No. _____

IN THE
Supreme Court of the United States

TODD M. HARPER AND TANYA F. OTSUKA,
Petitioners,

v.

SCOTT BESSENT, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

MOTION TO EXPEDITE CONSIDERATION OF THE PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

VINCENT LEVY
Counsel of Record
DENIS D. METIN
DANIEL FAHRENTHOLD
CHRISTOPHER M. KIM
HOLWELL SHUSTER
& GOLDBERG LLP
425 Lexington Avenue
New York, NY 10017
(646) 837-5151
vlevy@hsgllp.com

September 25, 2025

Pursuant to Supreme Court Rule 21, Petitioners Todd Harper and Tanya Otsuka respectfully request expedited consideration of their petition for a writ of certiorari before judgment, filed concurrently with this motion, as well as expedited consideration of this motion, in light of the Court's grant of certiorari in *Trump* v. *Slaughter*, No. 25-332. Respondents oppose this motion.

Petitioners Harper and Otsuka were nominated by the President and confirmed by the Senate to the Board of the National Credit Union Administration (NCUA) for terms expiring in 2027 and 2029, respectively. Both were purportedly terminated without cause. Petitioners obtained an injunction in the U.S. District Court for the District of Columbia enjoining Respondents (other than the President) from removing them from their offices. The U.S. Court of Appeals for the District of Columbia Circuit stayed that injunction and also expedited the appeal, which remains pending before that court.

Petitioners now seek expedited consideration of their petition for certiorari before judgment in view of the Court's grant of the petition for certiorari in *Slaughter*. The stay imposed by the Court of Appeals prevents Petitioners from carrying out their statutorily mandated duties

as members of the NCUA Board. The NCUA Board thus lacks a quorum to adopt decisions necessary for the efficient regulation and stable operation of credit unions, including, most notably, to address the interest-rate ceiling that credit unions may charge. This is a months-long process that, by statute, requires consultation with other financial regulators and careful assessments of money-market trends and risks to credit-union stability. Absent action by the Board before March 2026 on the interest-rate ceiling, the statutory cap will apply, thus potentially threatening the safety and soundness of credit unions serving more than 143 million members. And that is only one example—many other essential Board functions from approval of credit-union mergers to operation of the National Credit Union Central Liquidity Facility are likewise on hold, each carrying its own risks to the financial stability of the entire credit-union system.

Although the Court of Appeals is slated to have oral argument on the appeal in late November, this Court granted the petition for certiorari before judgment in *Trump* v. *Slaughter*, No. 25-332, which concerns the removal restrictions applicable to Commissioners of the Federal Trade Commission (FTC).

Petitioners now seek review in this Court in view of that grant of certiorari so that the cases can be considered together, and so that the issues raised in Petitioners' case can be addressed in advance of the March 2026 expiration of the interest-rate exemption. This petition presents parallel questions to those in *Slaughter*, but it also implicates the constitutionality of removal restrictions for agencies that, unlike the FTC, follow in a "distinct historical tradition" of independence from the Executive dating back to before the Founding—the same historical tradition that differentiates the Federal Reserve Board from agencies such as the National Labor Relations Board (NLRB) and the Merit Systems Protection Board (MSPB). See *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025). This case thus presents an opportunity for the Court to evaluate the role of history and tradition when it comes to the validity of removal protections, along with considering the continuing validity of *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), as it has chosen to do in *Slaughter*. This Court should grant certiorari before judgment and consider this case alongside *Slaughter*.

STATEMENT

As explained in the concurrently filed petition for certiorari before judgment, unlike the FTC and many other modern independent agencies, the NCUA Board traces its lineage and functions to the same English and early American traditions that this Court has distinguished in its removal jurisprudence. The Court emphasized that its stay orders in *Harris* and *Wilcox* did not "necessarily implicate the constitutionality of for-cause removal protections for members of the Federal Reserve's Board of Governors or other members of the Federal Open Market Committee," because the Federal Reserve "follows in the distinct historical tradition of the First and Second Banks of the United States." *Wilcox*, 145 S. Ct. at 1415. The NCUA Board stands on the same footing, as it shares many functions and hails from that same tradition.

Like the Federal Reserve, the NCUA does not set national policy or enforce laws against the public at large. Instead, it supervises a defined set of financial institutions (for the NCUA, credit unions), insures deposits at those institutions, and serves (like the Federal Reserve does for banks) as their lender of last resort—functions long recognized as requiring insulation from partisan politics to preserve financial stability.

The NCUA's statutory framework descends directly from pre-Revolutionary War "friendly societies," precursors to modern American credit unions, which Parliament subjected to oversight by officials appointed by the Crown but removable by the Crown only for cause. That English practice was carried forward when Alexander Hamilton urged Congress to charter the First Bank of the United States as a stabilizing institution free from political disruption—an early model of a lender of last resort during the Republic's first financial panic in 1792.

Congress reaffirmed that principle during the Great Depression, when it established the FDIC and strengthened the Federal Reserve's independence to protect public confidence in the nation's banks. And in 1978, Congress placed the NCUA Board on the same footing, adopting a multi-member, tenure-protected structure to safeguard the credit-union system from political interference—the same multi-member structure this Court approved in *Humphrey's Executor* and subsequent cases. See *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 215–16 (2020).

ARGUMENT

Expedited consideration of the petition for certiorari before judgment is appropriate to allow this Court to address the questions presented in this case alongside *Slaughter*. This Court has made clear that historical practice from before and after the Founding is important to the Court's assessment of congressional authority in the area of removal protections. See *Wilcox*, 145 S. Ct. at 1415; cf. *New York State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 597 U.S. 1, 25, 27 (2022) (assessing if law was analogous to "historical precedent" from "before, during, and even after the founding" and explaining that "our focus on history also comports with how we assess many other constitutional claims"). It has not yet had the opportunity to explain how.

Moreover, immediate action is necessary to restore the functions of the NCUA Board and public confidence in the credit-union system. Congress determined "[i]ndependence from presidential control" is critical for "agencies charged with regulating financial institutions, such as the NCUA." *Swan* v. *Clinton*, 100 F.3d 973, 983 (D.C. Cir. 1996). So long as Petitioners' claims are unresolved, the NCUA Board is deprived of the quorum required to perform many statutory functions—including

approving certain mergers; conserving and liquidating assets of failed credit unions; adjudicating supervisory determinations and share insurance claims; and operating the Central Liquidity Facility, which serves credit unions "the same way that the Federal Reserve System discount window provide[s] access to loans for banks."[1]

Without a quorum, the NCUA Board also cannot discharge its statutory responsibility of setting permissible interest rates on federal credit-union loans. By statute, federal credit unions may not charge more than 15% interest on loans unless the Board decides otherwise. 12 U.S.C. §1757(5)(A)(vi). The Board granted an exemption that will lapse in March 2026. When the Board last lifted the ceiling, NCUA staff warned that "reversion to the [15%] statutory loan interest rate ceiling would threaten the safety and soundness of as many as 1,139 federal credit unions."[2] And to now lift the ceiling, a fully constituted Board must complete a months-long statutory process requiring it to: (i) consult with relevant

---

[1] *Central Liquidity Facility*, https://ncua.gov/support-services/central-liquidity-facility.

[2] *Board Action Memorandum* (July 8, 2024), https://ncua.gov/news/board-meetings-agendas-results/board-agenda-july-18-2024-meeting/bam-federal-credit-union-loan-interest-rate-ceiling.

congressional committees, Treasury, and other financial regulators, including the Federal Reserve Board; (ii) assess whether money-market rates rose over the past six months; and (iii) assess whether prevailing rates threaten credit-union safety and soundness. *Ibid*. Last time, this took five months; on that pace, the Board would need to start in October. In the meantime, credit unions and the broader financial markets would face mounting uncertainty as the March 2026 deadline approaches.

At best, the D.C. Circuit could reach a decision on Respondents' appeal this winter—the same time this Court hears *Slaughter*. But the Court in *Slaughter* will consider whether to change existing law. Petitioners submit that the Court should consider their case alongside the questions in *Slaughter*.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court (i) expedite its consideration of this motion; (ii) expedite its consideration of the petition for certiorari before judgment; and (iii) grant the petition and set a briefing schedule to allow oral argument in tandem with *Trump* v. *Slaughter*, No. 25-332.

Dated: September 25, 2025

Respectfully submitted:

/s/ Vincent Levy

VINCENT LEVY
Counsel of Record
DENIS D. METIN
DANIEL FAHRENTHOLD
CHRISTOPHER M. KIM
HOLWELL SHUSTER & GOLDBERG LLP
425 Lexington Avenue
New York, NY 10017
(646) 837-5151
vlevy@hsgllp.com

Counsel for Petitioners