

No. 25-332

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES, *et al.*,

Petitioners,

v.

REBECCA KELLY SLAUGHTER, *et al.*,

Respondents.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

**BRIEF OF AMICI CURIAE PATRICK J. BORCHERS,
MICHAEL C. DORF, KELLEN FUNK,
AZIZ HUQ, RILEY T. KEENAN, JAMES PFANDER,
AND JONATHAN D. SHAUB
IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF APPENDICES	ii
TABLE OF CITED AUTHORITIES	iii
IDENTITY AND INTERESTS OF <i>AMICI CURIAE</i> ...	1
PROCEDURAL POSTURE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	5
I. Injunctive Relief Remediating Improper Removal of an Officer Accords with Foundational Principles of Equity and Binding Precedent.....	5
II. If the Court Concludes that Injunctive Relief is Not Available, Mandamus-Like Legal Relief is Available.	15
III. In Any Event, Plaintiff is Entitled to <i>Some</i> Remedy Preventing Her Removal.....	21
CONCLUSION	27

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX — List of <i>Amici</i>	1a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Aetna Health Inc. v. Davila</i> , 542 U.S. 200 (2004)	13
<i>Aetna Life Ins. Co. v. Haworth</i> , 300 U.S. 227 (1937).....	23
<i>Am. Hosp. Ass’n v. Burwell</i> , 812 F.3d 183 (D.C. Cir. 2016).....	19
<i>Am. Sch. of Magnetic Healing v. McAnnulty</i> , 187 U.S. 94 (1902).....	10
<i>Att’y Gen. v. Chi. & Nw. Ry. Co.</i> , 35 Wis. 425 (1874).....	8
<i>Baker v. Carr</i> , 369 U.S. 186 (1962).....	14
<i>Bd. of Liquidation v. McComb</i> , 92 U.S. 531 (1875).....	9, 19
<i>Bond v. Hopkins</i> , [1802] 1 Sch. & Lefr. 413 (Ir. Ct. Ch.)	7
<i>Cole v. Young</i> , 351 U.S. 536 (1956).....	11
<i>Dairy Queen, Inc. v. Wood</i> , 369 U.S. 469 (1962).....	6

Cited Authorities

	<i>Page</i>
<i>Delgado v. Chavez</i> , 140 U.S. 586 (1891)	25
<i>Ewing v. City of St. Louis</i> , 72 U.S. 413 (1866)	14
<i>Gaines v. Thompson</i> , 74 U.S. 347 (1868)	9, 14, 18
<i>Gordon v. Washington</i> , 295 U.S. 30 (1935)	7
<i>Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.</i> , 527 U.S. 308 (1999)	5, 13
<i>Harkrader v. Wadley</i> , 172 U.S. 148 (1898)	14
<i>Heckler v. Ringer</i> , 466 U.S. 602 (1984)	16, 20
<i>Humphrey's Executor v. United States</i> , 295 U.S. 602 (1935)	1
<i>In re Cheney</i> , 406 F.3d 723 (D.C. Cir. 2005)	12, 15, 16
<i>In re Nat'l Nurses United</i> , 47 F.4th 746 (D.C. Cir. 2022)	20

Cited Authorities

	<i>Page</i>
<i>In re Sawyer</i> , 124 U.S. 200 (1888).....	3, 14, 21
<i>James Bagg’s Case</i> , 77 Eng. Rep. 1271 (1615)	16
<i>Kalbus v. Siddons</i> , 42 App. D.C. 310 (D.C. Cir. 1914)	25
<i>Kendall v. U.S. ex. rel. Stokes</i> , 37 U.S. 524 (1838).....	18
<i>Knipe v. Edwin</i> , 87 Eng. Rep. 394 (K.B. 1695)	21
<i>Litchfield v. Reg. & Receiver</i> , 76 U.S. 575 (1869).....	19
<i>Liu v. SEC</i> , 591 U.S. 71 (2020).....	13
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803).....	2, 3, 18
<i>Marshall v. Whirlpool Corp.</i> , 593 F.2d 715 (6th Cir. 1979).....	13
<i>Mical Commc’ns, Inc. v. Sprint Telemedia, Inc.</i> , 1 F.3d 1031 (10th Cir. 1993).....	13

Cited Authorities

	<i>Page</i>
<i>Naporano Matal & Iron Co. v. Sec'y of Lab. of U.S.</i> , 529 F.2d 537 (3d Cir. 1976)	19
<i>Norton v. S. Utah Wilderness All.</i> , 542 U.S. 55 (2004).....	20
<i>Osborn v. Bank of U.S.</i> , 22 U.S. 738 (1824).....	9
<i>Pennoyer v. McConnaughy</i> , 140 U.S. 1 (1891)	9
<i>Perez v. Ledesma</i> , 401 U.S. 82 (1971)	22
<i>Peters v. Hobby</i> , 349 U.S. 331 (1955).....	11
<i>Queen v. Heathcote</i> , 88 Eng. Rep. 620 (Q.B. 1712).....	21
<i>R. v. Barker</i> , 97 Eng. Rep. 823 (1762)	17
<i>R v. Corp. of Wells</i> , 98 Eng. Rep. 41 (1767)	17
<i>R. v. Mayor and Aldermen of Doncaster</i> , 96 Eng. Rep. 795 (1752)	17

Cited Authorities

	<i>Page</i>
<i>R. v. Mayor of London</i> , 100 Eng. Rep. 96 (1787)	17
<i>R. v. Mayor of Wilton</i> , 87 Eng. Rep. 642 (1697)	17
<i>R. v. Mayor, Bailiffs, and Common Council of the Town of Liverpool</i> , 97 Eng. Rep. 533 (1759)	17
<i>Rudolph v. Sullivan</i> , 277 F. 863 (D.C. Cir. 1922)	19
<i>Sampson v. Murray</i> , 415 U.S. 61 (1974)	3, 11, 14, 15
<i>Samuels v. Mackell</i> , 401 U.S. 66 (1971)	23
<i>Service v. Dulles</i> , 354 U.S. 363 (1957)	11
<i>Severino v. Biden</i> , 71 F.4th 1038 (D.C. Cir. 2023)	3, 11, 26
<i>Slaughter v. Trump</i> , 791 F. Supp. 3d 1 (D.D.C. 2025)	1, 4-5, 10, 21, 23-24, 26
<i>Steffel v. Thompson</i> , 415 U.S. 452 (1974)	22, 23

Cited Authorities

	<i>Page</i>
<i>Swan v. Clinton</i> , 100 F.3d 973 (D.C. Cir. 1996)	3, 11, 20, 26
<i>Trump v. CASA, Inc.</i> , 606 U.S. 831 (2025)	4-7, 25
<i>U.S. ex rel. Arant v. Lane</i> , 47 App. D.C. 336 (D.C. Cir. 1918)	19
<i>U.S. ex rel. Hall v. Union Pac. R.R. Co.</i> , 28 F. Cas. 345 (C.C.D. Iowa 1875), <i>aff'd sub nom. Union Pac. R.R. Co. v. Hall</i> , 91 U.S. 343 (1875)	18
<i>United States v. Deneale</i> , 25 Fed. Cas. 817 (C.C.D.C. 1801)	18
<i>United States v. Lawrence</i> , 3 U.S. 42 (1795)	18
<i>Vitarelli v. Seaton</i> , 359 U.S. 535 (1959)	3, 10, 22
<i>Walton v. House of Representatives of Okla.</i> , 265 U.S. 487 (1924)	14
<i>White v. Berry</i> , 171 U.S. 366 (1898)	14, 21
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1953)	10

Cited Authorities

	<i>Page</i>
Statutes and Rules	
28 U.S.C. § 1361	12, 15, 16, 19, 26
28 U.S.C. §§ 2201-2202	22, 24
D.C. Code § 16-3501	24
Fed. R. Civ. P. 2	4
Fed. R. Civ. P. 81(b)	12
Other Authorities	
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33 Charles A. Wright & Arthur R. Miller, <i>Federal Practice and Procedure</i> (2d ed. 2024) . . .	16
Clark Byse & Joseph V. Fiocca, <i>Section 1361 of the Mandamus and Venue Act of 1962 and “Nonstatutory” Judicial Review of Federal Administrative Action</i> , 81 Harv. L. Rev. 308 (1967)	19

Cited Authorities

	<i>Page</i>
Charles E. Clark, <i>The Union of Law and Equity</i> , 25 Colum. L. Rev. 1 (1925)	12
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F.W. Maitland, <i>Equity and the Forms of Action</i> (A.H. Chaytor & W.J. Whittaker eds. 1910)	6, 8, 26
Henry Home, <i>Principles of Equity</i> (Michael Lobban ed., Liberty Fund 2014) (1778)	7
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James E. Pfander & Jacob P. Wentzel, <i>The Common Law Origins of Ex parte Young</i> , 72 Stan. L. Rev. 1269 (2020)	6-8, 17, 18, 26
James E. Pfander & Mary E. Zakowski, <i>Nonparty Protective Relief in the Early Republic: Judicial Power to Annul Letters Patent</i> , forthcoming 120 Nw. U. L. Rev. (2025)	7
James L. High, <i>Extraordinary Legal Remedies</i> § 49 (1896)	25
Jonathan David Shaub, <i>Interbranch Equity</i> , 25 U. Pa. J. Const. L. 780 (2023)	9

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	<i>Page</i>
1 Joseph Story, <i>Commentaries on Equity Jurisprudence, as Administered in England and America</i> (Boston, Hilliard, Gray & Co. 1836) . . .	6, 7
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Lord Woolf et al., <i>De Smith’s Judicial Review</i> (6th ed. 2007)	17
Louis L. Jaffe, <i>Judicial Control of Administrative Action</i> (Little, Brown & Co. 1965)	8
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Public Office—Remedies for Improper Removal—Mandamus—Quo Warranto, <i>38 Harv. L. Rev.</i> 693 (1925)	23, 24
Richard E. Flint, <i>The Evolving Standard for Granting Mandamus Relief in the Texas Supreme Court: One More “Mile Marker Down the Road of No Return,”</i> <i>39 St. Mary’s L.J.</i> 3 (2007)	21
Samuel Bray, <i>A Declaratory Judgment Against the President?</i> , <i>Yale J. on Reg. Notice & Comment Blog</i> (Mar. 14, 2025)	22

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	<i>Page</i>
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Thomas Tapping, <i>The Law and Practice of The High Prerogative Writ of Mandamus as it Obtains Both in England, and in Ireland</i> (1853).	16, 17
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IDENTITY AND INTERESTS OF *AMICI CURIAE*¹

Professors Patrick J. Borchers, Michael C. Dorf, Kellen Funk, Aziz Huq, Riley T. Keenan, James Pfander, and Jonathan D. Shaub, whose background and publications are described in the Appendix, submit this brief as *amici curiae*. Their interest in this matter is that of legal scholars on federal courts, jurisdiction, procedure, remedies, and the law governing federal adjudication of constitutional and statutory claims against the Federal Government and its officers.

PROCEDURAL POSTURE

This case is before the Court on its grant of the government's petition for a writ of certiorari before judgment stemming from the U.S. District Court for the District of Columbia's grant of injunctive and declaratory relief to Plaintiff Rebecca Kelly Slaughter. *See Slaughter v. Trump*, 791 F. Supp. 3d 1, 29 (D.D.C. 2025). This Court has directed the parties to brief and argue two questions regarding the purported removal of FTC Commissioner Slaughter: (1) whether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), should be overruled; and (2) whether a federal court may prevent a person's removal from public office, either through relief at equity or at law.

1. No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

Amici do not address the first question presented or Plaintiff’s entitlement to her office. Instead, assuming the Court finds that statutory removal protections for FTC members are constitutional and that Plaintiff’s purported removal from the FTC was unlawful, *amici* address the second question presented—specifically, the forms of relief, drawn from history and precedent, available to remedy unlawful removal from office.

INTRODUCTION AND SUMMARY OF ARGUMENT

“It is a settled and invariable principle,” Chief Justice Marshall wrote, “that every right, when withheld, must have a remedy.” *Marbury v. Madison*, 5 U.S. 137, 147 (1803) (citing 3 William Blackstone, *Commentaries on the Laws of England* 109 (Oxford, Clarendon Press 1768)). Assuming such a right was withheld here, the available remedy is clear: from 1789 to today, courts have consistently held that executive officers threatened with or subject to unlawful removal may properly be retained in or restored to office. Indeed, history and precedent establish that federal courts have the authority to protect the position of a federal officer removed unlawfully or threatened with such removal, whether that protection takes the form of an injunction, mandamus, or a declaratory judgment.²

That history started with *Marbury*, which drew upon the English tradition of using prerogative writs to compel government officials to act within legal boundaries. *See* 5 U.S. at 146-47. The Court made clear that because duties

2. *Amici* use the term “mandamus” to encompass all forms of mandamus-like relief available in this context. *See infra* note 7.

regarding executive officers' employment are "prescribed by law," a failure to uphold these duties constitutes an "illegal act" that presents "a plain case for" relief—in *Marbury's* case, mandamus—from a court of competent jurisdiction. *Id.* at 158, 164, 170-73. This Court has since continued to acknowledge and provide a remedy in cases involving challenges related to officeholding through both mandamus and injunctive relief. See *In re Sawyer*, 124 U.S. 200, 212 (1888); *Vitarelli v. Seaton*, 359 U.S. 535, 537, 546 (1959); *Sampson v. Murray*, 415 U.S. 61, 92 & n.68 (1974). As discussed herein, the characterization of the remedy has evolved as equity has absorbed aspects of the common law and equitable and legal procedures have merged. But the fundamental principle remains unaltered: officials subjected to an unlawful purported discharge may seek specific relief restoring them to office and are not remitted to suits for compensatory monetary relief.

Marbury itself settled that question, explaining why a suit for money damages was an inadequate remedy for loss of public office. "The value of a public office not to be sold, is incapable of being ascertained; and the applicant has a right to the office itself." *Marbury*, 5 U.S. at 173. Since *Marbury*, courts and commentators have repeatedly reaffirmed the principle that specific relief—restoration to the office itself rather than an award of damages—is a proper remedy. *E.g.*, *In re Sawyer*, 124 U.S. at 212 (listing procedures through which courts can determine the title to a public office); *Severino v. Biden*, 71 F.4th 1038, 1042-43 (D.C. Cir. 2023) (courts may "enjoin 'subordinate executive officials' to reinstate a wrongly terminated official" (quoting *Swan v. Clinton*, 100 F.3d 973, 980 (D.C. Cir. 1996))); Samuel L. Bray, *Remedies in the Officer Removal Cases*, (Oct. 20, 2025), forthcoming 17 J.

of Leg. Analysis (2025), at 3, <https://perma.cc/3XEP-2DL6> (explaining that “damages for lost wages and benefits” are “plainly insufficient,” as “[n]either the president trying to remove an officer nor the officer herself is really in it for the money”).³ That unbroken tradition resolves the question of federal judicial power to grant specific relief here, leaving only the question of how courts should tailor such relief in a world where remedies at law and in equity have been merged into a single civil action. Fed. R. Civ. P. 2.

A court might structure that relief in various ways, as *amici* describe below. In Section I, *amici* chronicle the English origins of the judicial power to prevent unlawful removal of executive officers, its integration into the practice of the federal courts, and its later absorption into equity as legal and equitable procedures merged, all of which support the injunction entered by the district court here. *See Slaughter*, 791 F. Supp. 3d at 29. In Section II, *amici* explain that should this Court find injunctive relief unavailable, mandamus would properly provide the same redress. And Section III explains that given law and equity’s relationship throughout history, this Court’s precedent, and the additional remedial tool of a declaratory judgment, *see id.* at 24 (granting a declaratory

3. Professor Bray’s views are particularly notable here, as his work featured heavily in *Trump v. CASA, Inc.* *See* 606 U.S. 831, 840, 841, 842, 843, 844, 845, 847, 848, 850, 854 (2025); *see also id.* at 863, 864, 865 (Thomas, J., concurring). As discussed throughout this brief, Bray’s views directly contradict multiple aspects of the government’s position here. Indeed, Professor Bray supports Plaintiff’s position before this Court with respect to the availability of equitable and legal remedies. *See Bray, Remedies in the Officer Removal Cases, supra*, at 6 (“[T]he Supreme Court should answer in the affirmative the second question presented in *Trump v. Slaughter*. . .”).

judgment), the bottom line is that a court may provide “some form of remedy that prevents [the] removal” of an improperly terminated federal officer, *id.* at 29 n.12.

ARGUMENT

I. Injunctive Relief Remediating Improper Removal of an Officer Accords with Foundational Principles of Equity and Binding Precedent.

“Equity is flexible.” *Trump v. CASA, Inc.*, 606 U.S. 831, 846 (2025) (quoting *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 322 (1999)) (brackets omitted). Within limits, to be sure: as this Court recently emphasized, equitable practice “must have a founding-era antecedent,” *id.* at 847, and equity’s “flexibility is confined within the broad boundaries of traditional equitable relief,” *id.* at 846 (quoting *Grupo Mexicano*, 527 U.S. at 322).

Injunctive relief to remedy unlawful officer removal accords with these principles. The practice developed gradually from the historical use of mandamus as the primary mechanism to contest summary removal from public office in eighteenth-century England. Because injunctions developed as the preferred means to restrain illicit executive action through case-by-case iteration, and their use for this purpose reflects procedural rather than substantive merger of law and equity, injunctions to maintain or restore an officer’s position comply with the “traditional principles of equity jurisdiction.” *Grupo Mexicano*, 527 U.S. at 319 (quoting 11A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2941 (2d ed. 1995)).

Perhaps the most fundamental principle of equity is that it has always operated to provide relief “where a plain, adequate, and complete remedy” cannot otherwise “be had.” 1 Joseph Story, *Commentaries on Equity Jurisprudence, as Administered in England and America* § 33 (Boston, Hilliard, Gray & Co. 1836). Equity thus contemplates interaction with legal remedies; it “presuppose[s] the existence of” and acts as a “gloss written round” the common law. F.W. Maitland, *Equity and the Forms of Action* 17-20 (A.H. Chaytor & W.J. Whittaker eds. 1910). Over time, therefore, equitable relief “adapt[s] to changes in the remedial system as a whole.” See James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of Ex parte Young*, 72 *Stan. L. Rev.* 1269, 1282 (2020). And because the “law is not static, the equity that corrects and supplements it cannot be static either.” Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 *Notre Dame L. Rev.* 1763, 1796 (2022).

This principle “works in both directions.” *Id.* at 1796 n.102. For example, the “bill of peace” accorded by English equitable courts has “evolved into the modern class action” under Rule 23, diminishing the justification for “the quick [equitable] fix of a universal injunction.” *CASA*, 606 U.S. at 849-50; see *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 478 n.19 (1962) (“[P]rocedural changes which remove the inadequacy of a remedy at law may sharply diminish the scope of traditional equitable remedies by making them unnecessary.”). On the other hand, there are certain “common law practice[s]” that equity has “absorbed.” Pfander & Wentzel, *supra*, at 1282. For instance, early federal law provided a legal remedy of patent cancellation based on the English writ of scire facias. *Id.* at 1325-26. But over time, equity “substituted the injunction for

the writ of scire facias, and suits for injunctive relief against invalid patents came to dominate the litigation landscape.” *Id.* at 1326; *see generally* James E. Pfander & Mary E. Zakowski, *Nonparty Protective Relief in the Early Republic: Judicial Power to Annul Letters Patent*, forthcoming 120 Nw. U. L. Rev. (2025), <https://perma.cc/HA3X-SLXF>.

To be clear, the adaptation of equity to fill common-law gaps is subject to the traditional limits on equity’s flexibility. *See CASA*, 606 U.S. at 846-47. Courts may not, for example, issue equitable relief beyond accepted practice merely to effectuate justice—that “conscience-based equity” model, wherein “the Chancellor considered the case as a whole and decreed what he personally thought should be done” regardless of remedial precedent, was rejected in England well before our Constitution’s adoption. Owen W. Gallogly, *Equity’s Constitutional Source*, 132 Yale L.J. 1213, 1243 (2023). But gradual, case-by-case development of equity jurisprudence has always been treated as legitimate. *See Bond v. Hopkins*, [1802] 1 Sch. & Lefr. 413, 429 (Ir. Ct. Ch.) (explaining that although English equitable courts were bound by “fixed and certain” jurisprudential rules, they were empowered to “illustrate . . . the operation” of those rules via application to new cases); Henry Home, *Principles of Equity* 27 (Michael Lobban ed., Liberty Fund 2014) (1778) (similar); 1 Story, *Commentaries*, §§ 19-23 (similar). “From the beginning,” this Court has emphasized, “the phrase ‘suits in equity’” has contemplated the issuance of relief “according to the principles” of English equitable practice “*as they have been developed in the federal courts.*” *Gordon v. Washington*, 295 U.S. 30, 36 (1935) (emphasis added).

As explained in the remainder of this Section, it is through this gradual development of federal-court precedent, alongside law and equity's procedural (though not substantive) fusion, that injunctive relief has displaced mandamus as the favored mechanism to adjudicate the employment of executive officials. This process, which neither created novel relief nor expanded federal courts' authority, occurred through the gradual development of remedial precedent reflecting equity's fundamental role in supplementing the common law. *See* Maitland, *supra*, at 17-20; Bray & Miller, *supra*, at 1796. As a result, although—as discussed in Section II—the legal remedy of mandamus was the primary mechanism for contesting summary removal from public office in eighteenth-century England, the use of injunctions to prevent the illegal removal of federal officers today is consistent with foundational equitable principles.

Start at this nation's founding. Although courts at law adjudicated public rights in eighteenth-century England, “[o]ver the course of the nineteenth century,” American “courts more actively deployed their equitable powers in public law controversies” to provide complete relief and fill gaps in common-law remedies. *See* Pfander & Wentzel, *supra*, at 1278-80. As one example, because the English common-law writ of “prohibition” failed to take hold in the United States as a vehicle to restrain government officials, equitable injunctions absorbed the writ's former function to afford complete relief. *See id.* at 1317-18; *Att’y Gen. v. Chi. & Nw. Ry. Co.*, 35 Wis. 425, 520 (1874) (using both mandamus and an injunction to enjoin the enforcement of unlawful railroad tolls); Louis L. Jaffe, *Judicial Control of Administrative Action* 468 (Little, Brown & Co. 1965) (“The public action . . . evolved principally through mandamus and injunction.”).

Equity’s use in public law included relief against public officials, as early American courts embraced equity to prevent officials from acting illegally. In 1824, for instance, this Court affirmed an order of restitution and an injunction—both equitable remedies—against Ohio state officials, reasoning that “[t]he suit . . . might be as well sustained in a Court of equity as in a Court of law.” *Osborn v. Bank of U.S.*, 22 U.S. 738, 869-71 (1824). In determining the availability of such relief, the relevant fault-line was *not* whether the remedy was legal or equitable. Instead, the “most relevant historical limitation[] on the equitable remedial power . . . [was] the traditional inability of courts to interfere with discretionary”—that is, non-ministerial—“governmental decisions.” Jonathan David Shaub, *Interbranch Equity*, 25 U. Pa. J. Const. L. 780, 839 (2023). Numerous cases confirmed that relief could issue for an official’s violation of ministerial duties but not discretionary judgments. *See, e.g., Gaines v. Thompson*, 74 U.S. 347, 352-53 (1868) (noting that “whether it be by writ of mandamus or injunction,” an officer could not be “required to abandon his right to exercise his personal judgment,” but could be forced to exercise “definite dut[ies]”); *Bd. of Liquidation v. McComb*, 92 U.S. 531, 536 (1875) (explaining that in sufficiently “clear” cases, courts could “interpose by injunction or mandamus” to restrain state officials from acting in violation of the law (emphasis removed)).

In accordance with that precedent, by the early twentieth century, this Court had affirmed or issued equitable relief running against both state and federal officers. *See, e.g., Pennoyer v. McConnaughy*, 140 U.S. 1, 18, 25 (1891) (affirming “an injunction” that “restrained and enjoined” Oregon officials from acting under a statute

that would be “destructive of [the plaintiff’s] rights”); *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 110-11 (1902) (granting a “temporary injunction” against the Postmaster General to “prohibit the further withholding of the mail from [the] complainants”). Mid-twentieth century, this Court affirmed the district court’s issuance of injunctive relief against the Secretary of Commerce in *Youngstown Sheet & Tube Co. v. Sawyer*, rejecting the government’s argument that such equitable relief was improper. 343 U.S. 579, 584 (1953); *see id.* at 595 (Frankfurter, J., concurring) (agreeing that the district judge was empowered “to issue a temporary injunction in the circumstances of [the] case”).⁴

The uncontroversial use of equitable relief against governmental officials formed the backdrop for numerous decisions affirming the propriety of injunctive relief to prevent removal of federal employees. Most directly, in *Vitarelli*, an unlawfully dismissed Department of the Interior employee sought and received both “a declaration that his dismissal” had been “illegal and ineffective,” and “an injunction requiring [the employee’s] reinstatement.” 359 U.S. at 537, 546. *Vitarelli* affirmed what this Court had acknowledged in a trio of then-recent cases in which wrongfully dismissed employees had sought reinstatement—*i.e.*, that injunctive relief mandating

4. The district court’s order below, which enjoined subordinate executive officers but not the President, accorded with the unbroken tradition supporting judicial authority to compel the executive’s subordinates to comply with law—as exemplified by *Youngstown*, *Marbury*, and numerous additional decisions. *Slaughter*, 791 F. Supp. 3d at 24-25. This Court accordingly need not address what if any power federal courts possess to issue injunctions operating on the President himself.

reinstatement was available if the individual remained entitled to the office. *See Service v. Dulles*, 354 U.S. 363, 370, 388-89 (1957) (permitting a wrongfully terminated employee, on remand, to pursue “an order directing the [government] to reinstate him to his employment”); *Cole v. Young*, 351 U.S. 536, 540-41, 558 (1956) (same); *Peters v. Hobby*, 349 U.S. 331, 348-49 (1955) (granting a wrongfully dismissed employee a “declaratory judgment that his removal and debarment were invalid” and an injunction ordering expungement of records, but denying reinstatement because the employee’s term would have already expired). Despite strenuous arguments by the government that the courts lacked authority to interfere in personnel matters, this Court never suggested reinstatement was not an available remedy. *See also Sampson*, 415 U.S. at 62-63, 92 & n.68 (recognizing that courts could, in appropriate cases, properly use their “injunctive power” to reverse the discharge of even probationary employees, though declining to do so based on a balance of the equities).

Lower courts have likewise approved of injunctions against subordinate officials preventing a federal officer’s removal. *See, e.g., Swan*, 100 F.3d at 978 (explaining that a court could properly grant “injunctive relief against subordinate [executive] officials”); *id.* at 989 (Silberman, J., concurring) (explaining that the court could properly “compel all [relevant] officials . . . to treat [the plaintiff] as the rightful” officeholder); *Severino*, 71 F.4th at 1042-43 (explaining that the Court could “enjoin ‘subordinate executive officials’ to reinstate a wrongly terminated official ‘*de facto*’” (quoting *Swan*, 100 F.3d at 980)). As these cases demonstrate, the centuries-long, gradual absorption of the common law into equity has culminated

in the widespread acceptance of injunctive relief to remedy the unlawful purported removal of federal officials.

The gradual adoption of injunctive relief as the primary mechanism to prevent unlawful removal is also supported by a development in the Federal Rules of Civil Procedure that merged legal and equitable procedure. In 1938, Rule 81(b) abolished the writs of mandamus and scire facias, but explained that “[r]elief previously available through them may be obtained by appropriate action or motion.” Fed. R. Civ. P. 81(b). The text of Rule 81(b) was drawn directly from the 1850 Field Code of Procedure, which had the aim of fusing law and equity and largely abolishing remedy-specific Latinate names and procedures. *See* Third Report of the Commissioners on Practice and Pleadings 15-16 (1849); Kellen Funk, *Equity Without Chancery: The Fusion of Law and Equity in the Field Code of Civil Procedure, New York 1846–76*, 36 J. of Leg. Hist. 152, 176 (2015). The Federal Rules of Civil Procedure sought to accomplish the same for federal procedure. *See* Charles E. Clark, *The Union of Law and Equity*, 25 Colum. L. Rev. 1 (1925).

Although Rule 81(b) and a later change to the U.S. Code support the continued issuance of relief in the nature of mandamus, *see* 28 U.S.C. § 1361 (discussed *infra* Section II), Rule 81(b)’s contemplation of using any “appropriate action or motion” to obtain relief formerly available under mandamus also explains the reliance on injunctions in the mid-to-late-twentieth-century decisions chronicled above. *See, e.g., In re Cheney*, 406 F.3d 723, 728-29 (D.C. Cir. 2005) (explaining that because Rule 81(b) abolished the writ of mandamus, what were formerly mandamus principles “now govern attempts to secure similar relief,

such as a mandatory injunction ordering a government employee or agency to perform a duty owed to the plaintiff” (internal citation omitted)); *Mical Commc’ns, Inc. v. Sprint Telemedia, Inc.*, 1 F.3d 1031, 1036 n.2 (10th Cir. 1993) (“Fed. R. Civ. P. 81(b) abolished writs of mandamus, and provided that relief formerly available by mandamus may now be obtained by ‘appropriate motion’ such as a motion for injunctive relief.”); *Marshall v. Whirlpool Corp.*, 593 F.2d 715, 720 n.7 (6th Cir. 1979) (“Since the writ of mandamus has been abolished in federal practice [by Rule 81(b)] the [Occupational Health and Safety] Act presumably contemplates injunctive relief against the Secretary [of Labor].”).

History, precedent, and the federal rules thus establish that injunctive relief is available where other remedies are inadequate to prevent the unlawful removal of a federal officer. The government’s reliance on *CASA* and *Grupo Mexicano* to claim otherwise is unavailing. See Brief for Petitioners (“U.S. Br.”) at 41, *Trump v. Slaughter*, No. 25-332 (Oct. 10, 2025). This Court has made clear that the key question in equitable practice is whether the remedy afforded accords with the “traditional principles of equity jurisdiction.” *Grupo Mexicano*, 527 U.S. at 319 (quoting 11A Wright & Miller, *supra*, § 2941). That limitation is one of “substance,” not “form,” *Liu v. SEC*, 591 U.S. 71, 76 n.1 (2020) (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 214 (2004)), so what matters is not the remedial “label” but whether the issued relief “reflect[s] a foundational principle” of equitable jurisprudence, *id.* at 79. For the reasons explained above, the relief issued here does so.

Nor are older cases questioning the availability of equitable remedies to prevent public-officer removal or

appointment to the contrary. *See In re Sawyer*, 124 U.S. at 212; *White v. Berry*, 171 U.S. 366, 376-77 (1898).⁵ *Sawyer*, *White*, and other cases cited by the government relied on considerations absent here, such as the reluctance to interfere with acknowledged discretion or the existence of quasi-criminal proceedings. And they are best viewed as reflecting judicial uncertainty regarding the extent to which traditional contours of common-law relief were being absorbed into equity before the procedural merger of the Federal Rules and the enactment of Rule 81(b). Compare, e.g., *Ewing v. City of St. Louis*, 72 U.S. 413, 418-19 (1866) (calling it “well-established doctrine” that a mayor’s alleged due process violations could be remedied only through legal relief—a writ of *certiorari*—rather than an injunction), with *Gaines*, 74 U.S. at 353 (reasoning two years post-*Ewing* that there is “no difference in the principle” by which federal courts could interfere with official duties, whether “by writ of mandamus or injunction”).⁶ “Much water has flowed over the dam since

5. The government cites two additional cases predating Rule 81(b)’s abolition of mandamus and much of the accretive adaptation of equitable practice described above. *See* U.S. Br. at 41 (citing *Harkrader v. Wadley*, 172 U.S. 148, 165 (1898); *Walton v. House of Representatives of Okla.*, 265 U.S. 487, 490 (1924)). It also cites *Baker v. Carr*, 369 U.S. 186, 231 (1962), but that case merely described the limits on equity jurisprudence as articulated in *Sawyer*, *Walton*, and *White* as a means of distinguishing the Court’s inquiry in *Baker*; this Court did not have occasion or reason to consider whether the analysis in the earlier cases remained applicable.

6. Though not directly relevant to the procedural posture here, an additional limitation on *Sawyer* and the government’s related citations is that these cases do not question a distinct line of precedent establishing that “equity will grant preliminary injunctions to prevent the removal of a de facto officer while the

1898,” *Sampson*, 415 U.S. at 71, and even more since 1789. That precedential water, in *Sampson*’s telling, is the gradual adaptation and accretion of equity practice to account for evolution in the common law and procedural fusion. Because this adaptation is itself a fundamental principle of equity, rejecting the availability of injunctive relief to remedy unlawful removal would run counter to the bedrock principle that courts of equity may adapt injunctive relief to new “circumstances and conditions brought under consideration”—as federal courts have done for centuries. W.A. Woods, *Injunction in the Federal Courts*, 6 Yale L.J. 245, 245 (1897).

II. If the Court Concludes that Injunctive Relief is Not Available, Mandamus-Like Legal Relief is Available.

If the attempted removal of Plaintiff was unlawful, a claim in the nature of mandamus is available. *See* 28 U.S.C. § 1361 (“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”); *In re Cheney*, 406 F.3d at 728 (Section 1361 provides

legal process plays out.” Bray, *Remedies in the Officer Removal Cases*, *supra*, at 16; *see* Henry L. McClintock, *Handbook of the Principles of Equity* § 167, at 453 (2d ed. 1948) (“It has been held that equity may protect the occupant of an office from dispossession pending the determination at law of the dispute as to his right.”). This limitation is a crucial consideration where the Court reviews a case in a preliminary posture. *See* Brief of Amici Curiae Patrick J. Borchers et al., *Trump v. Cook*, No. 25A312, at 12-13 (Oct. 29, 2025).

for “mandamus-type relief”).⁷ Thus, even if this Court finds injunctive relief unavailable, relief in the nature of mandamus is an available and appropriate remedy, particularly in light of its historical function of preserving the positions of public officials purportedly ousted through improper means.

Mandamus to protect executive officials has been an accepted feature of judicial power since at least the King’s Bench decision in *Bagg’s Case* in 1615, where the court granted a “writ of restitution” against the mayor and city council for removing Bagg from his position as an alderman in Plymouth with no legal basis. *James Bagg’s Case*, 77 Eng. Rep. 1271, 1272 (1615) (C.J., Coke). Writs of mandamus in eighteenth-century England generally were offered “in the form of a command.” Audrey Davis, *A Return to the Traditional Use of the Writ of Mandamus*, 24 Lewis & Clark L. Rev. 1527, 1530 (2020) (citing Thomas Tapping, *The Law and Practice of The High Prerogative Writ of Mandamus as it Obtains Both in England, and in Ireland* 57 (1853)). These writs “depended exclusively on ‘the character of the act or decision that was impugned,’ and not that ‘of the body that had acted or decided’—in

7. Though the nomenclature used to describe mandamus-like relief is somewhat inconsistent, there is no debate that courts may issue such relief. See 33 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 8305 (2d ed. 2024) (“Although Rule 81(b) in some sense abolished mandamus in name, it did not abolish its substance, and Congress did not intend for the phrasing ‘in the nature of mandamus’ to change this underlying substance, either.” (citing sources)); see also *In re Cheney*, 406 F.3d at 729 (noting that “it is not technically accurate to speak of . . . a writ of mandamus” (emphasis added)); but see *Heckler v. Ringer*, 466 U.S. 602, 616 (1984) (noting in dicta that Section 1361 “codified” the common law writ of mandamus).

other words, no officer was above such a writ.” Pfander & Wentzel, *supra*, at 1301 & n.183 (quoting Lord Woolf et al., *De Smith’s Judicial Review* 789-90 (6th ed. 2007)); *see also R. v. Barker*, 97 Eng. Rep. 823, 824 (1762) (asserting that whenever a subject was “dispossessed” of a public right, and had “no other specific legal remedy,” the courts of common law “ought to assist by a mandamus”).

Notably, use of mandamus to remedy wrongful removal of public officers was a common practice. In fact, by the seventeenth and eighteenth centuries, this was one of the *primary* uses of the writ of mandamus in England. *See Davis, supra*, at 1540 & n.116 (citing, *inter alia*, *R v. Corp. of Wells*, 98 Eng. Rep. 41, 41-42 (1767) and *R v. Mayor of Wilton*, 87 Eng. Rep. 642, 642 (1697)); Blackstone, *supra*, at *264-65 (“mandamus” is a “full and effectual remedy . . . for refusal of admission where a person is intitled to an office” and “for wrongful removal, where a person is legally possessed” and “the franchise[] concern[s] the public”); Tapping, *supra*, at 221 (“The writ of mandamus . . . has by a great number of cases held to be grantable . . . to restore him who has been wrongfully displaced, to any office, function, or franchise of a public nature. . . .”); *see also, e.g., R. v. Mayor of London*, 100 Eng. Rep. 96, 98 (1787) (recognizing power to issue mandamus reinstating public official); *R. v. Mayor and Aldermen of Doncaster*, 96 Eng. Rep. 795, 795 (1752) (restoring municipal official to his office after improper removal by town council); *R. v. Mayor, Bailiffs, and Common Council of the Town of Liverpool*, 97 Eng. Rep. 533, 537 (1759) (restoring municipal official to his office after improper removal, with Lord Mansfield explaining, “the return must set out all the necessary facts, precisely; to shew that the person is removed in a legal and proper manner, and for a

legal cause”). And it was this development of mandamus during the eighteenth century, especially under Lord Chief Justices Holt and Mansfield, that would become “authoritative statements of . . . mandamus to which American courts would later refer.” Pfander & Wentzel, *supra*, at 1305 & n.206 (citing treatises).

Specifically, the English roots of mandamus were adopted by early cases in United States federal courts through the All Writs Act and its absorption of Sections 13 and 14 of the Judiciary Act of 1789. *See* Davis, *supra*, at 1543-45 (discussing, *inter alia*, *United States v. Lawrence*, 3 U.S. 42, 42 (1795)); *United States v. Deneale*, 25 Fed. Cas. 817, 817 (C.C.D.C. 1801) (No. 14,946); *Marbury*, 5 U.S. at 176). Although unavailable in the exercise of this Court’s original jurisdiction, mandamus remedies took hold in the lower federal courts and have been part of the federal judiciary’s remedial toolkit since *Kendall v. U.S. ex. rel. Stokes*, 37 U.S. 524 (1838).

A series of decisions from the latter half of the nineteenth century confirms the availability of mandamus in proper cases, including those involving public law. *See U.S. ex rel. Hall v. Union Pac. R.R. Co.*, 28 F. Cas. 345, 348-52 (C.C.D. Iowa 1875), *aff’d sub nom. Union Pac. R.R. Co. v. Hall*, 91 U.S. 343 (1875) (granting mandamus to restrain a publicly chartered railroad from enforcing policies contrary to its organic statute); Pfander & Wentzel, *supra*, at 1309-10 (describing how “[t]he breadth of the remedy affirmed in *Hall* represents a logical outgrowth of public law litigation under the administrative writs as they had developed at common law”); *Gaines*, 74 U.S. at 353 (implying that in proper cases, a court could issue mandamus or an injunction to

interfere with official action); *Litchfield v. Reg. & Receiver*, 76 U.S. 575 (1869) (similar); *McComb*, 92 U.S. at 536 (explaining that in proper cases, a court could “interpose by injunction or mandamus” wherever state executive officers failed to conform their conduct to law (emphasis omitted)).⁸ And twentieth-century cases have specifically held that mandamus could properly be used to adjudicate entitlement to public office. *See, e.g., Rudolph v. Sullivan*, 277 F. 863, 863 (D.C. Cir. 1922) (affirming mandamus against the Commissioners of the District of Columbia to reinstate a police officer); *U.S. ex rel. Arant v. Lane*, 47 App. D.C. 336, 340 (D.C. Cir. 1918) (noting that a legal right to reinstatement can be vindicated through mandamus).⁹

History and precedent thus leave no doubt that remedying the wrongful removal of a public officer merits issuance of mandamus. From the eighteenth century to

8. Today, lower federal courts frequently issue or approve of mandamus-like relief on matters of public law through Section 1361, otherwise known as the Mandamus and Venue Act, which was passed in 1962. *See, e.g., Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 188, 194 (D.C. Cir. 2016) (Tatel, J., joined by Kavanaugh & Srinivasan, JJ.) (reversing the dismissal of a motion seeking mandamus under Section 1361 to compel the Secretary of Health and Human Services to reach decisions within a statutory timeframe); *Naporano Matal & Iron Co. v. Sec’y of Lab. of U.S.*, 529 F.2d 537, 539, 542-43 (3d Cir. 1976) (affirming mandamus requiring the Secretary of Labor to certify the plaintiff for employment).

9. Because *Kendall* recognized a distinctive legal basis for courts in the District of Columbia to grant mandamus relief, federal courts in other districts were not understood to have the power to enter such relief until Section 1361 was passed in 1962. *See Clark Bye & Joseph V. Fiocca, Section 1361 of the Mandamus and Venue Act of 1962 and “Nonstatutory” Judicial Review of Federal Administrative Action*, 81 Harv. L. Rev. 308, 311 (1967).

today, a plaintiff seeking mandamus has been required to show a clearly established legal right requiring the performance of a clear non-discretionary duty and the unavailability of other adequate relief. *See Heckler*, 466 U.S. at 616 (articulating this standard under this Court’s jurisprudence and citing cases); *Davis*, *supra*, at 1533-37 (articulating this standard for the eighteenth-century King’s Bench). In *Swan*, the D.C. Circuit held “that these prerequisites for stating a cause of action under the mandamus statute are met” where a federal officer seeks reinstatement. 100 F.3d at 976 n.1. Assuming this Court determines that the statutory removal protections for members of the FTC are constitutional and Plaintiff’s purported removal from the FTC was unlawful, the same is true here.

In that circumstance, the subordinate executive officials subject to the district court’s injunction may properly be ordered to treat Plaintiff as a valid officeholder—that is, to complete “a precise, definite act about which an official ha[s] no discretion whatever.” *In re Nat’l Nurses United*, 47 F.4th 746, 757 (D.C. Cir. 2022) (quoting *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004)); *see Davis*, *supra*, at 1541 (noting that mandamus could issue regarding an individual’s entitlement to public office because “[it] involved little to no discretion”). And because Plaintiff is a *public* officer, backpay is insufficient to remedy the harm that would occur from her unlawful removal.

Indeed, protection of one’s position as a public officer was “the primary type of case” for which mandamus was used in the seventeenth and eighteenth centuries, because a “plaintiff [c]ould easily show a lack of an adequate

remedy by claiming that the only way to reclaim what he was duly owed—his position—was to compel the defendant to restore the plaintiff to his position.” Davis, *supra*, at 1540; see Richard E. Flint, *The Evolving Standard for Granting Mandamus Relief in the Texas Supreme Court: One More “Mile Marker Down the Road of No Return,”* 39 St. Mary’s L.J. 3, 22 (2007) (“[T]he typical situation in which mandamus relief was sought during the seventeenth and eighteenth centuries” was “an individual seeking an office from which he had been denied.”); *Knipe v. Edwin*, 87 Eng. Rep. 394, 394 (K.B. 1695) (granting mandamus because any alternative claim “will not put the man in possession of the office, for by that he shall only recover damages”); *Queen v. Heathcote*, 88 Eng. Rep. 620, 623 (Q.B. 1712) (“[U]nless some mandamus . . . will lie in this case, there is no remedy . . . [damages] can never restore the persons wronged to their possession of their right.”). *Sawyer* and *White*, moreover, confirm the availability of non-monetary relief in this context. *In re Sawyer*, 124 U.S. at 211; *White*, 171 U.S. at 377. And the district court below recognized this state of the law and the historical origins of mandamus in noting the availability of mandamus as an alternative to an injunction. See *Slaughter*, 791 F. Supp. 3d at 29 n.12. If the Court finds that injunctive relief is not available here, therefore, mandamus is an appropriate alternative remedy.

III. In Any Event, Plaintiff is Entitled to *Some* Remedy Preventing Her Removal.

The above discussion reveals that history and precedent support both the use of injunctive relief to remedy unlawful removal and, in the alternative, the use of mandamus to accomplish the same. Additional potential

remedies, moreover, further demonstrate that relief for unlawfully terminated officers is not limited to money damages. One more recent addition to federal courts' remedial toolkit is the declaratory judgment, a statutory remedy authorized by the Declaratory Judgment Act of 1934. 28 U.S.C. §§ 2201-2202. As legal scholars have long recognized, “[p]ossibly the most convenient way to establish the right to an office is by declaration, a method open to the questioned incumbent himself.” Edwin Borchard, *Declaratory Judgments*, at 609 (1934). Indeed, in the context of removal cases, declaratory judgments “allow the parties to cut their way through the jungle of the equitable and legal procedural forms,” and can issue alongside legal or injunctive relief in appropriate cases, Bray, *Remedies in the Officer Removal Cases*, *supra*, at 27—as exemplified by this Court’s ruling in *Vitarelli*, *see* 359 U.S. at 537, 546.

The government’s claim that declaratory judgments are subject to the same limitations as equitable remedies, moreover, is incorrect: “the declaratory judgment is not an equitable remedy” because it does not bear the traditional hallmarks of equitable relief. Samuel Bray, *A Declaratory Judgment Against the President?*, Yale J. on Reg. Notice & Comment Blog (Mar. 14, 2025), <https://perma.cc/YV4U-QSW8>. Chief among the distinctions between injunctions and declaratory remedies is that the latter is less “coercive” than the former, so although “noncompliance with” a declaratory judgment “may be inappropriate,” it “is not contempt.” *Steffel v. Thompson*, 415 U.S. 452, 471 (1974) (quoting *Perez v. Ledesma*, 401 U.S. 82, 126 (1971) (Brennan, J., concurring in part)). This Court has accordingly recognized that “engrafting upon the Declaratory Judgment Act a requirement that all of

the traditional equitable prerequisites to the issuance of an injunction be satisfied before the issuance of a declaratory judgment is considered would defy Congress' intent to make declaratory relief available in cases where an injunction would be inappropriate." *Id.*; see also *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937) (reasoning that "as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required" to obtain a declaratory judgment). At bottom, although considerations relevant to issuance of injunctive relief may also bear on the issuance of a declaratory judgment, the remedies "do not rise and fall together." *Slaughter*, 791 F. Supp. 3d at 24 (citing *Samuels v. Mackell*, 401 U.S. 66, 73 (1971)).

In addition, quo warranto is a "paradigm[atic]" remedy "that would declare, with respect to the parties and claims before the court, that the removed officer is the proper holder of the office." Bray, *Remedies in the Officer Removal Cases*, *supra*, at 3. The availability of quo warranto as a remedy—which has previously been "recognized" by the United States as "available to contest a federal officer's removal"—shows that "it would be highly anachronistic to think that damages for lost wages were the only remedy available to an officer who successfully challenges her removal." *Id.* at 13 n.23 (citing Brief for the United States, *Wiener v. United States*, 1957 WL 87809, at *69 (U.S. Oct. 15, 1957)).

A historical limitation on quo warranto, however, is that it is available only where there is an alternative claimant to the plaintiff's office. See, e.g., Public Office—Remedies for Improper Removal—Mandamus—Quo

Warranto, 38 Harv. L. Rev. 693, 693 (1925) (when “there is no adverse claimant in possession” of a plaintiff’s position, quo warranto is not appropriate); Brief of *Amicus Curiae* Prof. Michael T. Morley in Support of Neither Party (“Morley Br.”) at 23-24, *Slaughter*, No. 25-332 (Oct. 17, 2025) (noting that quo warranto is available “when an agency head is wrongfully removed and someone else has been appointed to fill the vacancy”). And that limitation is incorporated into D.C.’s quo warranto statute. D.C. Code § 16-3501 (permitting quo warranto through a “civil action” against one who “usurps, intrudes into, or unlawfully holds or exercises” a federal office). With no one yet nominated by the President or confirmed by the Senate to purportedly fill Plaintiff’s position, there is no “usurper” to challenge, and quo warranto is unavailable here.

All told, assuming the unlawfulness of the purported removal here, courts have a variety of legitimate remedies at their disposal. For the reasons explained in Section I, *supra*, and earlier in this Section, that menu includes the district court’s grant of injunctive and declaratory relief. *Slaughter*, 791 F. Supp. 3d at 24, 29. Mandamus—or, were there another claimant, quo warranto—might alternatively be appropriate, as suggested by other *amici* in this case. *See* Morley Br. at 16-23; Brief of Maud Maron as *Amicus Curiae* in Support of Neither Party at 5, *Slaughter*, No. 25-332 (Oct. 17, 2025). For his part, Professor Bray has suggested on prudential grounds to start with a declaratory judgment remedying unlawful removal, supported later if necessary with a follow-on injunction or mandamus, *see* 28 U.S.C. § 2202, because that structure avoids unnecessarily “managerial remed[ies]” if possible. Bray, *Remedies in the Officer Removal Cases*, *supra*, at 28.

Amici take no firm position on the question of remedial ordering in this context because, in *amici*'s view, history provides no firm answer. *See id.* at 27 (explaining that there is authority to suggest that quo warranto, mandamus, and injunctions are all available only where the others are not).¹⁰ The only indefensible conclusion to draw from the history is the government's: that *neither* legal nor equitable relief is available because it would violate "traditional principles of equity and law." U.S. Br. at 41-44. That heads-we-win, tails-you-lose proposition ignores a remedy directly drawn from founding-era practice (mandamus), the modern equitable remedy for which mandamus is a "historical analogue" (injunctive relief), *CASA*, 606 U.S. at 847, and an additional remedy expressly authorized by Congress (declaratory judgment).

More than that, the government's isolated treatment of each remedy fails to appreciate that remedial history can be understood only considering the relationship *between* law and equity. Take, for instance, the government's

10. For one example, consider whether mandamus or quo warranto is appropriate where (unlike here) there has been a purported appointment of a new officer. Some authorities suggest that in such a situation, quo warranto must go first. *See, e.g.,* James L. High, *Extraordinary Legal Remedies* § 49 (1896) (at common law, "the only efficacious and specific" method to clear "title to an office" was through quo warranto); *Delgado v. Chavez*, 140 U.S. 586, 590 (1891) (where two claimants are "trying the title to office," "*quo warranto* is a plain, speedy, and adequate" remedy, and "*mandamus* shall not issue"). Yet the D.C. Circuit has held that even in a case where there was an "attempted appointment" of an officer's successor—and thus multiple claimants to office—"mandamus is the most adequate remedy to restore [the original officeholder] to his rights." *Kalbus v. Siddons*, 42 App. D.C. 310, 321 (D.C. Cir. 1914).

contention that mandamus may not be used to restore executive officers. U.S. Br. at 43. As Plaintiff notes, it does not appear that the government's statement accurately captures the relevant history. Brief for Respondent at 41-43, *Slaughter*, No. 25-332 (Nov. 7, 2025). But even to the extent that relatively few cases have used mandamus to restore executive officials, a myriad of historical rationales readily explain why: (a) non-D.C. courts could not issue mandamus before the 1962 passage of 28 U.S.C. § 1361, *see supra* n. 9; (b) it was well-established as recently as two years ago that injunctions were available “to reinstate a wrongly terminated official ‘*de facto*,’” *Severino*, 71 F.4th at 1042-43 (quoting *Swan*, 100 F.3d at 980); and (c) courts are wary to award mandamus where injunctive relief is available, *see Slaughter*, 791 F. Supp. 3d at 29 n.12.

None of this suggests, as the government contends, that mandamus is barred here by “separation-of-powers principles.” U.S. Br. at 43. Instead, it shows that legal and equitable remedies shift in relationship to one another, as has always been the case, and the remedy provided depends on a court's understanding of the boundaries of each form of relief at a specific point in time. *See Maitland, supra*, at 17-20; Pfander & Wentzel, *supra*, 72 Stan. L. Rev. at 1282; Bray & Miller, *supra*, 97 Notre Dame L. Rev. at 1796. Accordingly, should the Court reach the remedial issue, which remedy this Court finds appropriate is open to reasonable debate. But the bottom line is that in cases of “removal of public officers,” as in others, either “non-equitable remedies” are available “to vindicate the rights at issue,” or “equity [is] able to act.” Bray, *Remedies in the Officer Removal Cases, supra*, at 21. As a result, this Court “should answer in the affirmative the second question presented.” *Id.* at 6.

CONCLUSION

History and tradition confirm that individuals threatened with or subject to unlawful removal from office may secure equitable or legal relief by injunction, relief in the nature of mandamus, or otherwise.

Respectfully submitted,

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Dated: November 14, 2025

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX — List of <i>Amici</i>	1a

APPENDIX — LIST OF *AMICI*†

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† Institution names provided for purposes of identification only.

Appendix

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