook v. Trump*, No. 25-5326 (D.C. Cir.).

<sup>6</sup> E.g., *Abramowitz v. Lake*, No. 25-5145 (D.C. Cir.) (Head of Voice of America).

tions for writs of certiorari asking this Court to grant review in those cases alongside this one. See *Harris v. Bessent* (filed Sept. 15, 2025); *Wilcox v. Trump* (filed Sept. 15, 2025). Those petitions confirm that the importance of the issues in these cases warrant the extraordinary step of granting certiorari before judgment. They also confirm that this Court should grant a stay here—and that the FTC is no different from those other agencies in key respects. Those petitions argue that the MSPB is “the kind of adjudicatory body that lies at the heart of the *Humphrey’s Executor* framework,” Pet. at 12, *Harris, supra*, and that the NLRB’s removal protection complies with Article II because the NLRB performs “adjudicatory” functions, Pet. at 18, *Wilcox, supra*. This Court nonetheless granted a stay in *Wilcox*. See 145 S. Ct. at 1415. A stay is likewise warranted with respect to the FTC, which not only conducts adjudications, but also brings enforcement actions, makes rules, investigates violations, and negotiates international agreements. This Court should not allow the modern-day FTC to stand as the sole outlier when its Commissioners exercise even more executive power than many of their agency counterparts and when reinstatement of a removed Commissioner would inflict at least as much damage on Executive Branch functioning and the separation of powers.

\* \* \* \* \*

This Court should stay the judgment of the U.S. District Court for the District of Columbia pending the resolution of the government’s appeal to the U.S. Court of Appeals for the D.C. Circuit and pending any proceedings in this Court.

Respectfully submitted.

D. JOHN SAUER  
*Solicitor General*

SEPTEMBER 2025