No. 25-767

In the Supreme Court of the United States

DAREN K. MARGOLIN, PETITIONER

v.

NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

This Court has twice held that the Civil Service Reform Act of 1978 (CSRA), Pub. L. No. 95-454, 92 Stat. 1111, channels federal-employee personnel claims to the Merit Systems Protection Board (MSPB). *Elgin* v. *Department of the Treasury*, 567 U.S. 1 (2012); *United States* v. *Fausto*, 484 U.S. 439 (1988). But without notice to or briefing by the parties, the Fourth Circuit held that whether those precedents remain good law is a question of fact that turns on whether the CSRA today "functions as Congress intended." Pet. App. 14a.

Respondent agrees (Br. in Opp. 1-2, 16, 21, 24) that the continued vitality of CSRA channeling is an "undoubtedly" "important," "significant," "momentous," and "consequential" question. But respondent casts (*id.* at 24) the decision below as "modest" because the court of appeals remanded for the district court to apply its new test rather than invalidate CSRA channeling outright. "We should not be confused," however, "about

the scope of what the panel opinion did and did not do." Pet. App. 70a (Quattlebaum, J., dissenting from the denial of rehearing en banc). While the panel remanded for fact-finding, its "new functioning-as-intended test" governs every future CSRA case in the Fourth Circuit. *Ibid.*

Respondent does not meaningfully rehabilitate the court of appeals' two independent and egregious errors—errors that clearly contravene this Court's precedents and that each warrant summary reversal. *First*, the court flouted the party-presentation principle by granting relief on a theory that respondent did not raise (and, indeed, affirmatively disavowed). This Court already summarily reversed the Fourth Circuit once this Term for violating the party-presentation principle and should do the same here. See *Clark* v. *Sweeney*, 607 U.S. 7 (2025) (per curiam). Respondent tries to downplay the party-presentation violation but does not dispute that the Fourth Circuit adopted a theory it did not urge—a fact underscored by respondent's attempt to reinject the argument it *did* make via a meritless cross-petition.

Second, the court of appeals contradicted two on-point Supreme Court precedents in adopting the indefensible proposition that whether the CSRA channels federal-personnel claims turns on a factual assessment of whether the CSRA is operating "adequately and efficiently" today. Pet. App. 14a. Respondent offers a paean to legislative history, but nothing in the statutory text or structure remotely suggests that Congress required the CSRA's preclusive effect to toggle on or off based on current events.

The appropriate disposition is a summary reversal. By largely recycling arguments raised and answered at

the stay stage, the brief in opposition confirms that further "briefing and argument would be a waste of time." See Br. in Opp. 37 (citation omitted). The decision below has spawned a proliferation of copycat claims that threaten both the CSRA and countless other agency-review schemes. Given the obviousness of the court of appeals' error and the spiraling consequences, this Court should put an end to the confusion now.

A. The Party-Presentation Violation Warrants Summary Reversal

Respondent does not dispute the core party-presentation violation: The court of appeals granted relief on a theory respondent did not raise without notice to or briefing by the parties. Pet. 13-20. This Court summarily reversed or vacated less egregious party-presentation violations in *Sweeney*, *supra*, and *United States* v. *Sineneng-Smith*, 590 U.S. 371 (2020). The same course is appropriate here.

Respondent attempts to distinguish (Br. in Opp. 25, 30) those cases as involving supposedly more "radical" departures from party presentation. Respondent characterizes (*id.* at 24, 30) the decision below as merely addressing a "logically antecedent" question that was "relevant" to what "the parties have been litigating all along." But respondent ignores the parallel to *Sineneng-Smith* in particular. There, a court of appeals transformed an as-applied First Amendment challenge into a facial one—much as the court of appeals transformed respondent's contention that the CSRA did not channel *its* claim into one that the CSRA might not channel *any* claims. See Pet. 19. Whether the statute in *Sineneng-Smith* could constitutionally be applied to anyone was in some ways "logically antecedent"—and certainly "relevant"—to whether the statute was consti-

tutionally applied to the defendant. Br. in Opp. 24, 30. And like the facial invalidation of an act of Congress, the Fourth Circuit's suggestion that the entire CSRA channeling regime may be inoperable is "far broader than anything [respondent] asked for," *id.* at 31—namely, that its specific claim falls outside the CSRA. The party-presentation violation here is just as "beyond the pale" as in *Sineneng-Smith*. 590 U.S. at 380.

If anything, the error here is worse because respondent affirmatively conceded that "Congress's intent to preclude district-court jurisdiction is * * * manifest in the CSRA." Resp. C.A. Br. 16-17 (citation omitted); see Pet. 15. Respondent denies (Br. in Opp. 26) that it waived the claim that the CSRA lacks preclusive effect because that claim "became available only after briefing and oral argument." Respondent could have filed a notice of supplemental authority. But whether labeled waiver or forfeiture, the Fourth Circuit again "grant[ed] relief on a claim that [the respondent] never asserted and that the [government] never had the chance to address"—a move which "transgresse[s] the party-presentation principle." *Sweeney*, 607 U.S. at 9.

Respondent invokes (Br. in Opp. 25-26) *United States National Bank of Oregon* v. *Independent Insurance Agents of America, Inc.*, 508 U.S. 439 (1993). In that case, a court of appeals sua sponte held that the statute at the crux of the parties' dispute had been repealed. *Id.* at 445. But the court gave the parties "ample opportunity to address the issue"—both at oral argument and in supplemental briefing. *Id.* at 444, 448. And the court did so only to avoid an "advisory" opinion about a "hypothetical Act[] of Congress." *Id.* at 447. Here, by contrast, the Fourth Circuit gave the parties

no notice and *rejected* respondent's argument that its claim falls outside the CSRA. See Pet. App. 20a-31a.

Even less relevant are respondent's citations (Br. in Opp. 25-26) to *Kamen* v. *Kemper Financial Services*, 500 U.S. 90, 99 (1991), and *Lebron* v. *National Railroad Passenger Corp.*, 513 U.S. 374, 378-379 (1995). In those cases, this Court permitted *parties* to raise arguments belatedly in extraordinary circumstances to avoid making significant new law on false premises. It did not license *lower courts* to inject distinct, unbriefed issues themselves.

Respondent insists (Br. in Opp. 27-28) that the party-presentation principle has less force for arguments favoring subject-matter jurisdiction (although it rightly abandons its stay-stage assertion that the rule is wholly inapplicable, see Pet. 18-20). But respondent musters no precedent of this Court supporting that proposition, relying instead (Br. in Opp. 28) on inapposite court-of-appeals cases the government already distinguished. See Pet. 19-20. As respondent concedes (Br. in Opp. 28), this Court routinely refuses to consider unpreserved arguments favoring subject-matter jurisdiction. Respondent offers no basis to apply a different rule to the Fourth Circuit.

Respondent calls (Br. in Opp. 24) the decision below "modest" because it remanded for fact-finding. Respondent analogizes (*id.* at 29) to this Court's practice of vacating and remanding following intervening developments. But the court of appeals did not simply remand; it adopted a "new functioning-as-intended test" that now governs all CSRA cases in the Fourth Circuit. Pet. App. 70a (Quattlebaum, J., dissenting from the denial of rehearing en banc). It is that legal holding that no party urged or briefed—not the mere fact of re-

mand—that violates the party-presentation principle and cries out for this Court's review. See pp. 9-10, *infra*.

B. The Disregard Of Controlling CSRA Precedent Warrants Summary Reversal

The merits of the court of appeals' ruling are even less defensible. This Court has twice held that the CSRA precludes district-court suits challenging federal-personnel actions. *Elgin*, 567 U.S. at 5; *Fausto*, 484 U.S. at 452; see Pet. 20-22. The court of appeals' refusal to follow on-point Supreme Court precedent makes this a quintessential case for summary reversal. Pet. 25-26.

Respondent agrees (Br. in Opp. 32) that the CSRA's preclusive effect is a question of statutory interpretation that depends on "text, structure, and purpose." And respondent acknowledges that *Fausto* and *Elgin* would have controlled "until recently." *Id.* at 34 (quoting Pet. App. 13a). But, respondent claims (*id.* at 37), "changed circumstances" undermine "the inference that Congress intended to withdraw jurisdiction."

That preclusion-yesterday-but-not-today approach defies basic precepts of statutory interpretation and vertical stare decisis. Pet. 22-24. Statutory meaning is fixed; it does not evolve based on judicial speculation about how the enacting Congress would view "recent political events." Pet. App. 50a (Quattlebaum, J., dissenting from the denial of rehearing en banc). *Elgin* and *Fausto* recognize no exception to channeling whenever the CSRA is supposedly not operating "adequately and efficiently." *Id.* at 14a (panel opinion). Those cases relied on the CSRA's text and "elaborate" structure, and they bind lower courts today just as much as the day they were decided. *Elgin*, 567 U.S. at 11 (quoting *Fausto*, 484 U.S. at 443).

In *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996), this Court rejected the proposition that a change in a statute's operation—there, the unconstitutionality of its central enforcement provision—could negate its preclusive effect. Pet. 23. Rehashing its stay opposition, respondent distinguishes (Br. in Opp. 20-21) *Seminole Tribe* as involving a statutory cause of action, not a constitutional one, and diminishes CSRA preclusion as a "judicial creation." As explained, this Court has already held that the CSRA precludes constitutional claims and that preclusion comes from the statutory text and structure. Pet. 23-24. Respondent has no rejoinder.

Respondent instead analogizes (Br. in Opp. 36) CSRA preclusion to the requirement in the Prison Litigation Reform Act (PLRA) that prisoners exhaust "such administrative remedies as are available." 42 U.S.C. 1997e(a). As respondent notes, the PLRA does not require prisoners to pursue administrative remedies that, as a factual matter, are "not capable of use to obtain relief." *Ross* v. *Blake*, 578 U.S. 632, 643 (2016). But the CSRA's very different text—which does not require that administrative remedies be "available"—confirms that no factual inquiry into the MSPB's functionality is appropriate.

2. In any event, respondent's claim that Congress prioritized agency independence over all else is unfounded. Respondent relies (Br. in Opp. 6-7, 32) almost exclusively on legislative history, which "is not the law." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 523 (2018). The principal statutory feature respondent emphasizes (Br. in Opp. 6-7, 32) is that the CSRA divides employee management, investigation and prosecution, and adjudication into three separate agencies (the Office of Person-

nel Management, the Office of Special Counsel, and the MSPB, respectively). But those agencies remain separate today. And while Congress may have wanted those functions to be independent of *each other*, that separation says nothing about the agencies' independence from *the President*, and it does not show that Congress prioritized agency independence over other features of the CSRA.

That leaves (Br. in Opp. 7) the Special Counsel's and MSPB members' removal restrictions and related provisions like the MSPB's partisan-balance requirement and the MSPB chair's ability to appoint administrative law judges without consulting the Executive Office of the President. But only the Special Counsel's and MSPB members' removal restrictions have been challenged in litigation. Respondent's suggestion that the invalidation of those provisions might end the CSRA's preclusive effect is tantamount to holding those provisions inseverable, at least when it comes to channeling. Pet. 24-25.

Respondent calls (Br. in Opp. 19) that a "non-sequitur," insisting that the tests for severability and preclusion are different. But respondent's argument boils down to the claim that if one extraneous aspect of the CSRA scheme falls (*i.e.*, removal restrictions for some involved in adjudicating or prosecuting actions), then the whole scheme is necessarily inoperative—a classic inseverability argument. See *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 233-234 (2020) (plurality opinion).

But as respondent does not dispute, the removal restrictions are plainly severable under this Court's precedents. Pet. 24-25. The "purpose of the CSRA" was "to replace an 'outdated patchwork of statutes and rules'" that produced "'wide variations'" in outcomes with an

"integrated scheme of review." *Elgin*, 567 U.S. at 13-14 (quoting *Fausto*, 484 U.S. at 444-445). That integrated scheme is alive and well whether or not the MSPB and Special Counsel are independent of the President. Respondent offers no evidence that the 1978 Congress would have preferred the patchwork it enacted the CSRA to replace over a CSRA without unconstitutional removal restrictions.

Viewing this argument through the lens of the preclusion standard is, if anything, worse for respondent. The Court simply asks whether the statute Congress wrote precludes other avenues of review without hypothesizing what Congress might have wanted had it known that part of the statute was unconstitutional. See *Seminole Tribe*, 517 U.S. at 75-76; p. 7, *supra*.

C. This Case Warrants Review Now

This case warrants this Court's intervention—ideally via a summary reversal that would permit relief this Term.

1. Respondent downplays the "far-reaching implications" of the decision below. Pet. App. 71a (Quattlebaum, J., dissenting from the denial of rehearing en banc). Respondent recognizes (Br. in Opp. 16, 21) that the question whether the CSRA continues to channel federal-personnel claims is "momentous" and "undoubtedly an important one." But respondent minimizes (*id.* at 16, 24) the decision below as a "modest" remand for "further fact-finding."

Respondent misapprehends "the scope of what the panel opinion did and did not do." Pet. App. 70a (Quattlebaum, J., dissenting from the denial of rehearing en banc). While the panel did not resolve the ultimate question whether CSRA channeling still exists in the Fourth Circuit, its "new functioning-as-intended test"

is circuit law. *Ibid.* District courts in what should be open-and-shut channeling cases must now grapple with whether the "factual record" shows that the agencies are operating "adequately and efficiently." *Id.* at 14a-15a (panel opinion). As courts in the Fourth Circuit recognize, the decision below requires them to make "a fact-bound determination" about the CSRA's operations rather than treating the statute's channeling effect as "a pure question of statutory interpretation." *Doe* v. *Musk*, No. 25-cv-462, 2026 WL 242062, at *4 (D. Md. Jan. 29, 2026).

Respondent makes no effort to reconcile that novel legal standard with the decisions of other courts of appeals that have continued to apply *Elgin* and *Fausto* without question in analogous circumstances. Pet. 27-28. Nor does respondent deny that the decision below has spawned confusion nationwide, both for the CSRA and other agency-review schemes. Pet. 30-31.

Respondent notes (Br. in Opp. 22-23) that the lower-court decisions to date contain alternative rationales. But any test that requires district courts to weigh whether an agency is "function[ing] as Congress intended," Pet. App. 14a, invites endless mischief "captive to judges' views on political whims of the most recent administration," *id.* at 68a (Quattlebaum, J., dissenting from the denial of rehearing en banc). In recent months, similar claims relying on the decision below have proliferated, both for the MSPB and other agencies. *E.g.*, Pls.-Appellees' En Banc Br. at 46, *National Treasury Emps. Union* v. *Vought*, No. 25-5091 (D.C. Cir. Feb. 2, 2026); Opp. to Mot. to Dismiss at 3, *Comans* v. *Executive Office of the President*, No. 25-cv-1237 (E.D. Va. Jan. 20, 2026); Opp. to Mot. to Dismiss at 7-8, *Gordon* v. *Executive Office of the President*, No. 25-cv-

2409 (D.D.C. Dec. 23, 2025); Opp. to Mot. for Prelim. Inj. at 11-13, 17, *NLRB* v. *California*, No. 25-cv-2979 (E.D. Cal. Dec. 3, 2025); Compl. at ¶ 163, *Greene* v. *United States Agency for Int'l Dev.*, No. 25-cv-4217 (D.D.C. Dec. 3, 2025); see also Order at 1, *National Treasury Emps. Union* v. *Trump*, No. 25-cv-420 (D.D.C. Feb. 27, 2026) (staying Federal Labor Relations Authority channeling case on the theory that *Trump* v. *Slaughter*, No. 25-332 (argued Dec. 8, 2025), might "inform the question of whether the agency is functioning as Congress intended"). This Court should extirpate the Fourth Circuit's plainly erroneous legal rule at the earliest possible opportunity to avoid further snowballing.

2. Respondent's various gambits for delay should be rejected.

Respondent first asks (Br. in Opp. 17) the Court to await fact-finding on remand, which respondent promises "will aid in the ultimate resolution" of the question presented. But the CSRA's meaning is a question of law, not fact, making the district court's fact-finding irrelevant. Pet. 31. Regardless, after the government filed its petition, respondent disclaimed the need for discovery. D. Ct. Doc. 104 (Jan. 21, 2026). Respondent now catalogs (Br. in Opp. 17-18) the "public-record evidence" it plans to present, like the President's appointment of a dual-hatted Acting Special Counsel and the Department of Justice's position that administrative law judges' removal restrictions are unconstitutional. This Court does not need district-court findings to confirm that such current events are irrelevant to the CSRA's preclusive effect.

Respondent next urges (Br. in Opp. 18-20) the Court to hold this case until it resolves the constitutionality of

for-cause removal restrictions in *Slaughter*, *supra*, and hints at yet further holds for some future case about the MSPB's removal restrictions. As explained, there is no serious argument that the MSPB's and Special Counsel's removal restrictions are inseverable such that the invalidation of those provisions would bring down the CSRA's channeling scheme. Pet. 24-25; pp. 8-9, *supra*.

Finally, respondent asks (Br. in Opp. 23-24) this Court to resolve its cross-petition challenging the Fourth Circuit's conclusion that, assuming CSRA channeling remains in effect, respondent's specific claims fall within the agency-review scheme. As the government's forthcoming brief in opposition will explain, the Fourth Circuit's correct and fact-bound application of settled CSRA principles does not warrant this Court's review and provides no basis to avoid the question in this petition. Granting the cross-petition (which was filed nearly two months after the government's petition) would simply guarantee further delay. To the extent respondent implicitly recognizes (*id.* at 2) the need to "vacate and remand" the Fourth Circuit's decision on *some* ground, the straightforward path is summary reversal.

* * * * *

The petition for a writ of certiorari should be granted, and the decision below either summarily reversed or set for plenary review.

Respectfully submitted.

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Solicitor General

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