No. 25A

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, APPLICANT

v.

LISA D. COOK, ET AL.

APPLICATION TO STAY THE PRELIMINARY INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND REQUEST FOR ADMINISTRATIVE STAY

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

PARTIES TO THE PROCEEDING

Applicant Donald J. Trump, President of the United States, was defendant-appellant below. Respondent Lisa D. Cook was plaintiff-appellee below. Respondents Board of Governors of the Federal Reserve System and Jerome H. Powell, Chair, Board of Governors of the Federal Reserve System, were defendants-appellees below.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Cook v. *Trump*, No. 25-cv-2903 (Sept. 9, 2025)

United States Court of Appeals (D.C. Cir.):

Cook v. *Trump*, No. 25-5326 (Sept. 15, 2025)

In the Supreme Court of the United States

No. 25A

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, APPLICANT

v.

LISA D. COOK, ET AL.

APPLICATION TO STAY THE PRELIMINARY INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND REQUEST FOR ADMINISTRATIVE STAY

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicant Donald J. Trump, President of the United States—respectfully requests that this Court stay the preliminary injunction issued by the U.S. District Court for the District of Columbia (App., *infra*, 23a) pending appeal to the U.S. Court of Appeals for the D.C. Circuit and any further proceedings in this Court. The Solicitor General also respectfully requests an immediate administrative stay of the preliminary injunction.

This application involves yet another case of improper judicial interference with the President's removal authority—here, interference with the President's authority to remove members of the Federal Reserve Board of Governors for cause.

The Federal Reserve Act, ch. 6, 38 Stat. 251, broadly authorizes the President to dismiss members of the Board of Governors "for cause," without further restricting permissible types of cause. 12 U.S.C. 242. In August 2025, the President determined that cause existed to remove respondent Lisa Cook from the Federal Reserve Board.

As her removal notice observed, before taking office, Cook had made contradictory representations in two mortgage agreements a short time apart, claiming that both a property in Michigan and a property in Georgia would simultaneously serve as her principal residence. Each mortgage agreement described the representation as material to the lender, reflecting the reality that lenders usually offer lower interest rates for principal-residence mortgages because they view such mortgages as less risky. When her apparent misconduct came to light, the President determined that Cook's "deceitful and potentially criminal conduct in a financial matter" renders her unfit to continue serving on the Federal Reserve Board, 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." App., *infra*, 29a. To this day, Cook has never attempted to reconcile these representations or offered any substantive justification.

The district court nonetheless issued a preliminary injunction reinstating Cook, and a divided D.C. Circuit panel refused to stay that order. As Judge Katsas's dissent explained, those decisions flout many strands of this Court's precedents, from removal to due process to the equities. The injunction should be stayed.[1]

To start, the government is likely to succeed on the merits because Cook lacks a Fifth Amendment property interest in her continued service as a Governor of the Federal Reserve System. The lower courts' primary theory is that principal officers are akin to teachers or lower-level civil servants and can thus claim a property interest and an entitlement to notice and a hearing before removal. This theory is untenable and would wreak havoc on sensitive presidential decision-making. The Due Pro-

[1] This application does not contest the constitutionality of the Federal Reserve Board's for-cause removal provision. Instead, it explains that the President's removal of Cook complies with that provision.

cess Clause concerns only deprivations of life, liberty, or property; Cook was deprived of none of the these. The lower courts treated her office as a Federal Reserve Governor as a form of property based on *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), a case involving the firing of a tenure-protected security guard, not a principal officer of the United States. That theory contravenes this Court's cases holding that a "public office is not property," *Taylor* v. *Beckham*, 178 U.S. 548, 576 (1900), and that "an officer" has no "vested interest" in an office to which he is appointed, *Crenshaw* v. *United States*, 134 U.S. 99, 104 (1890)—even when the officer may be removed only for cause, see *Reagan* v. *United States*, 182 U.S. 419, 424-427 (1901). The lower courts' due-process theory would invite judicial micromanagement of the President's exercise of his core Article II powers—even where, as here, courts have no authority to review the substance of the President's ultimate decision. Regardless, due process is a flexible concept; whatever process is due to principal officers was provided here. The President notified Cook of the charges against her and waited five days for her to respond before removing her. Having declined to bring any defense to the President's attention or to dispute any material facts, Cook cannot complain about insufficient process.

The district court alternatively held that the President's reason for removing Cook—apparent, unexplained mortgage fraud—likely is not a permissible "cause" for removal because pre-appointment conduct cannot constitute cause. That rationale is so flawed that the D.C. Circuit did not adopt it and even Cook did not press it. The Federal Reserve Act's broad "for cause" provision rules out removal for no reason at all, or for policy disagreement. But so long as the President identifies a cause, the determination of "some cause relating to the conduct, ability, fitness, or competence of the officer" is within the President's unreviewable discretion. App., *infra*, at 14a

(Katsas, J., dissenting) (quoting *Black's Law Dictionary* (3d ed. 1933)). The President's strong concerns about the appearance of mortgage fraud, based on facially contradictory representations made to obtain mortgages by someone whose job is to set interest rates that affect Americans' mortgages, satisfies any conception of cause. That is especially true here, where Cook has not disputed any material fact or offered any plausible justification for her conduct. By reading in an atextual requirement that those representations had to occur while Cook was in office, the district court disregarded Congress's deliberate choice to forgo the familiar "inefficiency, neglect of duty, or malfeasance *in office*" standard in favor of an equally familiar but broader formulation. See *Collins* v. *Yellen*, 594 U.S. 220, 255-256 (2021). The district court's logic would also create results that Congress could not have intended, like preventing the removal of a Governor who "committed murder before taking office" or who "bribed a Senator to ensure confirmation." App., *infra*, 15a (Katsas, J., dissenting).

In addition, the district court lacked authority to order reinstatement as an equitable remedy for the removal of an officer of the United States, as we have discussed in several recent stay applications. See Appl. at 19-23, *Trump* v. *Slaughter*, No. 25A264; Appl. at 15-18, *Trump* v. *Boyle*, 145 S. Ct. 2653 (No. 25A11); Appl. at 20-31, *Trump* v. *Wilcox*, 145 S. Ct. 1415 (No. 24A966). This conclusion is particularly clear as applied to preliminary injunctions ordering temporary reinstatement while litigation is pending,

The equities, too, favor the government. The government faces irreparable harm "from an order allowing a removed officer to continue exercising the executive power" over the President's objection. *Wilcox*, 145 S. Ct. at 1415; see *Boyle*, 145 S. Ct. at 2654. Moreover, the President has determined that, because of Cook's serious misconduct, the American people and he cannot have "full confidence" in her "integrity"

and that "faithfully executing the law requires [her] immediate removal." App., *infra*, at 29a. That the Federal Reserve Board plays a uniquely important role in the American economy only heightens the government's and the public's interest in ensuring that an ethically compromised member does not continue wielding its vast powers. Put simply, the President may reasonably determine that interest rates paid by the American people should not be set by a Governor who appears to have lied about facts material to the interest rates she secured for herself—and refuses to explain the apparent misrepresentations. This Court should stay the district court's deeply flawed preliminary injunction and should grant an immediate administrative stay.

STATEMENT

1. In 1913, Congress enacted the Federal Reserve Act, ch. 6, 38 Stat. 251, which established the Federal Reserve System. Two decades later, Congress enacted the Banking Act of 1935, ch. 614, 49 Stat. 684, which reorganized the Federal Reserve System and established its modern structure.

Today, the Federal Reserve System includes the Board of Governors (a federal agency) and twelve regional Federal Reserve Banks (governmental corporations). See 12 U.S.C. 241, 341. The Board of Governors consists of seven members appointed by the President with the advice and consent of the Senate. See 12 U.S.C. 241. By statute, "each member shall hold office for a term of fourteen years," "unless sooner removed for cause by the President." 12 U.S.C. 242. Congress initially adopted the for-cause provision in 1913, repealed it in 1933, and then restored it in 1935. See Federal Reserve Act, § 10, 38 Stat. 260; Banking Act of 1933, ch. 89, § 6, 48 Stat. 166-167; Banking Act of 1935, § 203(b), 49 Stat. 704-705.

The seven members of the Board of Governors, along with five representatives of the Federal Reserve Banks, make up the twelve-member Federal Open Market

Committee, the body that conducts the Nation's monetary policy. See 12 U.S.C. 263. The committee sets the federal funds rate, the target interest rate at which banks lend money to each other. See Federal Reserve System, *The Fed Explained* 12 (11th ed. 2021), https://federalreserve.gov/aboutthefed/files/the-fed-explained.pdf. The Board and committee then use various monetary-policy tools—such as adjusting the interest rates on deposits at Federal Reserve Banks—to influence the money supply in a manner that achieves that target. See *id.* at 34-39.

Separately, the Board of Governors exercises broad regulatory authority. Many federal statutes—ranging from the Federal Reserve Act to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376—authorize the Board to issue rules governing private banks and other financial institutions. Exercising that authority, the Board has issued rules about matters such as minimum capital requirements for banks, see 12 C.F.R. 217.1-217.608; banks' international operations, see 12 C.F.R. 211.1-211.605; electronic fund transfers, see 12 C.F.R. 205.1-205.20; and maximum debit-card fees, see 12 C.F.R. 235.1-235.10.

2. In 2022, President Biden, with the advice and consent of the Senate, appointed respondent Lisa Cook to the Federal Reserve Board, to fill the remainder of a term that expired in 2024. See App., *infra*, 27a. In 2023, President Biden, with the advice and consent of the Senate, reappointed Cook, this time for a full 14-year term ending in 2038. See *ibid.*

On August 15, 2025, the Director of the Federal Housing Finance Agency, William Pulte, sent a criminal referral letter to the Department of Justice concerning potential mortgage fraud by Cook. See App., *infra*, 27a-28a. Director Pulte identified two mortgage agreements that Cook entered in within two weeks of each other in June and July 2021, less than a year before joining the Federal Reserve Board—one

for a house in Ann Arbor, Michigan, the other for a condominium in Atlanta, Georgia. See *id.* at 28a. In each agreement, Cook represented that she would "occupy, establish, and use the Property as [her] principal residence within 60 days after the execution" of the mortgage and would "continue to occupy the Property as [her] principal residence for at least one year after the date of occupancy." D. Ct. Doc. 13, at 11 (Aug. 29, 2025). Each agreement also specified that those representations concerning "occupancy of the Property as [Cook's] principal residence" are "[m]aterial" to the lender. *Ibid.* As the referral explained, lenders consider such representations important because they tend to view mortgages for secondary residences or investment properties as "significantly riskier," triggering higher interest rates. *Ibid.*

On August 20, President Trump and Director Pulte publicly released the referral letter on social media. See App., *infra*, 28a. The President made clear that he viewed the alleged misconduct as sufficient grounds to "fire" Cook. *Ibid.* Yet Cook did not answer the letter or offer any defense of her contradictory representations in the mortgage documents. Instead, in a statement released to the media, she said only: "I have no intention of being bullied to step down from my position because of some questions raised in a tweet." D. Ct. Doc. 13, at 5.

Five days later, after it was clear that no explanation or defense from Cook was forthcoming, the President removed her from office for cause. App., *infra*, 28a-29a. In a letter to Cook, the President observed that, because of the Federal Reserve Board's "tremendous responsibility for setting interest rates and regulating [banks]," the "American people must be able to have full confidence in the honesty of [its] members." *Id.* at 29a. He explained that, given Cook's "deceitful and potentially criminal conduct in a financial matter," neither he nor the American people could have the necessary "confidence" in her "integrity." *Ibid.* He added that, "[a]t a minimum," her

conduct "exhibits the sort of gross negligence in financial transactions that calls into question [her] competence and trustworthiness as a financial regulator." *Ibid.* The President accordingly determined that "there is sufficient cause to remove" Cook and that "faithfully executing the law requires [her] immediate removal from office." *Ibid.*

3. Cook sued the President, the Federal Reserve Board, and the Chairman of the Board in the U.S. District Court for the District of Columbia. See App., *infra*, 24a. The Chairman and Board informed the district court that they "d[o] not intend to offer arguments" concerning the merits. D. Ct. Doc. 12, at 1 (Aug. 29, 2025).

The district court granted Cook a preliminary injunction. App., *infra*, 24a-72a. The court first determined that Cook is likely to succeed on her claim that her removal violates the statutory provision allowing removal only for cause. See *id.* at 31a-50a. The court rejected the government's argument that the President's finding of cause is unreviewable, concluding that a court may review whether the President has "provided a legally permissible cause." *Id.* at 47a. The court then held that the reason identified by the President—Cook's dishonesty in her mortgage applications—likely is not sufficient cause for removal because it concerns her "conduct before she began serving on the Federal Reserve Board." *Id.* at 49a.

The district court also concluded that Cook is likely to succeed on her claim that her removal violates the Fifth Amendment's Due Process Clause. App., *infra*, 50a-62a. The court reasoned that Cook has a property interest in the office of Governor of the Federal Reserve, see *id.* at 51a-55a, and that she was therefore entitled to notice and opportunity for a hearing before her removal, see *id.* at 56a-62a. The court declined to reach Cook's other merits arguments, including her contentions that "the asserted basis for cause was 'pretextual.'" *Id.* at 50a n.10.

Turning to the equities, the district court determined that Cook faced irrepa-

rable harm because her removal prevents her from "discharging her duties as a Federal Reserve Governor." App., *infra*, 62a. The court also found that the balance of equities and public interest favor granting preliminary relief. See *id.* at 68a-70a.

The district court accordingly issued a preliminary injunction prohibiting the Chairman and Federal Reserve Board "from effectuating in any manner [Cook's] removal" "pending the resolution of this litigation." App., *infra*, 22a. In the same opinion in which it granted the injunction, the court denied the government's request for a stay pending appeal. See *id.* at 71a-72a.

4. A divided panel of the D.C. Circuit denied the government's motion for a stay pending appeal. App., *infra*, 1a.

Judge Garcia issued a concurring opinion, which Judge Childs joined. App., *infra*, 2a-9a. He concluded that Cook was likely to succeed on her due-process claim, reasoning that Cook has a property interest in her office under *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), because she is removable only for cause. See *id.* at 2a-7a. He acknowledged that *Loudermill* involved "employees" but stated that the "principles underlying" that decision support extending it to "principal officers of the United States." *Id.* at 3a. Judge Garcia did not address Cook's substantive claim that her removal violates the statutory for-cause restriction. See *id.* at 7a. He also concluded that the equities favor Cook. See *id.* at 7a-9a.

Judge Katsas dissented. App., *infra*, 10a-22a. Addressing Cook's substantive claim, he explained that the President's reason for removing Cook "plainly" fits within the "broad definition" of "cause." *Id.* at 14a-15a. Turning to her procedural claim, he observed that this Court has "long held" that public offices are "'not property'" and that removal from office accordingly does not trigger due-process protections. *Id.* at 16a (quoting *Taylor* v. *Beckham*, 178 U.S. 548, 577 (1900)).

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, to obtain a stay of a preliminary injunction pending review in the court of appeals and in this Court, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court balances the equities and weighs the relative harms. *Ibid.*

Here, the government is likely to succeed on the merits of Cook's procedural and substantive challenges. It is also likely to succeed on the independent ground that the district court's preliminary injunction reinstating Cook exceeds its remedial authority. The equities, too, support allowing the removal to take effect while this litigation proceeds. This Court should accordingly stay the district court's injunction pending further review and should grant an administrative stay.

A. The Government Is Likely To Succeed On Cook's Procedural Claim

The district court concluded that Fifth Amendment's Due Process Clause likely entitles Cook to notice and opportunity for a hearing before her removal, see App., *infra*, 50a-62a, and the D.C. Circuit relied solely on that procedural claim in denying a stay, see *id.* at 2a (Garcia, J., concurring). But the office of Governor of the Federal Reserve Board is not a species of "property" protected by the Due Process Clause. Even if it were, the President *did* give Cook notice and an adequate opportunity to respond to the charges against her. And because Cook raises no material factual dispute concerning the charges, no further process could make any difference. The lower courts' contrary reading of the Due Process Clause would grant courts free-wheeling authority to regulate the President's decision-making process. That is particularly inappropriate here, where the courts have no authority to review the sub-

stance of the underlying decision, see pp. 20-25, *infra*, and any judicially invented process could interfere with a pending criminal investigation.

1. Offices are not "property" protected by the Due Process Clause

a. The Due Process Clause provides that no person may be "deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. The district court held that Cook's removal deprived her of "property," reasoning that an office is a form of property when the incumbent may be removed only for cause. See App., *infra*, 51a-55a. That holding is incorrect. Although this Court has concluded that tenure-protected government *employees* have a property interest in their jobs, it has long held that tenure-protected *officers* have no property right to their offices. Officers exercise significant government power, and no individual has a property right to such power. See App., *infra*, 16a-17a (Katsas, J., dissenting).

For example, *Crenshaw* v. *United States*, 134 U.S. 99 (1890), rejected a claim that Congress had deprived a tenure-protected naval officer of a vested property right by authorizing a reduction in force in the Navy. "The primary question in this case," the Court explained, is "whether an officer appointed for a definite time or during good behavior ha[s] any vested interest or contract right in his office." *Id.* at 104. The Court had "little difficulty in deciding that there was no such interest or right." *Ibid.* The Court drew a distinction between a contract, which gives rise to "private rights of property," and an "appointment" to an office, which is made for "public purposes" and does not create "private personal rights." *Id.* at 104-105.

Similarly, in *Taylor* v. *Beckham*, 178 U.S. 548 (1900), this Court rejected a claim that a State had deprived a gubernatorial candidate of property without due process of law by using inadequate procedures to resolve an election contest. The Court explained that a "public office is not property"; that "public offices are mere

agencies or trusts, and not property as such"; and that "the nature of the relation of a public officer to the public is inconsistent with either a property or a contract right." *Id.* at 576-577. The Court accordingly determined that the Constitution allows a State to deprive an officer of his office with no process at all. See *id.* at 580.

So too, in *Reagan* v. *United States*, 182 U.S. 419 (1901), this Court upheld a lower court's removal of an inferior officer with "no notice of any charge against him, and no hearing." *Id.* at 424. Even though the applicable statute authorized removal only for "causes prescribed by law," this Court concluded that the removed officer had no right to notice and a hearing. *Ibid.* The Court of Claims, the traditional forum for removed officers' back-pay claims, similarly explained the removed officer had a right to notice and a hearing only if "the statute affords him that protection" and that "the statute [at issue] does not do this." *Reagan* v. *United States*, 35 Ct. Cl. 90, 105 (1900).

Those decisions reflect the traditional understanding of the Due Process Clause. Though English courts treated offices as property, American courts have long recognized that an "office in this country is not property." *Smith* v. *Mayor*, 10 Tiffany 518, 520 (N.Y. 1868). The theory that an officer "has a property or vested right" in his office, American courts have explained, "is wholly inconsistent with our system of government." *Lynch* v. *Chase*, 40 P. 666, 667 (Kan. 1895); see *State ex rel. Attorney General* v. *Hawkins*, 5 N.E. 228, 233 (Ohio 1886) (similar).

In particular, American courts have long agreed that a "public office cannot be called 'property,' within the meaning" of federal and state constitutional provisions guaranteeing due process. *Attorney General* v. *Jochim*, 58 N.W. 611, 613 (Mich. 1894); see, *e.g.*, *In re Carter*, 74 P. 997, 997 (Cal. 1903); *Moore* v. *Strickling*, 33 S.E. 274, 275 (W.V. 1899); *Donahue* v. *Will County*, 100 Ill. 94, 103-104 (1881). That is so even if the removal "must be for cause." *Jochim*, 58 N.W. at 614; see, *e.g.*, *Carter*, 74

P. at 997 (a "public office" is not "a species of property" even if "the removal is to be for cause"). Courts thus historically held that, where a statute authorizes removal for "cause," the officer may be removed without notice and without a hearing. See, *e.g.*, *Carter*, 74 P. at 998; *Trimble* v. *People*, 34 P. 981, 985-986 (Colo. 1893); *People ex rel. Gere* v. *Whitlock*, 47 Sickels 191, 197-198 (N.Y. 1883); *City of Hoboken* v. *Gear*, 3 Dutch. 265, 287 (N.J. 1859).

To be sure, this Court's understanding of property has evolved over time, leading the Court to recognize new types of property interests in the 20th century. See, *e.g.*, *Goldberg* v. *Kelly*, 397 U.S. 254 (1970) (welfare benefits). In *Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532 (1985), the Court concluded that a security guard with civil-service tenure protection had "a property right in continued employment." *Id.* at 536. That decision, however, involved only non-officer "employees." *Id.* at 538. Neither *Loudermill* nor the other new-property cases purported to overrule earlier decisions holding that an "office is not property." *Taylor*, 178 U.S. at 576. And extending those new-property cases to officers of the United States would be a major step given how markedly those offices differ from the civil-service job in *Loudermill*. Federal officers exercise "significant authority pursuant to the laws of the United States." *Lucia* v. *SEC*, 585 U.S. 237, 245 (2018). The notion that an officer has a property right to that power is "alien to the concept of a republican form of government." *Barnes* v. *Kline*, 759 F.2d 21, 50 (D.C. Cir. 1985) (Bork, J., dissenting). That is especially true of officers in the Executive Branch. Article II vests the entire executive power in the President, see U.S. Const. Art. II, § 1, Cl. 1, and an executive officer cannot have a property interest in exercising the President's executive power over the President's objection.

At a minimum, this Court should not extend *Loudermill* to *principal* officers of

the United States, who are the highest-ranking officers in the Executive Branch and by definition have no "'superior' other than the President." *United States* v. *Arthrex*, 594 U.S. 1, 13 (2021). They wield immense executive power in leading federal agencies and in supervising inferior officers. Their selection process—appointment by the President with the advice and consent of the Senate—looks nothing like the hiring of an employee. And whereas *Loudermill* reasoned that government employees often depend on their jobs for income and that their dismissal may force them "onto the welfare rolls," 470 U.S. at 544, "[o]ne suspects that is not the case * * * for Governors of the Federal Reserve Board," App., *infra*, 19a n.3 (Katsas, J., dissenting).

To the extent executive officers—especially principal officers—have any procedural rights at all related to their removal, they do so only as a matter of legislative grace. For instance, Congress has provided that the President may remove members of the National Labor Relations Board "upon notice and hearing, for neglect of duty or malfeasance in office." 29 U.S.C. 153(a). Congress also included notice-and-hearing requirements in statutes governing the removal of members of the Federal Labor Relations Board, see 5 U.S.C. 7104(b); members of the Foreign Service Grievance Board, see 22 U.S.C. 4135(d); and administrative law judges, see 5 U.S.C. 7521(a). Congress considered including a similar requirement in the Federal Reserve Act, albeit only for officers of the Federal Reserve Banks. The bill as originally passed by the House of Representatives allowed the President to remove members of the Federal Reserve Board "for cause," and the Board to remove officers of the Federal Reserve Banks "for cause stated *in writing with opportunity of hearing*." S. Doc. 335, 63d Cong., 2d Sess. 25, 29 (1913) (emphasis added); see 12 U.S.C. 248(f) (enacted text omitting the hearing requirement even for Federal Reserve Bank officers).

Congress, in short, understands the difference between a substantive cause

requirement and a procedural notice-and-hearing requirement. The statutory text at issue here imposes only the former, requiring "cause" but saying nothing about notice or a hearing. 12 U.S.C. 242. Federal courts have no authority to impose additional, extra-statutory removal restrictions under the aegis of the Due Process Clause.

The district court's due-process theory raises significant interpretive problems. "What, particularly, is the 'property' in a public job? Is it the emoluments of the office, the official power of the office, or the honor of it all?" *Thornton* v. *Barnes*, 890 F.2d 1380, 1392 (7th Cir. 1989) (Easterbrook, J., concurring). Does the Due Process Clause prohibit Congress from abolishing the office or diminishing its powers or salary? Does the Takings Clause require Congress to pay just compensation when it does so?

In addition, what type of hearing does the Due Process Clause require? Must the President preside himself, or may he delegate that task to subordinates? Must he hold a formal evidentiary hearing, or does an informal discussion suffice? The district court attempted to answer those questions by applying the interest-balancing test in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). See App., *infra*, 56a. But courts may not balance away the President's Article II powers. See *Morrison* v. *Olson*, 487 U.S. 654, 733-734 (1988) (Scalia, J., dissenting). The D.C. Circuit, in turn, did not attempt to answer those questions at all. "Evidently, the governing standard is to be what might be called the unfettered wisdom of [the federal courts], revealed to an obedient people on a case-by-case basis." *Id.* at 712. But Article II creates "an energetic, independent Executive," *Trump* v. *United States*, 603 U.S. 593, 642 (2024)—not a subservient Executive that must follow judicially invented procedures even when exercising core executive power.

b. The lower courts' contrary analysis lacks merit. To start, the courts failed to distinguish this Court's decisions establishing that offices are not property.

The district court emphasized that Federal Reserve Board members enjoy tenure protection, see App., *infra*, *id.* at 52a, but the naval officer in *Crenshaw* could be removed only pursuant to the sentence of a court-martial, see 134 U.S. at 100; the governor in *Taylor* could not be removed at all, except by impeachment, see App., *infra*, 18a (Katsas, J., dissenting); and the inferior officer in *Reagan* could be removed only "for causes prescribed by law," 182 U.S. at 424. The court also distinguished between elected and appointed officers, see App., *infra*, 53a, but *Crenshaw* and *Reagan* involved appointed officers, see *Reagan*, 182 U.S. at 423-424; *Crenshaw*, 134 U.S. at 104, and *Taylor* explained that even "an officer appointed for a definite time" lacks a "vested interest" in his office, *Taylor*, 178 U.S. at 576.

Judge Garcia, meanwhile, emphasized that *Crenshaw* involved a challenge to legislative rather than executive action. See App., *infra*, 5a-6a. But the Due Process Clause binds both Congress and the President. The Clause cannot reasonably be read to mean that an office is "property" vis-à-vis one branch but not the other. Cf. *Clark* v. *Martinez*, 543 U.S. 371, 382 (2005) (courts may not treat a word as "a chameleon, its meaning subject to change" from case to case).

Judge Garcia also observed that Congress granted tenure protection to Federal Reserve Board members to assure "national and global markets" that members "enjoy a measure of policy independence," thereby promoting "'the general public interest in the nation's longer-term economic stability and success.'" App., *infra*, 3a-4a. But that observation hardly helps Cook. The *public's* interest in the independence of the Federal Reserve Board does not somehow establish that *Cook* has a private property right to the office of Governor.

The district court claimed that "historical practice" supports its reading of the Due Process Clause. See App., *infra*, 61a. But as discussed above, courts tradition-

ally recognized that offices are *not* property protected by federal and state due-process guarantees. See pp. 12-13, *supra*. To be sure, courts historically concluded—as a matter of statutory interpretation, not due process—that, when the permissible causes of removal are "named in the statute," a "removal for any of those causes can only be made after notice and an opportunity to defend." *Shurtleff* v. *United States*, 189 U.S. 311, 317 (1903). Thus, when President Taft removed two members of the Board of General Appraisers for inefficiency, neglect of duty, or malfeasance in office, he first provided notice and a hearing. See Aditya Bamzai, *Taft, Frankfurter, and the First Presidential For-Cause Removal*, 52 U. Rich. L. Rev. 691, 729-737 (2018). But courts also historically recognized that, where a removal provision requires cause without listing specific causes, an officer may be removed with "no notice of any charge against him, and no hearing." *Reagan*, 182 U.S. at 424. Thus, when President Nixon removed the President of the Federal National Mortgage Association (Fannie Mae) for "good cause," he provided neither notice nor a hearing. See Bamzai 746-747.

2. In any event, Cook received sufficient process

Even if Cook had a property interest in her office, her removal complied with the Due Process Clause. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972). And courts owe "deference to the political branches" when applying the Due Process Clause to matters within the political branches' special competence. *Fuld* v. *PLO*, 606 U.S. 1, 23 (2025). Courts have no basis for demanding more process for the removal of a principal executive officer than the political branches choose to provide.

Even assuming that *Loudermill*'s due-process standard for employees extends to principal executive officers, the removal here passes constitutional muster. Under *Loudermill*, the Due Process Clause entitles a tenure-protected employee only to "oral

or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story," "either in person or in writing." 470 U.S. at 546. The hearing need not be "elaborate" or involve "a full adversarial evidentiary" proceeding. *Id.* at 545. It need provide only "an initial check against mistaken decisions" and enable the decisionmaker to ascertain "whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action." *Id.* at 545-546. "To require more" even in an ordinary employment case "would intrude to an unwarranted extent" on the government's power to manage its personnel. *Id.* at 546. Requiring additional process would be even less appropriate here, given the President's authority under Article II.

Cook received "notice of the charges" against her, *Loudermill*, 470 U.S. at 546, when the President publicized the criminal referral. See Compl. ¶ 43. The district court found the notice inadequate because it did not contain an "explanation of the evidence," App., *infra*, 57a (ellipsis omitted), but the referral specifically identified the contradictory representations in Cook's mortgage documents, see p. 7, *supra*. The court did not say what more Cook needed to know.

Cook also had "an opportunity to present [her] side of the story," *Loudermill*, 470 U.S. at 546. The President made clear that he viewed Cook's conduct as grounds to remove her, then waited five days for her to respond. The district court faulted the President for not "invit[ing] Cook to submit" evidence, App., *infra*, 58a, but the Due Process Clause requires (at most) an opportunity to respond, not a formal invitation. Cook had an opportunity to explain why no misconduct occurred, and she spurned it.

Even now, it is unclear what a hearing would accomplish given Cook's refusal to offer a meaningful response to the misconduct charges. Judge Garcia correctly noted that the "right to a hearing does not depend on demonstration of certain suc-

cess," App., *infra*, 7a, but the right *does* depend on the existence of a material factual dispute. The object of notice and a hearing "is to provide the person an opportunity to clear [her] name" and "refute the charge." *Codd* v. *Velger*, 429 U.S. 624, 627 (1977) (per curiam). If the hearing "is to serve any useful purpose, there must be some factual dispute between an employer and a discharged employee which has some significant bearing" on the removal decision. *Ibid.*

At no point below did Cook identify any material factual dispute. Neither her complaint nor her multiple briefs in this litigation offer any substantive defense of her contradictory representations in her mortgage agreements. She merely calls the accusations "unsubstantiated," Compl. 2—even though her mortgage agreements contain facially contradictory representations. She hints (though never directly says) that the representations resulted from error rather than intentional wrongdoing. See, *e.g.*, D. Ct. Doc. 2-1, at 14 (Aug. 28, 2025). But, intentional or not, her "misstatements in formal applications for six-figure loans" are deeply "concerning." App., *infra*, 15a (Katsas, J., dissenting). Even if Cook's acts reflect gross negligence, the President expressly determined that her lack of care in making important financial representations provides sufficient cause for her removal because it "calls into question [her] competence and trustworthiness as a financial regulator." App., *infra*, 29a. No further process could have made any difference.

B. The Government Is Likely To Succeed On Cook's Claim That The President Lacked Cause To Remove Her

The district court also held that the President likely did not have "cause" to remove Cook because her misconduct predated her service as a governor. See App., *infra*, 31a-50a. Though the district court relied primarily on that theory, the court of appeals did not invoke it, see *id.* at 7a (Garcia, J., concurring), and "[e]ven Cook did

not urge that position," *id.* at 15a (Katsas, J., dissenting). Understandably so. The phrase "for cause" allows the President to remove an officer for any reason relating to the officer's "conduct, ability, fitness, or competence." *Id.* at 14a. The President's application of that standard is not subject to judicial review. Even if it were, the district court effectively rewrote the statutory scheme by imposing an in-office requirement for misconduct that Congress eschewed.

1. The determination of cause is committed to the unreviewable discretion of the President

a. As a threshold matter, though federal courts may review the removal of a Federal Reserve Board member when, for instance, the President identifies no cause at all, they may not question whether the stated cause provides a sufficient justification for removal. The statutory "for cause" language at issue commits the determination of cause to the President's unreviewable discretion.

Congress has enacted different types of removal provisions for different federal agencies. Most provisions state that the President may remove an agency member only for enumerated causes—typically, "inefficiency, neglect of duty, or malfeasance in office."[2] Other provisions allow the President to remove agency members for "cause" but do not specify the causes that suffice.[3] The removal provision here falls in the latter category. It states that members of the Federal Reserve Board may be "removed for cause by the President" but does not list specific causes. 12 U.S.C. 242.

---

[2] See, *e.g.*, 5 U.S.C. 1202(d) (Merit Systems Protection Board) ("inefficiency, neglect of duty, or malfeasance in office"); 15 U.S.C. 41 (Federal Trade Commission) ("inefficiency, neglect of duty, or malfeasance in office"); 22 U.S.C. 4605(f) (United States Institute of Peace) ("conviction of a felony, malfeasance in office, persistent neglect of duties, or inability to discharge duties"); 29 U.S.C. 153(a) (National Labor Relations Board) ("neglect of duty or malfeasance in office").

[3] See, *e.g.*, 39 U.S.C. 202(a)(1) (Board of Governors of the U.S. Postal Service); 39 U.S.C. 502(a) (Postal Regulatory Commission).

In *Reagan*, this Court held that a removal under the latter type of provision—*i.e.*, a pure for-cause provision—is not subject to judicial review. The statute in that case authorized the removal of certain inferior officers for "causes prescribed by law" but did not specify the causes that would justify removal. 182 U.S. at 424. This Court explained that "removal for cause, when causes are not defined," "is a matter of discretion and not reviewable." *Id.* at 425. The Court of Claims similarly explained that, "[w]here the statute gives a power of removal 'for cause,' without any specification of the causes, this power is of a discretionary" nature, and "the exercise thereof can not be reviewed." *Reagan*, 35 Ct. Cl. at 105.

Even before *Reagan*, courts agreed that they could not review removals under pure for-cause provisions. When President Cleveland removed a D.C. justice of the peace under a statute authorizing removal "for cause," the D.C. Supreme Court (the predecessor of the U.S. District Court for the District of Columbia) explained that it could not "review his action for the purpose of determining the sufficiency of the causes." *United States ex rel. Garland* v. *Oliver*, 6 Mackey 47, 53, 56 (1887). State courts similarly determined that, where a statute authorizes removal "for cause" but "prescribes no particular kind of cause," the removing authority is "the sole judg[e] of what shall be cause." *Gear*, 3 Dutch. at 287-288; see *Trimble*, 34 P. at 985; *People ex rel. Platt* v. *Stout*, 19 How. Pr. 171, 183 (N.Y. Sup. Ct. Gen. Term 1860) (opinion of Sutherland, J.). A 19th-century treatise writer agreed that, "where a statute gives a power of removal 'for cause,' without any specification of the causes," the removal is not subject to review "with respect either to the cause, or to its sufficiency or existence, or otherwise." Montgomery H. Throop, *A Treatise on the Law Relating to Public Officers* § 396, at 387 (1892).

This Court presumes that, "when Congress enacts statutes, it is aware of this

Court's relevant precedents." *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 80 (2023). It also presumes that Congress is aware of a "longstanding judicial interpretation" adopted by "lower courts." *Lamar, Archer & Cofrin, LLP* v. *Appling*, 584 U.S. 709, 721-722 (2018). Thus, when Congress adopted and later re-adopted the statutory provision allowing the President to remove members of the Federal Reserve Board "for cause," 12 U.S.C. 242, it acted against the backdrop of the settled principle that "removal for cause, when causes are not defined," is "not reviewable," *Reagan*, 182 U.S. at 425.

The same conclusion follows from general principles governing judicial review of presidential action. Plaintiffs challenging federal agency action ordinarily rely on the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, but the President is not an agency subject to the APA. See *Franklin* v. *Massachusetts*, 505 U.S. 788, 800-801 (1992). Cook's only path to judicial review, therefore, is a non-statutory ultra vires claim, see App., *infra*, 13a (Katsas, J., dissenting)—a type of claim this Court recently described as a "Hail Mary pass." *NRC* v. *Texas*, 605 U.S. 665, 681 (2025). While ultra vires review may be available when a plaintiff claims that the President's actions violate the Constitution, courts usually may not review contentions that the President has "exceeded his statutory authority" if the statute at issue empowers the President to exercise his "discretion." *Dalton* v. *Specter*, 511 U.S. 462, 473-474 (1994); see *Dakota Central Telephone Co.* v. *South Dakota ex rel. Payne*, 250 U.S. 163, 184 (1919) (courts may not review claims of "a mere excess or abuse of discretion in exerting a power given" to the President). The word "cause" allows the President to exercise discretion in deciding whether to remove a member of the Federal Reserve Board, and courts have no authority to review that exercise of discretion.

When Congress means to authorize judicial review of removals for cause, it says so. For example, the statute in *Morrison*, which authorized the Attorney Gen-

eral to remove the independent counsel for "good cause," provided that a removed independent counsel could "obtain judicial review of the removal in a civil action." Independent Counsel Reauthorization Act of 1987, Pub. L. No. 100-191, § 2, 101 Stat. 1305. The statute here contains no comparable provision.

The canon of constitutional avoidance confirms the unavailability of judicial review here. The President's removal power is "conclusive and preclusive," meaning that exercises of that power "may not be regulated by Congress or reviewed by the courts." *Trump*, 603 U.S. at 621. This Court has left open whether an exception to the removal power, grounded in history and tradition, allows Congress to restrict the President's power to remove members of the Federal Reserve Board. See *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025). But no such historical exception could authorize judicial review of the President's finding of cause, since courts have traditionally treated such findings as unreviewable.

b. The district court's contrary reasoning is flawed—so much so that the D.C. Circuit tellingly did not endorse it. Seeking to distinguish *Reagan*, the court emphasized that (1) the provision in *Reagan* allowed removal "for causes prescribed by law," while the provision here authorizes removal "for cause"; and (2) the officer in *Reagan* lacked a fixed term, while members of the Federal Reserve Board hold office for 14 years. App., *infra*, 47a-48a. But *Reagan* did not turn on either of those features. *Reagan* instead recognized that, "when causes are not defined" by statute, removal for cause is "not reviewable." 182 U.S. at 425. That is why courts have traditionally declined to review for-cause removals even when the applicable statute uses the term "cause" rather than "causes prescribed by law," and even when the officer serves for a fixed term. See, *e.g.*, *Oliver*, 6 Mackey at 50. A fixed term, moreover, sets "a ceiling, not a floor, on the length of service"; it does not protect an officer

from removal before the end of the term. *Severino* v. *Biden*, 71 F.4th 1038, 1045 (D.C. Cir. 2023); see *Parsons* v. *United States*, 167 U.S. 324, 343 (1897). There is no reason to think that the President's determination of cause for removal is more amenable to judicial review simply because it concerns an officer with a fixed term.

The district court next cited this Court's statement in *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024), that, even when a statute "delegates discretionary authority," a reviewing court must "independently interpret the statute" and ensure that the Executive Branch remains within the bounds of the delegated authority. App., *infra*, 47a (quoting 603 U.S. at 395). But *Loper Bright* arose under the APA, a statute that expressly authorizes courts to set aside agency action that is "in excess of statutory jurisdiction, authority, or limitations." 5 U.S.C. 706(2). Again, the President is not an agency subject to the APA, see *Franklin*, 505 U.S. at 801, and courts generally lack the power to review "claims simply alleging that the President has exceeded his statutory authority" if "the statute in question commits the decision to the discretion of the President," *Dalton*, 511 U.S. at 473-474.

Finally, the district court worried that the government's argument would mean that, "in practice," the President could remove members of the Federal Reserve Board at will. App., *infra*, 49a. That is incorrect. If the President provides no reason at all for removing a member, a court could properly review that decision. But once the President identifies a cause, judicial review must cease. Courts normally "do not look behind a facially valid justification to probe the mental states of the President." App., *infra*, 15a (Katsas, J., dissenting); see *Trump* v. *Hawaii*, 585 U.S. 667, 702-704 (2018). Any inquiry "into the President's motives' "would risk exposing" the President's actions "to judicial examination on the mere allegation of improper purpose"—an outcome that would "'seriously cripple the proper and effective administration of public

affairs.'" *Trump*, 603 U.S. at 618.

The district court's concerns are particularly misplaced because the President has an independent obligation to follow and faithfully execute the law, regardless of whether courts may review his actions. See *Hawaii*, 585 U.S. at 711-712 (Kennedy, J., concurring). The President, moreover, is "the most democratic and politically accountable official in Government," *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 224 (2020), and "the political consequences" to the President "of seeming to break the law" can be "substantial," *Morrison*, 487 U.S. at 702 (Scalia, J, dissenting). Judicial review of presidential action is more circumscribed than judicial review of agency action precisely because the President, unlike agency heads, "is responsible to the voters, who, in principle, will judge the manner in which he exercises his delegated authority." *Clinton* v. *City of New York*, 524 U.S. 417, 490 (1998) (Breyer, J., dissenting).

2. In any case, the President identified sufficient cause here

Even if judicial review of the President's stated cause were available, it would be highly deferential. To prevail on her ultra vires claim, Cook would need to show that the President "has taken action entirely 'in excess of [his] delegated powers and contrary to a specific prohibition' in a statute." *NRC*, 605 U.S. at 681 (emphasis omitted). It is not enough to show that the President "arguably reached 'a conclusion which does not comport with the law.'" *Ibid.* Cook, however, cannot establish even garden-variety error, much less the type of "extreme error" that the *ultra vires* standard demands. App., *infra*, 13a (Katsas, J., dissenting).

a. Because the statute does not define "cause," courts must interpret that term in accordance with its ordinary legal meaning. When Congress enacted the Federal Reserve Act in 1913 and the Banking Act in 1935, the term "for cause," as used in the context of removal, required a reason "relating to the conduct, ability,

fitness, or competence of the officer." *Black's Law Dictionary* 608 (2d ed. 1910); see *Black's Law Dictionary* 796 (3d ed. 1933) (same). Although that definition does not allow the President to remove a member of the Federal Reserve Board because of a policy disagreement or a mere desire to appoint someone else, it does (as relevant here) allow removal based on the member's "conduct" or "fitness." See App., *infra*, 14a (Katsas, J., dissenting). Federal Reserve Chairman Marriner Eccles thus acknowledged at a congressional committee hearing on the Banking Act of 1935 that "dishonesty or improper conduct" would be cause for removing a member of the Board. *Banking Act of 1935: Hearings Before the H.R. Comm. on Banking and Currency on H.R. 5357*, 74th Cong., 1st Sess. 275 (1935).

This Court's cases confirm that concerns about an officer's conduct or integrity can provide sufficient "cause" for removal. In *Wiener* v. *United States*, 357 U.S. 349 (1958), the Court stated that a removal "involving the rectitude" of an officer would be "a removal for cause." *Id.* at 356. In *Morrison*, it explained that "the term 'good cause'" allowed the Attorney General to "remove an independent counsel for 'misconduct.'" *Id.* at 692. And in *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477 (2010), the Court stated that the President "might have less confidence in," and must have the authority to remove, an officer "who cheats on his taxes." *Id.* at 503.

The canon of constitutional avoidance reinforces that interpretation. Even if Article II allows Congress to impose *some* limits on the President's removal power given the Federal Reserve System's unique historical pedigree—a question this Court need not address here—a reading of "cause" that does not give the President broad latitude to remove an officer for misconduct would violate Article II or, at a minimum, raise serious constitutional doubts. Cf. *Free Enterprise Fund*, 561 U.S. at 503 ("unusually high" cause standard poses a "serious threat to executive control"); John F.

Manning, *The Independent Counsel Statute*, 83 Minn. L. Rev. 1285, 1330 (1999) (discussing "persuasive reasons for concluding that a narrow construction of 'good cause' * * * would raise a serious question under Article II.").

Under those principles, the President identified a legally permissible cause for removing Cook. The Director of the Federal Housing Finance Agency referred Cook to the Department of Justice for potential criminal prosecution for mortgage fraud. As explained in the referral, Cook entered two mortgage agreements—for properties in different States (Michigan and Georgia)—within just weeks of one another in the summer of 2021, less than a year before starting her service on the Board of Governors. Each agreement included a covenant representing that Cook would "occupy, establish, and use the Property as [her] principal residence within 60 days after the execution" of the agreement and would "continue to occupy the Property as [her] principal residence for at least one year." D. Ct. Doc. 13, at 11. Each agreement specified that this representation concerning "occupancy of the Property as Borrower's principal residence" is "[m]aterial" to the lender. *Ibid.* As the referral letter explains, such representations matter because lenders tend to view secondary residences as "significantly riskier," triggering higher interest rates. *Ibid.*

It is difficult to see how Cook could have honestly represented that she intended to occupy both a property in Michigan and a property in Georgia as her "principal residence" during the same period—and she herself has offered no explanation. In this context, the word "principal" means "first or highest in rank of importance; that is at the head of all the rest; of the greatest account or value." *Oxford English Dictionary* (3d ed. rev. 2007). By definition, "a homeowner may have only one principal residence." *In re Apergis*, 539 B.R. 24, 28 (E.D.N.Y. 2015); cf. *Hertz Corp.* v. *Friend*, 559 U.S. 77, 93 (2010) (a corporation's "principal place of business" must be

"a single place"). It follows that one of Cook's two properties must have been a secondary residence or an investment property, not (as Cook represented) a principal residence. If Cook made her contradictory representations knowingly, they could constitute felonies. See, *e.g.*, 18 U.S.C. 1014 (false statements to financial institutions); 18 U.S.C. 1344 (bank fraud). And even if Cook made the representations inadvertently, they still show gross negligence with respect to important financial matters.

Either way, the President may treat Cook's misrepresentations as "cause" for removal. "Fraud is an excellent reason for removal, not merely a permissible one." App., *infra*, 15a (Katsas, J., dissenting) (brackets and quotation marks omitted). Even assuming that Cook's misrepresentations were unintentional, "the President specifically concluded that [her gross negligence] cast doubt on [her] 'competence and trustworthiness as a financial regulator.'" *Ibid.* That is "a cause relating to Cook's conduct, ability, fitness, or competence," *id.* at 14a, which is all the statute requires.

b. The district court concluded that "'for cause' in the Federal Reserve Act refers to in-office conduct that demonstrates ineffective or unfaithful execution of statutory duties," App., *infra*, 39a (capitalization and emphasis omitted), and that the President's reason for removing Cook is not a "legally permissible cause" because it concerns "conduct before she began serving," *id.* at 49a. The court of appeals did not adopt that theory, and even Cook did not defend that view below. When the district court asked if Cook was taking the position that "conduct that predates confirmation cannot be a basis for cause," Cook's lawyer responded, "we're not taking that absolute position" and "[w]e're not taking that extreme." 8/29/25 Hearing Tr. 17.

Rightly so, for the district court's artificial limitation has no plausible basis in the statutory text. No statutory language limits "cause" to in-office conduct. To the contrary, the ordinary meaning of "cause" comfortably covers any misconduct,

whether during the officer's term or before it, that, in the President's judgment, renders the officer unfit to serve. See p. 26, *supra*. Making the district court's reading even less tenable, Congress must use "'clear and explicit language'" to restrict the President's removal power; "'inference or implication' does not suffice." *Kennedy* v. *Braidwood Management, Inc.*, 145 S. Ct. 2427, 2448 (2025). The word "cause" does not clearly preclude removal based on pre-office misconduct.

The district court noted that Congress has enacted many statutes authorizing removal for "inefficiency, neglect of duty, or malfeasance in office" (INM), and it read that standard to authorize removal only for in-office conduct. See App., *infra*, 36a-39a. The statute here, however, authorizes removal for "cause," not for INM. When Congress "employs different words, it usually means different things." Henry J. Friendly, *Mr. Justice Frankfurter and the Reading of Statutes*, in *Benchmarks* 224 (1967); see *Russello* v. *Untied States*, 464 U.S. 16, 23 (1983). Contrary to the court's analysis, the "*in pari materia*" canon does not suggest otherwise. App., *infra*, 39a. That canon directs courts to adopt a consistent interpretation of "identical language" in related statutes, *Kousisis* v. *United States*, 145 S. Ct. 1382, 1390 n.2 (2025)—not to adopt a consistent interpretation of different language.

This Court has previously recognized, moreover, that the for-cause standard meaningfully differs from the INM standard. Substantively, a "'for cause' restriction" provides "more removal authority" than the INM standard. *Collins* v. *Yellen*, 594 U.S. 220, 255 (2021). Procedurally, the INM standard requires notice and a hearing, see *Shurtleff*, 189 U.S. at 314, while a for-cause standard allows removal with no notice and no hearing, see *Reagan*, 182 U.S. at 424. And courts may engage in limited judicial review of removals under the INM standard, see *Humphrey's Executor* v. *United States*, 295 U.S. 602, 626 (1935), but removals under pure for-cause provisions

are "not reviewable," *Reagan*, 182 U.S. at 425. The meaning of the INM standard therefore does not constrain the meaning of the broader for-cause standard.

The district court's theory defies common sense. The court reasoned that an officer's "in-office behavior" can reveal his inability to "effectively and faithfully carry out [his] statutory duties." App., *infra*, 46a. But an officer's behavior before taking office can do so as well. Presidents routinely vet their nominees, and Senate committees routinely ask about allegations of misconduct in confirmation hearings, precisely because past behavior is relevant evidence of a person's fitness to exercise power going forward. In removing Cook, moreover, the President specifically found that her past conduct *does* impair her current ability to serve. He explained that her "deceitful and potentially criminal conduct in a financial matter" undermined the American people's "confidence" in "the honesty of the members entrusted with setting policy and overseeing the Federal Reserve"; that her conduct at a minimum shows "the sort of gross negligence in financial transactions that calls into question [her] competence and trustworthiness as a financial regulator"; and that "faithfully executing the law" accordingly "requires [her] immediate removal." *Id.* at 29a.

The district court's interpretation also leads to absurd results. "Imagine a Governor who amassed his great wealth and stellar reputation based on financial fraud discovered only after he took office. Imagine a Governor who is discovered to have bribed a Senator to ensure confirmation. Or imagine a Governor who is discovered to have committed murder before taking office." App., *infra*, 15a (Katsas, J., dissenting). On the district court's logic, none of those acts would amount to cause.

The district court sought to mitigate those consequences by stipulating that the President could remove an officer who is "convicted of a serious crime and incarcerated while in office, even if that conviction was the result of earlier conduct." App.,

infra, 44a-45a. But that just compounds the atextualism; the answer to problems with an atextual requirement cannot be to manufacture atextual exceptions. Besides, the court's rationale fails on its own terms. While imprisonment for pre-office conduct of course can impair one's ability to continue doing one's job, see *ibid.*, pre-office conduct can likewise impair a member's ability to keep doing the job where, as here, the President finds that the conduct undermines public trust in the agency.

The district court claimed that the government had conceded that pre-office conduct cannot be cause if it was "known at the time of the official's confirmation." App., *infra*, 42a. But the government did not argue for any such bright-line rule. The government instead acknowledged 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 and a judgment has been made." 8/29/25 Hearing Tr. 66. Regardless, because Cook's conduct was not publicly known when she was confirmed, these issues are irrelevant.

Finally, the district court observed that Congress granted tenure protection to the Federal Reserve Board to insulate the Board from political pressure. See App., *infra*, 34a-36a. But the government's interpretation of the for-cause restriction is consistent with that observation. The government has consistently acknowledged throughout this case that, although fraud or gross negligence in financial matters is cause for removal, mere policy disagreement is not. The court's distinction between pre-office misconduct and in-office misconduct has nothing to do with the statutory purpose of protecting the Federal Reserve Board from political pressure.

C. The Government Is Likely To Succeed In Showing That Cook Is Not Entitled To Equitable Relief Restoring Her To Office

The government also is likely to succeed on the independent ground that the

district court's preliminary injunction reinstating Cook exceeded its remedial authority. The traditional remedy for the unlawful removal of an executive officer is back pay, not a preliminary injunction granting interim reinstatement. See *Bessent* v. *Dellinger*, 145 S. Ct. 515, 516-518 (2025) (Gorsuch, J., dissenting); Appl. at 20-31, *Wilcox*, *supra* (No. 24A966). Even assuming that Cook could obtain some form of reinstatement remedy at the end of the litigation—an issue the Court need not decide now—the preliminary relief granted here is plainly unlawful.

a. Federal courts derive their equitable powers from the Judiciary Act of 1789, ch. 20, 1 Stat. 73. See *Trump* v. *CASA, Inc.*, 606 U.S. 831, 841 (2025); *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999). They must exercise those powers in accordance with "traditional principles of equity jurisdiction," *Grupo*, 527 U.S. at 319, as understood "at the time of the adoption of the Constitution and the enactment of the original Judiciary Act," *CASA*, 606 U.S. at 841-842. Federal courts may not "devise novel remedies that have no background in traditional equitable practice." *Id.* at 846 n.9.

One of the most well-established principles of equity jurisprudence is that a court may not enjoin the removal of an executive officer. This Court has recognized that principle time and again. For instance, the Court has explained:

- "[T]o sustain a bill in equity to restrain * * * the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative department." *In re Sawyer*, 124 U.S. 200, 210 (1888).
- "[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).
- "[T]he general rule, both in England and in this country, is that courts of

> equity have no jurisdiction * * * over the appointment and removal of public officers." *Harkrader* v. *Wadley*, 172 U.S. 148, 165 (1898).
>
> - "A court of equity has no jurisdiction over the appointment and removal of public officers." *Walton* v. *House of Representatives*, 265 U.S. 487, 490 (1924).
> - A "traditional limit upon equity jurisdiction" precludes "federal equity from staying removal of a federal officer." *Baker* v. *Carr*, 369 U.S. 186, 231 (1962) (emphasis omitted).

That principle is longstanding and well established. "No English case has been found of a bill for an injunction to restrain" a "removal." *Sawyer*, 124 U.S. at 212. American courts have likewise "denied" the "power of a court of equity to restrain" a "removal" in "many well considered cases." *Ibid.* One 19th-century scholar wrote that "[n]o principle of the law of injunctions, and perhaps no doctrine of equity jurisprudence, is more definitely fixed or more clearly established than that courts of equity will not interfere by injunction to determine questions concerning the appointment of public officers or their title to office." 2 James L. High, *Treatise on the Law of Injunctions* § 1312, at 863 (2d ed. 1880).

This Court has previously applied that equitable principle to the removal of inferior executive officers, see *White*, 171 U.S. at 376-378, and state officers, see, *e.g.*, *Sawyer*, 124 U.S. at 221. The principle applies with even greater force to the President's removal of a principal executive officer. This Court's cases require Congress to use clear statutory language to authorize remedies that burden the President's Article II powers in general, see *Franklin*, 505 U.S. at 801, or to restrict the President's removal power in particular, see *Braidwood*, 145 S. Ct. at 2448. But the district court cited no statutory provision that authorizes (much less clearly authorizes) reinstatement of removed members of the Federal Reserve Board.

Because reinstatement is not a traditional equitable remedy, Congress affirmatively authorizes reinstatement when it means to make that relief available. For example, the statute in *Morrison* provided that a removed independent counsel "may be reinstated" by a reviewing court. Independent Counsel Reauthorization Act of 1987, § 2, 101 Stat. 1305. Congress likewise has authorized "reinstatement" as a remedy for employment discrimination, see 42 U.S.C. 2000e-5(g)(1), and unfair labor practices, see 29 U.S.C. 160(c). But Congress did not authorize such relief in the Federal Reserve Act or the Banking Act, and that omission is decisive. The "remedies available are those 'that Congress enacted into law,'" not those that courts consider "desirable." *Alexander* v. *Sandoval*, 542 U.S. 275, 286-287 (2001).

b. To resolve this stay application, this Court need hold only that federal courts lack the power to issue preliminary injunctions reinstating removed officers. It need not consider whether courts could issue other types of relief, such as writs of mandamus ordering reinstatement or declaratory judgments stating that removals are unlawful. The government has argued against those remedies as well, see, *e.g.*, Appl. at 20-31, *Wilcox*, *supra* (No. 24A966), but the district court did not grant them, so this case presents no occasion to consider their lawfulness.

Reinstatement injunctions pose a more severe threat to the Executive Branch than writs of mandamus or declaratory judgments. A party may obtain a writ of mandamus only if he has a "clear and indisputable" entitlement to relief, *Cheney* v. *U.S. District Court*, 542 U.S. 367, 381 (2004), and a declaratory judgment only if he prevails on the merits, see *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). By contrast, a preliminary injunction requires just a likelihood of success on the merits. See *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

Regardless of whether removed officers could obtain mandamus or declaratory

judgments at the end of the litigation, they have no right to preliminary injunctions reinstating them while the litigation remains pending. In debates leading to the Decision of 1789, even those members of the First Congress who thought that removal required Senate consent agreed that the President could suspend officers pending Senate action. See *Myers* v. *United States*, 272 U.S. 52, 124-125 (1926). In *Wiener*, this Court suggested that the President could make a "suspensory removal" of a tenure-protected Commissioner "until the Senate could act upon it by confirming the appointment of a new Commissioner or otherwise dealing with the matter." 357 U.S. at 356. And in *Loudermill*, the Court explained that the Due Process Clause would not prevent a State from "suspending" a civil-service employee pending a hearing. 470 U.S. at 545. So too here, courts should allow the President's removal of Cook to remain in effect while they adjudicate the removal's lawfulness.

Finally, preliminary injunctions reinstating removed officers threaten to cause "the utmost confusion in the management of executive affairs." *White*, 171 U.S. at 378. During this Administration, courts have awarded a series of interim injunctions temporarily reinstating removed executive officers. See, *e.g.*, C.A. Order, *Perlmutter* v. *Blanche*, No. 25-5285 (D.C. Cir. Sept. 10, 2025) (Register of Copyrights); *Harris* v. *Bessent*, 775 F. Supp. 3d 86 (D.D.C. 2025) (Merit Systems Protection Board); *Dellinger* v. *Bessent*, 766 F. Supp. 3d 57 (D.D.C. 2025) (Special Counsel). In many of those cases, the injunctions were later stayed by the court of appeals or by this Court. By making clear that reinstatement injunctions exceed courts' equitable powers, this Court would minimize "the disruptive effect of the repeated removal and reinstatement of officers" during litigation. *Wilcox*, 145 S. Ct. at 1415.

D. The Other Factors Support Granting A Stay

In deciding whether to grant interim relief, this Court also considers whether

the underlying issues warrant review; whether the applicant likely faces irreparable harm; and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors all support granting a stay.

1. The issues raised by this case are certworthy. The question whether Cook's removal is lawful warrants this Court's review, given the significance of the removal power to the President's ability to supervise the Executive Branch and the importance of the Federal Reserve Board as a federal agency. The remedial question, too, warrants this Court's review, given the serious separation-of-powers concerns raised by court orders reinstating removed officers. Finally, the "interim status" of the removals—that is, whether Cook may continue to hold office "while the parties wait for a final merits ruling"—"*itself* raises a separate question of extraordinary significance" that should be resolved by this Court. *Labrador* v. *Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring).

2. As this Court recognized in *Wilcox*, the government faces a serious risk of irreparable harm when a district court reinstates a removed principal executive officer. See 145 S. Ct. 1415. Such an order harms the Executive Branch by "allowing a removed officer to continue exercising the executive power" over the President's objection. *Ibid.* Such an order also subjects the agency to "the disruptive effect of the repeated removal and reinstatement of officers." *Ibid.*

The district court dismissed the harm to the government on the ground that the President "has not identified anything related to Cook's conduct * * * that would indicate that she is harming the Board or the public interest." App., *infra*, 69a. That claim is baseless. The President determined that, in light of Cook's "deceitful and potentially criminal conduct in a financial matter," neither he nor the American people could have "confidence in [her] integrity." *Id.* at 29a. He also determined that, at

a minimum, her conduct "exhibits the sort of gross negligence that calls into question [her] competence and trustworthiness as a financial regulator." *Ibid.* And he stated that "faithfully executing the law requires [her] immediate removal." *Ibid.* In declaring that Cook's continued service is not "harming the Board," *id.* at 69a, the district court improperly substituted its own judgment for the President's.

Judge Garcia suggested that the government does not face irreparable harm from being required to provide additional process. App., *infra*, 8a. But Article II allows the President to determine what process to follow when removing executive officers, and courts cause irreparable harm to the separation of powers when they wrongly usurp that authority. Further, "if a Governor could demand a constitutional entitlement to adjudicatory process prior to her removal," she could potentially "enlist the judiciary to review the adequacy of that process." *Id.* at 21a (Katsas, J., dissenting). "Even with substantial expedition, judicial review can frustrate presidential action for months or even years." *Ibid.*

3. Finally, the balance of equities favors the government. Cook's removal deprives her of employment and salary, but such harms ordinarily are not considered irreparable, given the prospect of back pay at the end of a case. See *Sampson* v. *Murray*, 415 U.S. 61, 92 n.68 (1974). The district court nonetheless found that Cook faces irreparable harm because her removal "prevent[s] her from discharging her duties as a Federal Reserve Governor." App., *infra*, 62a. That argument lacks merit. A public official's "loss of political power" is not a judicially cognizable harm, much less the type of irreparable harm that can justify issuing an injunction. *Raines* v. *Byrd*, 521 U.S. 811, 821 (1997). In all events, "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 stat-

utory duty." *Wilcox*, 145 S. Ct. at 1415.

Judge Garcia stated that "Cook has been serving in her position continuously despite" her removal and that, as a result, granting relief would "upend, not preserve, the status quo." App., *infra*, 9a. But this Court resolves stay applications by applying the stay factors, not "a blanket rule of 'preserving the status quo.'" *Poe*, 144 S. Ct. at 931 (Kavanaugh, J., concurring). For example, the Court granted a stay in *Boyle* even though the removed officers had been serving pursuant to a reinstatement order for more than a month. See 145 S. Ct. at 2654; Appl. at 6, *Boyle*, *supra* (No. 25A11).

E. This Court Should Issue An Administrative Stay While It Considers This Application

The Chief Justice granted administrative stays of the district court's orders reinstating removed executive officers in both *Trump* v. *Wilcox*, No. 24A966, 2025 WL 103917 (Apr. 9, 2025), and *Trump* v. *Slaughter*, No. 25A264, 2025 WL 2582814 (Sept. 8, 2025). An administrative stay is likewise warranted here.

CONCLUSION

This Court should stay the preliminary injunction 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. The Court should also enter an administrative stay of the district court's injunction.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

SEPTEMBER 2025