No. 25A11

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

MARY BOYLE, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR STAY

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In this case, lower courts have refused to follow the precedent that this Court set less than two months ago in *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025), by staying injunctions ordering the reinstatement of removed members of the National Labor Relations Board (NLRB) and Merit Systems Protection Board (MSPB). Respondents now essentially embrace that defiance, dismissing (Opp. 19, 29) *Wilcox* in just two paragraphs as a non-binding advisory opinion and rehashing the same arguments that this Court rejected there when granting a stay.

Tellingly, respondents do not argue that the Consumer Product Safety Commission (CPSC) exercises less executive power than the NLRB or MSPB, or that the equities here meaningfully differ from the equities in *Wilcox*. Nor could they. As in *Wilcox*, the agency exercises "considerable executive power," the government faces irreparable harm "from an order allowing a removed officer to continue exercising the executive power," and that injury outweighs any harm that "a wrongfully removed officer faces from being unable to perform her statutory duty." 145 S. Ct. at 1415.

This Court should not countenance respondents' and the lower courts' circumvention of its recent precedent. Of course, interim orders such as the *Wilcox* stay do

not control the ultimate resolution of the merits. But when this Court issues a stay, its decision is precedential on the application of the stay factors, and lower courts must follow that application in materially similar cases. See *Trump* v. *CASA, Inc.*, No. 24A884 (June 27, 2025), slip op. 5-6 (Kavanaugh, J., concurring). Otherwise, lower courts could disregard the Court's interim orders in other cases, rendering those orders purely advisory, upending the ordinary Article III hierarchy, and forcing this Court to decide the same issues over and over on its emergency docket. In another recent case, the D.C. Circuit correctly recognized that *Wilcox* required it to stay an injunction reinstating a removed member of the Federal Labor Relations Authority (FLRA). See C.A. Order at 1-2, *Grundmann* v. *Trump*, No. 25-5165 (July 3, 2025). *Wilcox* is equally binding here—and this case illustrates that the sooner this Court resolves the merits of this application and decides foundational questions about the scope of the President's removal authority, the better.

This case also underscores the practical problems that arise when lower courts ignore this Court's emergency orders. Since the lower courts reinstated the three removed CPSC members, the members have aggressively moved to annul decisions made by the other Commissioners, pressed forward with new rules despite the President's regulatory freeze, and deliberately frustrated implementation of the President's policy agenda, while threatening staff members with penalties for refusing to heed their orders instead of those of the remaining Commissioners'. Their intra-agency civil war is a recipe for Executive Branch dysfunction that cannot endure without compromising the agency's longer-term priorities. Those on-the-ground disruptions would warrant a stay under any circumstances. And *Wilcox* makes this an especially easy case.

A. The Government Is Likely To Show That Article II Empowers The President To Remove CPSC Members At Will

This Court concluded in *Wilcox* that the government was likely to show that Article II empowers the President to remove NLRB and MSPB members at will. See 145 S. Ct. at 1415. The government is also likely to show here that Article II empowers him to remove members of the CPSC, which likewise exercises substantial executive power and which is likewise subject to statutory provisions that thwart at-will removal.

Respondents emphasize (Opp. 19) the Court's statement that it did "not ultimately decide in this posture whether the NLRB or MSPB falls within" an exception to the President's removal power. *Wilcox*, 145 S. Ct. at 1415. But that statement simply reflects the principle that, "in this posture," the Court's task is not to resolve the merits but to assess the likelihood of success on the merits. *Ibid.* *Wilcox* accordingly found that the government was likely to succeed because it was "likely to show that both the NLRB and MSPB exercise considerable executive power." *Ibid.* Respondents cannot seriously dispute that the government is likely to make the same showing for the CPSC here. The CPSC, like the NLRB, possesses the authority to make rules, issue final decisions in adjudications, investigate violations of the law, and bring judicial enforcement proceedings—each a form of significant executive power. Appl. 13-14.

Like the removed officers in *Wilcox*, respondents insist (Opp. 12) that, under *Humphrey's Executor* v. *United States*, 295 U.S. 602 (1935), Congress may insulate a multimember agency from Presidential control no matter how much executive power the agency exercises. See Wilcox Opp. 1, *Wilcox*, *supra* (No. 24A966) (Wilcox Opp.); Harris Opp. 2, *Wilcox*, *supra* (No. 24A966) (Harris Opp). But this Court has now

repeatedly rejected that argument. *Seila Law LLC* v. *CFPB*, 591 U.S. 197 (2020), described *Humphrey's Executor* as a narrow "exceptio[n]" to the "general rule" of "unrestricted removal"—one that extends at most to certain "multimember agencies *that do not wield substantial executive power*." *Id.* at 215, 218 (emphasis added). And *Wilcox* found that the government was likely to show that two multimember agencies —the NLRB and MSPB—fall outside the *Humphrey's Executor* exception because they "exercise considerable executive power." *Wilcox*, 145 S. Ct. at 1415.

Like the removed officers in *Wilcox* (Wilcox Opp. 14; Harris Opp. 11), respondents also cite (Opp. 15) the remedial portion of *Seila Law*, in which three Justices stated that their "severability analysis does not foreclose Congress from pursuing alternative responses to the problem—for example, converting the [Consumer Financial Protection Bureau] into a multimember agency." 591 U.S. at 237 (opinion of Roberts, C.J.). But that statement means only what it says: The Court's "severability analysis" did not "foreclose" reconstituting the CFPB as a multimember agency. *Ibid.* The Court did not purport to decide in advance whether Article II would allow Congress to grant tenure protection to such a hypothetical multimember agency if Congress's "alternative respons[e]," *ibid.*, did not *also* involve limiting the CFPB's powers to go no further than the 1935 Federal Trade Commission's powers. *Seila Law*'s tentative observation that "there may be means of remedying the defect in the CFPB's structure," *ibid.*, cannot reasonably be read to override its detailed description of the limits of *Humphrey's Executor*, see *id.* at 215-217 (majority opinion).

Respondents barely attempt to distinguish the CPSC from the NLRB and MSPB, instead arguing (Opp. 18) that "the government fails to identify any distinctions between the CPSC and the 1935 FTC." That is incorrect. According to *Humphrey's Executor*, the 1935 FTC possessed only the power to issue judicially enforceable

cease-and-desist orders, to make reports to Congress, and to recommend decrees to courts. See 295 U.S. at 620-621. The CPSC, by contrast, may make rules, issue final orders in adjudications, investigate violations of the law, and file lawsuits seeking civil penalties. See App. 13-14. Each of those powers is a "quintessentially executive power not considered in *Humphrey's Executor*." *Seila Law*, 591 U.S. at 219.

Respondents contend (Opp. 16-17) that the 1935 FTC possessed some of the rulemaking, adjudicatory, and enforcement powers exercised by the CPSC. But this Court has taken *Humphrey's Executor* "on its own terms." *Seila Law*, 591 U.S. at 219 n.4. "Perhaps the FTC possessed broader * * * powers than the *Humphrey's* Court appreciated. Perhaps not." *Ibid.* "Either way, what matters is the set of powers the Court considered as the basis for its decision, not any latent powers the agency may have had not alluded to by the Court." *Ibid.* *Humphrey's Executor* did not consider the power to "promulgate binding rules," to "unilaterally issue final decisions" in "administrative adjudications," or to seek "penalties against private parties on behalf of the United States in federal court," *id.* at 218-219—all of which the CPSC possesses.

In all events, respondents concede (Opp. 17) that the CPSC, unlike the 1935 FTC, can "prosecute *criminal* cases." That alone establishes that the President must have the power to remove CPSC members at will, for "prosecutorial decisionmaking" "implicates 'conclusive and preclusive' Presidential authority." *Trump* v. *United States*, 603 U.S. 593, 620-621 (2024). Respondents note (Opp. 18) that the "CPSC's power in this respect is subject to the Attorney General's approval," but "power over [an agency's] functions" is no substitute for "the power to remove [agency] members." *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477, 504 (2010). "[A]ltering the [prosecutorial activities] of [the CPSC] as a whole is a problematic way to control" "individual members." *Ibid.*

At bottom, *Wilcox* makes this case particularly straightforward, because this Court has now established that when heads of multimember agencies exercise "considerable executive power" and do not "follo[w] in a distinct historical tradition," injunctions reinstating removed agency members should be stayed. 145 S. Ct. at 1415. Other courts have heeded that unambiguous message: The D.C. Circuit, for instance, recently followed *Wilcox* in staying an injunction reinstating a removed FLRA member. See p. 2, *supra*. This Court should stay the district court's injunction here.

B. The Government Is Likely To Show That Courts Lack The Power To Issue Equitable Relief Restoring Removed Executive Officers

The government is independently likely to succeed in showing that the district court exceeded its remedial authority by forcing the reinstatement of CPSC members whom the President removed and thereby handing control of the agency to hostile members who are deliberately thwarting the President's objectives for the agency. Respondents offer no convincing response to the long line of precedents establishing that "a court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee." *White* v. *Berry*, 171 U.S. 366, 377 (1898) (citation omitted); see, *e.g.*, *In re Sawyer*, 124 U.S. 200, 210 (1888). Respondents observe (Opp. 22 n.2) that most of those involved "*state* officers," but they ultimately concede the Court has "applied [the same principle] to a federal officer." See *White*, 171 U.S. at 377. That equitable principle makes sense; an order reinstating a removed executive officer "would invade the domain * * * of the executive," *id.* at 376, and would severely undermine the President's supervision of his branch by "saddl[ing]" him with officers "in whom he can have no confidence," *Myers* v. *United States*, 272 U.S. 52, 132 (1926) (citations omitted).

Respondents cite (Opp. 20-22) a series of allegedly contrary decisions, but none

holds that courts of equity may reinstate removed principal executive officers. Several of the cases involve employees, not officers. See *Vitarelli* v. *Seaton*, 359 U.S. 535, 536 (1959); *Pelicone* v. *Hodges*, 320 F.2d 754, 755 (D.C. Cir. 1963); *Paroczay* v. *Hodges*, 219 F. Supp. 89, 90 (D.D.C. 1963); *Priddie* v. *Thompson*, 82 F. 186, 186 (C.C.D.W.V. 1897). One case involved officers whom the court regarded as legislative rather than executive, see *Berry* v. *Reagan*, No. 83-3182, 1983 WL 538, at *2 (D.D.C. Nov. 14, 1983); one involved mandamus rather than equitable relief, see *Delgado* v. *Chavez*, 140 U.S. 586, 591 (1891); and one did not involve removal at all, see *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952). In the remaining two cases, the court upheld the removal and had no occasion to consider the appropriate remedy. See *Severino* v. *Biden*, 71 F.4th 1038, 1050 (D.C. Cir. 2023); *Swan* v. *Clinton*, 100 F.3d 973, 988 (D.C. Cir. 1996). The decisions that respondents cite—most of which come from the lower courts—cannot overcome this Court's precedents establishing that "courts of equity have no jurisdiction * * * over the appointment and removal of public officers." *Harkrader* v. *Wadley*, 172 U.S. 148, 165 (1898) (citation omitted). And, again, the *Wilcox* respondents made these same arguments—to no avail. See Wilcox Opp. 21; Harris Opp. 4.

Respondents' contention (Opp. 21) that the government's remedial argument would "rende[r] statutory tenure protections for multimember agencies impotent" is likewise misplaced. "[T]he question whether a given remedy is adequate is a legislative determination that must be left to Congress, not the federal courts." *Egbert* v. *Boule*, 596 U.S. 482, 498 (2022). The "remedies available," therefore, "are those 'that Congress enacted into law.'" *Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001) (citation omitted). Here, Congress has enacted a Back Pay Act, 5 U.S.C. 5596, under which wrongfully fired officials may seek back pay, but it has never enacted a Rein-

statement Act under which principal executive officers may seek reinstatement.

Respondents fall back (Opp. 22-23) to the district court's alternative holding that they are entitled to mandamus, but that relief, too, is inappropriate here. A court may award mandamus only if the litigant shows a "clear and indisputable" right to relief. *United States ex rel. Bernardin* v. *Duell*, 172 U.S. 576, 582 (1899). Respondents have not cleared that high bar—and, in light of *Wilcox*, they cannot do so. Further, in deciding whether to award mandamus, a court must consider "separation of powers" principles. *Cheney* v. *U.S. District Court*, 542 U.S. 367, 381 (2004). As the government has explained (Appl. 16) and as respondents do not seriously dispute, an order requiring the President to entrust his executive power to a fired principal executive officer raises grave separation-of-powers concerns. In addition, respondents have failed to identify a single case before the start of this Administration in which a court has granted mandamus to reinstate an executive officer fired by the President (as opposed to a "judicial" or "local" officer), Opp. 23 (citation omitted)—and that lack of "precedent" "is of much weight against [them]," *Mississippi* v. *Johnson*, 4 Wall. 475, 500 (1867).

Finally, respondents argue (Opp. 23) that the government did not preserve its remedial arguments in the lower courts. Not so. The government has consistently argued throughout this case that courts lack the power to reinstate respondents. See, *e.g.*, D. Ct. Doc. 21-1, at 17-26 (June 4, 2025); C.A. Doc. 13, at 18-24 (June 17, 2025). And "[o]nce a federal [defense] is properly presented, a party can make any argument in support of that [defense]; parties are not limited to the precise arguments they made below." *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992).

C. The Equities Support A Stay

The equities supported a stay in *Wilcox*, and they support a stay here even

more strongly. Of course, the propriety of a stay depends on "the circumstances of the particular case." Opp. 29 (citation omitted). But respondents never meaningfully distinguish the circumstances here from *Wilcox*. Indeed, the main difference here is that respondents have unleashed dysfunction by aggressively exercising executive power to thwart the President's policy agenda since their reinstatement. Their open rebellion against the President tilts the equities yet further toward a stay.

1. As in *Wilcox*, the government faces irreparable harm because the district court's order allows "removed officer[s] to continue exercising the executive power." 145 S. Ct. at 1415. Respondents' own conduct illustrates the magnitude of that harm. Respondents do not dispute that, since their court-ordered reinstatement, they have purported to countermand almost every decision taken by the two Commissioners who have retained the President's trust, to fire staff who had been hired to facilitate compliance with an Executive Order, to press forward with new regulations despite a regulatory freeze ordered by the President, and to prevent the Acting Chairman from implementing a reduction in force. See Appl. 7-9. Respondents describe (Opp. 4) those acts as "the Commissioners performing official functions" that they were "lawfully entitled to perform." But under Article II, an executive officer's lawful functions do not include exercising the President's executive power over the President's objection to thwart the President's policy agenda.

Respondents contend (Opp. 25) that, when the President removed them, he "offered no explanation and identified no harm from their service." But that just attacks the foundational Article II principle of removal *at will*. See *Collins* v. *Yellen*, 594 U.S. 220, 265 (2021). The harm to the President from respondents' continued service is in any event obvious. Respondents belong to a political party that opposes the President. Instead of pursuing the President's policies, they are blocking his and

pursuing their own—for instance, by failing to reduce the size of agency bureaucracy and by moving to adopt new regulations in the face of the President's regulatory freeze. As this Court recently recognized, preventing the President "from enforcing [his] policies" is a form of "irreparable harm" that "justif[ies] interim relief." *CASA*, slip op. 24.

Respondents next argue (Opp. 25) that the "government's lack of urgency" in seeking a stay "reflects its lack of irreparable harm." But the government sought a stay in the district court one business day after the district court issued its merits decision, sought a stay in the court of appeals one day after that, and sought a stay in this Court one day after the court of appeals ruled. See Appl. 6, 8-9. By contrast, respondents waited nearly two weeks after their removal before seeking reinstatement. See Appl. App. 4a-5a.

Respondents suggest (Opp. 25) that the government should have sought relief in this Court even before the court of appeals acted, but this Court's rules discourage leapfrogging the lower courts except in rare cases. See Sup. Ct. R. 23.3. Respondents' argument would trap the government in a Catch-22: a stay application filed before the court of appeals acts would be too early, while one filed after it acts would be too late. It also would create perverse incentives, encouraging the government to give the lower courts little time to rule on stay applications and to rush to this Court at the earliest opportunity. Litigating on the emergency docket is already "a fast and furious business," *Labrador* v. *Poe*, 144 S. Ct. 921, 927 (2024) (Gorsuch, J., concurring); adopting respondents' argument would magnify that concern.

Donning the mantle of the status quo, respondents emphasize (Opp. 2) that this Court should leave them in place because they have been serving on the CPSC "for the last month." That argument is flawed on multiple levels. First, this Court

resolves stay applications by evaluating the merits and equities, not by applying "a blanket rule of 'preserving the status quo.'" *Labrador*, 144 S. Ct. at 931 (Kavanaugh, J., concurring). Second, the district court reinstated respondents more than a month after their removal. See Appl. 5-6. Respondents do not explain why preserving the status quo matters only when the government is seeking relief from this Court, not when they are seeking relief from the district court. Third, respondents have been able to exercise the executive power for the past month only because the district court refused to follow *Wilcox* and to stay its injunction, and because the court of appeals took two weeks to issue a one-sentence order denying a stay. See Appl. 8. Respondents do not explain why the government should be penalized for the district court's refusal to follow *Wilcox* or the court of appeals' delay in resolving the stay application.

Respondents note that *Wilcox* sought to avoid "the disruptive effect of the repeated removal and reinstatement of officers during the pendency of litigation." Opp. 26 (quoting 145 S. Ct. at 1415) (ellipsis omitted). *Wilcox*, however, treated that factor as a reason to *grant* a stay—not as a reason to allow the removed officers to continue exercising executive power in defiance of the President. See 145 S. Ct. at 1415. Respondents argue (Opp. 26) that the interest in avoiding disruption "weighs against a stay" here because they are "currently serving" on the CPSC, but the officers in *Wilcox* were likewise "currently serving" when the government sought a stay. Indeed, respondents' current service is itself the problem. Since their reinstatement, respondents have held meetings over the Acting Chairman's objection, annulled previous agency decisions, usurped the Acting Chairman's power to supervise the agency's staff and manage its budget, and moved forward with new agency regulations against the President's instructions. See Appl. 7-9. Those actions have put agency staff in the untenable position of deciding which Commissioners' directives to follow and have

distracted the agency from its mission of protecting consumer safety. Only a stay will end that disruption.

Finally, respondents observe (Opp. 27) that "President Trump will have the opportunity to appoint Commissioner Boyle's successor when her term expires on October 27," and they see no "pressing reason why the President must exert his will over the agency in the intervening three months." The President, however, "is elected for four years" and holds "the mandate of the people to exercise his executive power" throughout that term. *Myers*, 272 U.S. at 123. A court may not effectively shorten that period by three months. Regardless, though one respondent's term expires this October, the other two respondents' terms expire in October 2027 and October 2028. See Appl. 5. Article II empowers the President to remove them, and their continued exercise of executive power over the President's objection inflicts grave and irreparable harm to the President and to the separation of powers.

2. Respondents argue (Opp. 28) that they would suffer irreparable harm because they would lose the opportunity to serve as CPSC Commissioners. That argument is unsound. Though respondents' removal deprives them of their salary, that harm is not irreparable; it could be redressed by an award of back pay at the end of the case. See *Sampson* v. *Murray*, 415 U.S. 61, 91-92 (1974). Nor is respondents' loss of political power a cognizable harm. Executive power belongs to the President, not to respondents. Thus, the notion that executive officers "have a separate private right, akin to a property interest, in the powers of their offices" is "alien to the concept of a republican form of government." *Barnes* v. *Kline*, 759 F.2d 21, 50 (D.C. Cir. 1984) (Bork, J., dissenting). This Court has already determined, moreover, that "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from

being unable to perform her statutory duty." *Wilcox*, 145 S. Ct. at 1415. Respondents identify no reason to balance the equities differently here.

Echoing the *Wilcox* dissenters, respondents (Opp. 28-29) also emphasize that Congress sought to protect the CPSC's independence. See 145 S. Ct. at 1420 (Kagan, J., dissenting). But that point should carry no more weight here than in *Wilcox*. Congress's desire to insulate the CPSC from the President, see Opp. 28-29, cannot supersede Article II's requirement that executive agencies such as the CPSC be accountable to the President and, through him, to the people, see *Seila Law*, 591 U.S. at 224.

D. This Court Should Grant Certiorari Before Judgment

1. Observing (Opp. 24) that this Court has recently denied certiorari in two cases concerning the constitutionality of CPSC members' tenure protections, respondents argue that the questions presented here are not certworthy. See *Leachco, Inc.* v. *CPSC*, 145 S. Ct. 1047 (2025) (No. 24-156); *Consumers' Research* v. *CPSC*, 145 S. Ct. 414 (2024) (No. 23-1323). But the continuing stream of post-*Wilcox* cases concerning the constitutionality of independent agencies confirms that the Court should settle the issue as soon as possible. And the argument for certiorari in this case, which involves a direct challenge to the President's removal of CPSC members, is far stronger than in *Leachco* and *Consumers' Research*, which involved claims that removal restrictions rendered other agency actions unlawful.

Leachco arose in a preliminary-injunction posture; the court of appeals affirmed the denial of preliminary relief for lack of irreparable harm and only briefly discussed the merits. See Br. in Opp. at 7-8, *Leachco*, *supra* (No. 24-156). The government argued that *Leacho* "would not be an appropriate vehicle in which to take up" the constitutional question. *Id.* at 7. In *Consumers' Research*, meanwhile, private parties contested the agency's processing of Freedom of Information Act requests on

the ground that Congress had restricted the President's power to remove the agency's members. See Br. in Opp. at 2, *Consumers' Research*, *supra* (No. 23-1323). The government questioned the parties' standing and argued that their "highly artificial suit" was an "exceptionally poor vehicle for deciding a constitutional question of this magnitude." *Id.* at 10.

Here, by contrast, the President has removed respondents from the CPSC, and respondents have sued the President to contest their removal. The questions presented have become more important and more urgent now that the President has exercised his removal power. And this case does not involve the vehicle problems that plagued *Leachco* and *Consumers' Research*. Like *Wilcox*, this case plainly warrants certiorari.

2. Respondents also object (Opp. 29-30) to the government's request for certiorari before judgment, noting that this Court did not grant a similar request in *Wilcox*. As the government has explained (Appl. 22-23), however, developments since *Wilcox* have heightened the need for this Court's intervention. Since *Wilcox*, more removed executive officers have sued to contest their removal, and more district courts have restored them to office. See *id.* at 23.

In addition, members of this Court have expressed the expectation that this Court will "surely" decide "the fate of *Humphrey's*" "next Term." *Wilcox*, 145 S. Ct. at 1420 (Kagan, J., dissenting). If the Court does not grant certiorari before judgment here, however, it may not have that opportunity. The D.C. Circuit heard argument in *Harris* v. *Bessent*, No. 25-5037, and *Wilcox* v. *Trump*, No. 25-5057, on May 16, 2025, but it has not yet issued a decision in those cases. Depending on when the court rules, whether the court grants rehearing en banc, and how long certiorari briefing takes, it may be too late for this Court to grant review in those cases in time for a decision

next Term. Postponing a decision until the following Term would needlessly prolong the uncertainty about the status of the affected federal agencies.

* * * * *

This Court should stay the judgment of the U.S. District Court for the District of Maryland pending the resolution of the government's appeal to the U.S. Court of Appeals for the Fourth Circuit and pending any proceedings in this Court.

Respectfully submitted.

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Solicitor General

JULY 2025