[NOT YET SCHEDULED FOR ORAL ARGUMENT]

No. 25-5326

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LISA D. COOK,
in her official capacity as a member of the Board of Governors of the Federal Reserve System and her personal capacity,

Plaintiff-Appellee,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia

EMERGENCY MOTION FOR A STAY PENDING APPEAL AND ADMINISTRATIVE STAY

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

Plaintiff is Lisa D. Cook, in her official capacity as a member of the Board of Governors of the Federal Reserve System and her personal capacity. Defendants are Donald J. Trump, in his official capacity as President of the United States of America; the Board of Governors of the Federal Reserve System both collectively and in their individual official capacities; and Jerome H. Powell, in his official capacity as Chair of the Board of Governors of the Federal Reserve System.

Azoria Capital, Inc. and James T. Fishback appeared as amici curiae in the district court. K.L. Smith, Jason Goodman, Martin Akerman, and William Michael Cunningham filed pro se motions to appear as amici curiae. There have been no intervenors.

B. Ruling Under Review

The ruling under review is an order granting a preliminary injunction (Dkt. 28) and opinion (Dkt. 27) that the district court (Judge Jia M. Cobb) issued on September 9, 2025. The opinion and order are attached to this motion.

C. Related Cases

This case has not previously been before this Court.

Wilcox v. Trump, No. 25-5057 (D.C. Cir.); *Harris v. Bessent*, No. 25-5055 (D.C. Cir.); *Grundmann v. Trump*, No. 25-5165 (D.C. Cir.); *Slaughter v. Trump*, No. 25-5261 (D.C. Cir.), and *Boyle v. Trump*, No. 25-1687 (4th Cir.), involve challenges to the President's removal of principal officers from multimember agencies with statutory removal restrictions.

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INTRODUCTION

This appeal arises from an order enjoining the President's removal for cause of plaintiff Lisa Cook as a member of the Board of Governors of the Federal Reserve System. The President removed Cook for cause under 12 U.S.C. § 242 after detailing misrepresentations Cook had made in mortgage applications—misrepresentations that would constitute mortgage fraud if made knowingly, and that at a minimum reflect a lack of care in financial matters that the President determined was inconsistent with Cook's holding a position of public financial trust on the Federal Reserve Board. The district court nonetheless preliminarily enjoined Cook's removal, holding that the President lacked cause to remove Cook because she made the misrepresentations before she assumed office and that Cook had not been afforded sufficient notice or an opportunity to be heard before the President removed her. That extraordinary order countermanding the President's exercise of his Article II authority rests on a series of legal errors and should be stayed pending appeal.

First, under longstanding Supreme Court precedent, when a statute gives a power of removal "for cause," without any specification of the causes, the removal decision "is a matter of discretion and not reviewable." *Reagan v. United States*, 182 U.S. 419, 425 (1901). And even if the decision

were reviewable, Cook would have to show that the President acted *ultra vires—i.e.*, contrary to a specific statutory prohibition that is clear and mandatory—a standard that Cook does not come close to satisfying.

Second, under any standard, the President had clear cause to remove Cook from office. As a Governor, Cook serves on the Federal Open Market Committee which "has exclusive control over the open market operations of the entire Federal Reserve System," which "affects the ability of banks to make loans and investments" and "has a substantial impact on interest rates and investment activity in the economy as a whole." *Federal Open Market Committee of Federal Reserve System v. Merrill*, 443 U.S. 340, 343-44 (1979). Here, the evidence—which Cook has yet to offer contrary explanation for—was that she applied for two loans for her personal benefit, and was able to obtain favorable interest rates by misrepresenting where she lived. Op. 5. Regardless of whether that misconduct occurred before or during office, it indisputably calls into question Cook's trustworthiness and whether she can be a responsible steward of the interest rates and economy for the whole Nation. Indeed, the district court had no problem confirming that the President would have cause to remove Cook if she was convicted of mortgage fraud based on her conduct before taking office. Op. 21-22. Criminal conviction is not a prerequisite for removal under 12 U.S.C. § 242,

and the President acted lawfully in removing Cook from office.

Third, there is no basis under the Due Process Clause for enjoining the President's removal of a principal officer. Cook does not hold a personal property interest in her position, as a "public office is not property" and her role as a principal officer "to the public is inconsistent with either a property or a contract right." *Taylor v. Beckham*, 178 U.S. 548, 576-77 (1900). And here, the President clearly made public both the factual basis for his concern and his judgment that Cook's conduct constituted grounds for removal. Cook does not allege that she sought to offer any evidence to the President or anyone else that would explain her actions, either after the President first called on her to resign, *see* Dkt. 1 at 14, ¶¶ 44-46, or even through this litigation. For a "hearing mandated by the Due Process Clause [] to serve any useful purpose, there must be some factual dispute," and "the absence of" materially disputed facts "is fatal to [plaintiff's] claim under the Due Process Clause that [she] should have been given a hearing." *Codd v. Velger*, 429 U.S. 624, 627 (1977).

Finally, the Supreme Court has established that the balance of equities favors the government when a district court reinstates a removed principal officer. *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025); *Trump v. Boyle*, 145 S. Ct. 2653 (2025). The equitable calculus is identical here. *See*

Grundmann v. Trump, 2025 WL 1840641, at *1 (D.C. Cir. July 3, 2025) (granting a stay pending appeal because "[t]he Supreme Court's reasoning fully applies to" the reinstatement of other principal officers).

We respectfully request a stay pending appeal and an immediate administrative stay, consistent with the administrative stays granted in *Trump v. Wilcox*, No. 24A966 (U.S. Apr. 9, 2025), *Trump v. Slaughter*, No. 25A264 (U.S. Sept. 8, 2025), and *Grundmann v. Trump*, No. 25-5165 (D.C. Cir. June 18, 2025), which similarly involved district court orders reinstating principal officers who had been removed by the President. We also respectfully request that the Court act on the request for an administrative stay or a stay pending appeal by the close of business on Monday, September 15, 2025, as the Federal Open Market Committee—which includes the Board of Governors—is scheduled to meet and may direct open market activities for Federal Reserve Banks on September 16.

STATEMENT

1. There are seven Governors on the Board of the Federal Reserve System, all appointed by the President with the advice and consent of the Senate. 12 U.S.C. §§ 241-242. Governors serve staggered fourteen-year terms, "unless sooner removed for cause by the President." *Id.* § 242. "[T]he Government does not contest the constitutionality of the 'for cause'

removal restrictions for [the] Board Governors." Op. 9.

The Federal Reserve Governors "overse[e] the operations of the regional Reserve Banks, including by setting policies for Reserve Banks' lending of money to private banks and provision of other financial services," while also "regulat[ing] certain private financial institutions and activities." *Appointment and Removal of Federal Reserve Bank Members of the Federal Open Market Committee*, 43 Op. O.L.C. ____, 2019 WL 11594453, at *2 (Oct. 23, 2019). All the Governors and five presidents of the regional Reserve Banks serve on the Federal Open Market Committee, which "expands [and] contracts the supply of money in the United States." *Id.* at *3. This occurs through open market operations that raise and lower interest rates, which "has a 'substantial impact' on 'investment activity in the economy as a whole,'" *id.*, making these operations "the most important monetary policy instrument of the Federal Reserve System," *Merrill*, 443 U.S. at 343; *see also* 12 U.S.C. § 263.

2. In 2023, President Biden nominated Lisa Cook to serve as a Governor and the Senate confirmed her later that year. Op. 4. On August 15, 2025, the Director of the Federal Housing Finance Agency sent a referral letter to the Department of Justice raising evidence of apparent mortgage fraud by Cook based on misstatements in her mortgage

agreements before she was nominated and confirmed to the Board. Op. 5. The letter stated that in June 2021, Cook had acquired a $203,000 loan for a property in Ann Arbor, Michigan, based on Cook's representation that she would "use the Property as [her] principal residence * * * for at least one year after the date of occupancy." Dkt. 1-2 at 2-3. Two weeks later, in July 2021, Cook obtained a $540,000 loan for a second property in Atlanta, Georgia, based on her affirmance that this property would "serve as her primary residence for a full year." Dkt. 1-2 at 3. The letter stated that this Georgia property was listed for rent in 2022, and Cook "has not disclosed any rental income tied to this address." *Id.*

The letter was made public on August 20, 2025; that same day, the President called on Cook to resign. Op. 5. The President reiterated that call two days later in a public interview, stating that he would fire Cook if she did not resign. *Id.* Cook has not made any attempt to explain her actions, meaningfully dispute the allegations, or otherwise clarify how she obtained $743,000 in loans for her own benefit by stating that she would live in two places at once.

On August 25, 2025, the President removed Cook as a Governor for cause, because the "American people must be able to have full confidence in the honest of the members entrusted with setting policy and overseeing the

Federal Reserve." Op. 6. Based on Cook's misconduct, the President determined that neither he nor the public could "have such confidence in [her] integrity." Op. 6.

3. Cook sued the President, Jerome Powell as Chair of the Federal Reserve, and the Federal Reserve Board of Governors to enjoin her removal. Op. 6-7. Cook moved for a temporary restraining order, but because the parties were able to engage in briefing and a court hearing, the court construed the motion as seeking a preliminary injunction. Op. 2.

The district court granted a preliminary injunction, holding that "the permissible grounds 'for cause' removal" in 12 U.S.C. § 242 "are limited to grounds concerning an official's behavior in office and whether they have been faithfully and effectively executing statutory duties." Op. 9. Because the President removed Cook based on her misconduct before she took office, the court ruled the President likely lacked cause to remove her. Op. 26-27.

The court also held that Cook's removal likely violated due process because Cook "has a protected property interest in her 'for cause'-protected role as a member of the Board of Governors." Op. 32. Based on that conclusion, the court further determined that Cook was entitled to a pre-deprivation hearing before being removed, based on the balancing factors

of *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Op. 33-39.

The court concluded that Cook would face irreparable harm from being removed from a "unique Presidentially appointed and Senate-confirmed role with significant responsibility," Op. 39, and that the equities weighed in favor of a preliminary injunction ordering Cook's reinstatement to office, Op. 45-47. The court denied the government's request for a stay pending appeal. Op. 48-49.

ARGUMENT

In considering a stay pending appeal, this Court considers four factors: the likelihood of success on the merits, the movant's irreparable injury, the balance of harms, and the public interest. *Nken v. Holder*, 556 U.S. 418, 426 (2009). Because those factors uniformly favor the government, a stay pending appeal is warranted.

I. The Government Is Likely To Prevail On The Merits

A. The President's Determination Is Unreviewable Or At Most Reviewable Under The *Ultra Vires* Standard

The President's "power to remove—and thus to supervise—those who wield executive power on his behalf" is "conclusive and preclusive." *Trump v. United States*, 503 U.S. 593, 608-09 (2024). "Congress cannot act on, and courts cannot examine, the President's actions" within this sphere. *Id.* Thus the Supreme Court has long held that removal "for cause," but not

further specified, "is a matter of discretion and not reviewable." *Reagan v. United States*, 182 U.S. 419, 425 (1901). *Accord* Montgomery H. Throop, *A Treatise on the Law Relating to Public Officers* § 396, at 387 (1892) ("[W]here a statute gives a power of removal 'for cause,' without any specification of the causes, this power is of a discretionary and judicial nature; and unless the statute otherwise specifically provides, the exercise thereof cannot be reviewed in any other tribunal, with respect either to the cause, or it is sufficiency or existence, or otherwise.").

Reagan considered a court officer who by statute could be removed "for causes prescribed by law," 182 U.S. at 424, but Congress had not provided for or further specified such causes, *id.* at 425-26. When the officer challenged his removal as unlawful, the Supreme Court affirmed dismissal of the case, explaining that "when causes are not defined nor removal for cause provided for, [it] is a matter of discretion and not reviewable." *Id.* at 425. That rule applies here with equal force.

If there were any review, it would be extremely narrow and circumscribed, which even the district court recognized. Op. 25 (recognizing that a court may not review whether a specified permissible cause was sufficient to warrant removal). Indeed, Cook's complaint does not identify a free-standing statutory cause of action, and her suit boils

down to a claim that the President acted *ultra vires*. That method of review is "essentially a Hail Mary pass" and requires Cook to demonstrate that the President plainly acted "contrary to a specific prohibition in the statute that is clear and mandatory." *Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 722 (D.C. Cir. 2022). Cook cannot demonstrate such an "extreme" departure from statutory commands, *id.*, and under any standard of review the government is likely to succeed on the merits.

B. The President Had Cause To Remove Cook From Office Based On Her Apparent Contradictory Attestations Made To Benefit Herself

As the district court noted, "for cause" has long been understood to "relat[e] to the conduct, ability, *fitness*, or *competence* of the officer." Op. 11 (quoting Black's Law Dictionary 796 (3d ed. 1933)) (emphasis added). But the court fundamentally erred in holding that the President lacked such cause for removal here.

The Governors of the Federal Reserve System are entrusted with the critical responsibility of managing the money supply of the United States, ensuring that Federal Reserve notes serve as an elastic currency that can meet the country's demand for liquidity, and appropriately using the purchase and sale of government securities to reach target interest rates for the economy as a whole.

Cook has been accused of financial misconduct, misrepresenting the terms of her personal loans to inure to her own benefit by receiving lower interest rates than might otherwise be offered to her. Dkt. 1-2 at 2-3. If those contradictory representations were made knowingly, they could constitute federal felonies. *See, e.g.*, 18 U.S.C. § 1344 (bank fraud); *id.* § 1014 (false statements to financial institution). And if they were made inadvertently, they still demonstrate lack of care or negligence with respect to important financial matters.

In this litigation, Cook has offered no meaningful explanation for her apparent contradictory statements about whether she primarily lived in her Michigan house or her Georgia house, both of which she stated would be her primary residence for essentially the same time. *Supra* pp. 5-6. Instead, Cook has proffered that perhaps President Biden and the Senate might have been on inquiry notice of these misstatements at the time of her confirmation, and that her misconduct does not rise to the level of "'moral turpitude' or criminal convictions." Dkt. 17 at 13-15. Nothing in the text of "for cause" suggests that inquiry notice by a previous President eliminates any possible cause, or that only immoral or criminal conduct can be the basis for removal.

Cook's apparent financial misconduct constitutes clear cause for the

President to consider and ultimately order her removal, and at a minimum demonstrates "the sort of gross negligence in financial transactions that calls into question [her] competence and trustworthiness as a financial regulator." Dkt. 1-4 at 2. As Alexander Hamilton made clear when discussing the Federal Reserve's historical predecessor—the Bank of the United States—its principals must be entrusted with the "keen, steady, and, as it were, magnetic sense" of the "prosperity of the institution" for "careful and prudent administration," because that is the "only basis on which an enlightened, unqualified and permanent confidence can be expected to be erected and maintained." 3 The Works of Alexander Hamilton 163 (1885 ed. Henry Cabot Lodge). When Governors by misconduct or gross neglect erode the foundations of such confidence, the President acts properly and lawfully by removing them.

The district court did not question the ultimate merits of that judgment, but instead erroneously held that the President lacked statutory authority to consider Cook's actions *at all* because they occurred before she took office. Op. 26-27. The court reached that result by reasoning that the "for cause" removal limitation must be limited to cover only the same ground as other removal statutes that consider an official's actions in office. Op. 13-19 (citing statutes that provide for removal based on "inefficiency,

neglect of duty, or malfeasance in office"). But if Congress had wanted to limit cause to only in-office conduct, "it easily could have drafted language to that effect," as it has done in other statutes. *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 169 (2014). Removal "for cause" contemplates a broader range of considerations, and indeed the Supreme Court has recognized that a for-cause removal provision "appears to give the President *more* removal authority than other removal provisions reviewed by this Court," and specifically contrasted "for cause" with "inefficiency, neglect of duty, or malfeasance in office." *Collins v. Yellen*, 594 U.S. 220, 255-56 (2021).

The district court resisted this conclusion, stating that allowing the President to remove "Governors from office based on conduct that was already known and ratified through the confirmation process would allow for" the President to remove Governors effectively at will. Op. 21. It is difficult to understand the district court's concern. Most individuals do not commit financial fraud, much less those selected to lead the Federal Reserve. If an earlier President and earlier Senate had confirmed Bernie Madoff or Charles Ponzi to be Federal Reserve Governors, it would blink reality to suggest that a later President could not remove them based on their misdeeds, regardless of whether they occurred in office or not.

The district court mistakenly viewed the government as "conce[ding] that conduct that was known to the appointing authorities (the President and Senate) at the time of a Board member's appointment could not be the basis for a later 'for cause' firing." Op. 19. But government counsel simply said that "if it was something that was known at the time, it's much harder to say that it's cause later because the presumption is that has gone through the political process * * * [b]ut again, that's not the facts here." Hearing Tr. at 66:4-9 (Aug. 29, 2025). Counsel also argued that pre-confirmation conduct would be cause if it "was not known at the time of confirmation." *Id.* at 66:15-16. Indeed, Cook's counsel agreed at the hearing that "for cause" did not categorically exclude conduct that predates confirmation. Hearing Tr. at 17:10-18:23 (Aug. 29, 2025). The district court's insistence that "for cause" must be limited to "circumstances that have occurred while [the Governors] are in office," Op. 16, is a categorical definition urged by neither party.

Moreover, the district court's narrow construction of "for cause" butts up against the President's "constitutionally appointed duty to 'take care that the laws be faithfully executed' under Article II." *Morrison v. Olson*, 487 U.S. 654, 690 (1988). A construction of "cause" that nevertheless forbids the President from removing a principal officer when there is unrebutted

evidence of serious misconduct would raise substantial questions under Article II. *Cf.* John F. Manning, *The Independent Counsel Statute: Reading "Good Cause" In Light of Article II*, 83 Minn. L. Rev. 1285, 1330 (1999) (discussing "persuasive reasons" why "a narrow construction of 'good cause' * * * would raise a serious question under Article II").

Indeed, the district court seemed to recognize these concerns when it suggested that prior misconduct could support removal if it led to a criminal conviction. Op. 21-22. While that is obviously true, it is unclear what textual basis the court used to reach that conclusion—the misconduct would have already "occurred before they assumed the position," and would not count as the "official's behavior in office," which the court had earlier considered to be the only legal grounds for cause. Op. 9.

The court's acknowledgment that the President may consider pre-office misconduct if it results in extreme consequences underscores that pre-office misconduct is not categorically off limits. And once it is agreed that the President may properly remove a Governor based on such misconduct, the district court had no authority to inquire further. When a statute "commits decisionmaking to the discretion of the President, judicial review of the President's decision is not available." *Dalton v. Specter*, 511 U.S. 462, 477 (1994). Presidential action may be reviewed for compliance

with the Constitution, but mere claims that the President "has acted in excess of his statutory authority" are not judicially cognizable "when the statute in question commits" the discretionary decision to "the President." *Id.* at 474. The court properly recognized that principle when it clarified that it was "not inquiring into the sufficiency of the evidence presented by President Trump." Op. 26 n.9; *accord United States ex rel. Garland v. Oliver*, 6 Mackey 47, 56 (Sup. Ct. D.C. 1887) ("[I]f the power to remove is in this President," the court lacks power to review "the sufficiency of the cause which induce him to remove an officer").

C. Cook Does Not Have A Due Process Interest In A Hearing

The government is also likely to succeed on Cook's procedural challenge, as there is no basis under the Due Process Clause for enjoining the President's removal of a principal officer. To establish a due process violation, Cook must show that the President "deprived her of a 'liberty or property interest' to which she had a 'legitimate claim of entitlement,' and that 'the procedures attendant upon that deprivation were constitutionally [in]sufficient.'" *Roberts v. United States*, 741 F.3d 152, 161 (D.C. Cir. 2014).

Cook does not hold a protected property interest in her position, as a "public office is not property" and her role as a principal officer "to the public is inconsistent with either a property or a contract right." *Taylor v.*

Beckham, 178 U.S. 548, 576-77 (1900). The Supreme Court had "little difficulty" deciding that "an officer appointed for a definite time or good behavior" did not have any "vested interest or contract right in his office" and thus could not maintain a due-process claim. *Crenshaw* v. *United States*, 134 U.S. 99, 104 (1890).[1] That same analysis defeats Cook's claim here.

The district court erred in holding to the contrary, mistakenly reasoning that Cook presented a special case because she is an "independent agency Board Member." Op. 32. The court held *Taylor* inapposite because it involved "elected offices," Op. 30, but *Taylor*'s reasoning was not so limited. Rather, the Supreme Court rejected a property right based on "numerous" decisions "to the effect that public offices are mere agencies or trusts, and not property as such," *Taylor*, 178 U.S. at 577, and that rationale that applies to all officers, elected and appointed. Indeed, *Taylor* began its analysis by discussing how "appointed" officers—who serve as "agents for the effectuating of such public purposes"—do not hold "fixed private rights of property" in their

[1] These holdings are consistent with the traditional view of state courts that "office in this country is not property." *Smith v. City of New York*, 10 Tiffany 518, 520 (N.Y. 1868); *Lynch v. Chase*, 40 P. 666, 667 (Kan. 1895) (the theory that a prison warden "has a property or vested right" in the office "is wholly inconsistent with our system of government.").

continued office. *Id.* at 576 (discussing appointed officers in *Butler v. Pennsylvania*, 51 U.S. 402, 403 (1850)).

The district court was further mistaken in holding *Crenshaw* inapplicable, suggesting that the case simply concerned whether "*Congress* was prohibited from passing a law that would modify" an officer's tenure. Op. 31. But that misses the key point that *Crenshaw* re-affirmed: a public office does not become private property merely because its incumbent enjoys tenure protection. The naval officer in *Crenshaw* could be removed only by court-martial, *see* 134 U.S. at 100, but the Supreme Court held that he had no "vested interest" or "private right of property" in his position, *id.* at 104.

The district court rested its due process holding almost entirely on *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), and *Esparraguera v. Department of the Army*, 101 F.4th 28 (D.C. Cir. 2024). Op. 28-30. But those cases concerned whether "civil service *employees*" with statutory tenure protections had "a property right in continued employment." *Loudermill*, 470 U.S. at 538; *accord Esparraguera*, 101 F.4th at 33 (considering whether "a government employee has a constitutionally protected property interest in her position"). Neither decision purports to overrule the Supreme Court's earlier precedents

holding that "*offices* are * * * not property," *Taylor*, 178 U.S. at 577 (emphasis added). That distinction matters. It defines how officers may be appointed under the Constitution, *see* U.S. Const. art. II, § 2, cl. 2, what "significant authority" they may wield "pursuant to the laws of the United States," *Lucia* v. *SEC*, 585 U.S. 237, 245 (2018), and their relationship to their office as one of public trust, not of a vested property right. The notion that a principal officer can have a property interest in the authority she wields is "alien to the concept of a republican form of government." *Barnes* v. *Kline*, 759 F.2d at 50 (D.C. Cir. 1985) (Bork, J., dissenting).

And at bottom, Cook still does not explain what difference a hearing would have made. Cook complains that she was denied a chance to make her case, but she does not allege that she sought to offer any evidence to the President or anyone else that would explain her actions, *see* Dkt. 1 at 14, ¶¶ 44-46. Nor has she offered an explanation in this litigation. For a "hearing mandated by the Due Process Clause [] to serve any useful purpose, there must be some factual dispute," and "the absence of" materially disputed facts "is fatal to [plaintiff's] claim under the Due Process Clause that [she] should have been given a hearing." *Codd v.*

Velger, 429 U.S. 624, 627 (1977).[2]

II. The Remaining Factors Favor A Stay

The equitable factors weigh decisively in the government's favor, and "the public interest and balance of equities factors merge" where, as here, "the government is the party" against whom an injunction is sought. *MediNatura, Inc. v. FDA*, 998 F.3d 931, 945 (D.C. Cir. 2021). The Supreme Court has emphasized 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." *Boyle*, 145 S. Ct. at 2654 (quoting *Wilcox*, 145 S. Ct. at 1415). The Supreme Court's orders are binding precedent on how to apply the stay factors, *id.*, and this Court has confirmed that "[i]njunctions that require the President to work with removed principal officers interfere with his constitutional power to supervise the Executive Branch" and "inflic[t] irreparable injury." Order, *LeBlanc v. U.S. Privacy*

[2] Although the Court has no need to reach the issue here for all of the reasons explained above, the Court also lacks the equitable power to order reinstatement of a principal officer of the United States. *See In re Sawyer*, 124 U.S. 200, 212 (1888); *White* v. *Berry*, 171 U.S. 366, 377 (1898). The government acknowledges that this Court has previously declined to grant relief based on that argument but preserves it for further review. *See Harris* v. *Bessent*, 2025 WL 1021435, at *2 (D.C. Cir. Apr. 7, 2025) (en banc).

and Civil Liberties Oversight Board, No. 25-5197 (D.C. Cir. July 1, 2025) (granting stay pending appeal).

The district court mistakenly concluded that this equitable calculus did not apply here, because "*Wilcox*'s theory of harm was premised" on "having a reinstated officer exercise the 'executive power," and that *Wilcox* "expressly disclaimed that its analysis" would include "the Federal Reserve." Op. 46. The district court was wrong on both counts. Federal Reserve Governors obviously exercise executive power when they promulgate rules that bind the regulated public, *Corner Post, Inc. v. Board of Governors of Federal Reserve System*, 603 U.S. 799, 805-06 (2024), and when they bring enforcement actions against regulated entities, *Board of Governors of Federal Reserve System v. MCorp Financial, Inc.*, 502 U.S. 32, 34-36 (1991). Under "our constitutional structure" the Governors' rulemakings and adjudications "*must be* exercises of[] the 'executive Power,'" which the President must constitutionally oversee. *City of Arlington v. FCC*, 569 U.S. 290, 304 n.4 (2013). And while *Wilcox* noted that its analysis did not "necessarily implicate the constitutionality of for-cause removal protections" for the Federal Reserve—based on its "distinct historical tradition" drawing on the "First and Second Banks of the United States," 145 S. Ct. at 1415—the President and the government are still

unquestionably harmed when a removed officer is reinstated and continues to serve notwithstanding the President's removal.

Even setting these cases aside, Cook has identified no irreparable harm that would tip the balance in her favor. This Court has set "a high standard for irreparable injury," and a plaintiff must show "that there is a 'clear and present' need for equitable relief,'" and "the injury must be beyond remediation." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). In the removal context, these requirements will be met only in a "genuinely extraordinary situation." *Sampson v. Murray*, 415 U.S. 61, 92 (1974).

The district court concluded that Cook had demonstrated irreparable harm in the form of deprivation of her "high-ranking, public-servant role." Op. 44. But this Court has rejected the "statutory right to function" theory of irreparable injury. *See Dellinger v. Bessent*, 2025 WL 887518, at *4 (D.C. Cir. Mar. 10, 2025). *Dellinger* held that even if the discharged Special Counsel's "removal [wa]s ultra vires," a deprivation of his "statutory right to function in office" was not irreparable. *Id.* "At worst," the removed officer "would remain out of office for a short period of time," which was clearly outweighed by "the potential injury to the government" of an injunction reinstating the Special Counsel. *Id.* *Dellinger* did not break new ground;

the longstanding rule is that, absent a "genuinely extraordinary situation," loss of employment does not constitute irreparable harm. *Sampson*, 415 U.S. at 92 n.68. "Cases are legion holding that loss of employment does not constitute irreparable injury." *English v. Trump*, 279 F. Supp. 3d 307, 334 (D.D.C. 2018).

Indeed, although the district court relied on a string cite of cases for the proposition that an official deprived of their "statutory right to function" has demonstrated irreparable harm, *see* Op. 40, many of those decisions were stayed by this Court or the Supreme Court (*Dellinger*, *Grundmann*, *LeBlanc*, *Harris*, and *Harper*). Whatever the district court's view of plaintiff's duties or her alleged harm, they do not support the denial of a stay.

Finally, the district court concluded that the "public interest in Federal Reserve independence weighs in favor of Cook's reinstatement." Op. 47. Even with the Federal Reserve's unique structure and history, its Governors are subject to removal for cause, and the President's actions to remove Cook based on her misconduct should strengthen, not diminish, the Federal Reserve's integrity. As in *Wilcox*, the balance of equities counsels against "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of this litigation." 145 S. Ct. at 1415.

CONCLUSION

The Court should grant an immediate administrative stay and issue a stay pending appeal. We respectfully request that the Court act on either request by Monday, September 15, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,166 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in 14-point Georgia, a proportionally spaced typeface.

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