No. 25A312

IN THE
Supreme Court of the United States

DONALD J. TRUMP,

Applicant,

v.

LISA D. COOK ET AL.,

Respondents.

ON APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OPPOSITION TO APPLICATION FOR A STAY

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OPPOSITION TO APPLICATION FOR A STAY

The President's stay application asks this Court to act on an emergency basis to eviscerate the independence of the Federal Reserve Board. For decades, the Board's insulation from direct presidential control has allowed the American markets and economy to thrive. And as the Court recognized earlier this year, the Board's independence is uniquely entrenched in the Nation's history and tradition. Yet the President now requests that the Court precipitously depart from that view and allow him to remove Governor Lisa D. Cook from the Federal Reserve Board "for cause" and without process based on flimsy, unproven allegations of pre-office wrongdoing—allegations conveniently timed following the President's criticism of the Board's policy decisions. Granting that relief would dramatically alter the status quo, ignore centuries of history, and transform the Federal Reserve into a body subservient to the President's will.

This Court should deny the President's extraordinary application because his arguments defy established precedent and longstanding practice. To start, the President's request for this Court's intervention is premature: This litigation has barely begun, and further factfinding could avoid the need for this Court to decide the high-stakes legal issues raised in the President's application. On the merits, this Court is likely to reject each of the President's legal theories. Specifically, the Court is likely to hold that because Governor Cook is removable only for cause, she is entitled to notice, opportunity for a hearing, and judicial review before she is removed. The Court is also likely to hold that the "for cause" standard provides meaningful

protection and is not satisfied by manufactured charges based on conduct that predates her service on the Board.

The President's emergency application fares even worse on the equitable factors. The preliminary injunction issued by the district court follows a longstanding equitable tradition of preserving the status quo by preventing Governor Cook, who has remained in her office and participated fully as a Federal Reserve Board governor throughout this litigation, from being ousted while this suit proceeds. And because of the Federal Reserve Board's unique historical tradition and insulation from presidential control, the President has no urgent or compelling need to remove Governor Cook while the courts consider the legality of the purported removal. Finally, a stay from this Court would signal to the financial markets that the Federal Reserve no longer enjoys its traditional independence, risking chaos and disruption.

The bottom line is this: Contrary to the President's boundless assertion of authority, there must be some meaningful check on the President's ability to remove Governor Cook. Otherwise, any president could remove any governor based on any charge of wrongdoing, however flawed. That regime is not what Congress envisioned when it protected the Federal Reserve Board from presidential control. That regime is not what this Court envisioned when it went out of its way to single out the Board as a unique institution with a unique history of independence. And granting the President's request for immediate relief to alter the status quo would sound the death knell for the central-bank independence that has helped make the United States' economy the strongest in the world.

This Court should deny the application for a stay.

STATEMENT

A. Statutory Background

The Federal Reserve System—a "uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States"—serves as the Nation's central bank. *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025). It "includes the Federal Reserve Board of Governors and twelve regional Reserve Banks." *Am. Bankers Ass'n v. United States*, 932 F.3d 1375, 1378 (Fed. Cir. 2019) (citations omitted); *see* 12 U.S.C. § 222. The Board of Governors is responsible for "promot[ing] effectively the goals of maximum employment, stable prices, and moderate long-term interest rates." 12 U.S.C. § 225a; *see id.* § 248.

As part of those duties, Federal Reserve Board governors sit alongside representatives of the regional banks on the Federal Open Market Committee (FOMC). 12 U.S.C. § 263(a). The FOMC directs the regional banks' "open-market transactions," *id.* § 263(b), "the most important monetary policy instrument of the Federal Reserve System," *Fed. Open Mkt. Comm. of Fed. Rsrv. Sys. v. Merrill*, 443 U.S. 340, 343 (1979). By instructing the banks to buy or sell "securities in the domestic securities market," the FOMC alters "the volume of bank reserves," creating a "substantial impact on interest rates and investment activity in the economy as a whole." *Id.* at 343-44.

A defining feature of the Federal Reserve and other central banks is its insulation from direct presidential control. *See* Howard H. Hackley, *The Status of the Federal Reserve System in the Federal Government* 2 (1972). Central-bank

independence dates back at least to 1694, when Parliament created the Bank of England as a privately owned entity. 5 & 6 Will. & Mar. c. 20 (1694). In that era, economists agreed "that Government could not be safely entrusted with the power of issuing paper money" because "it would most certainly abuse it." David Ricardo, *Plan for the Establishment of a National Bank* (1824), reprinted in *The Works of David Ricardo—With a Notice of the Life and Writings of the Author* 448 (J.R. McCulloch ed. 1888).

In modern times, "[a] broad consensus has emerged . . . that the goals of monetary policy should be established by the political authorities, but that the conduct of monetary policy in pursuit of those goals should be free from political control." Ben S. Bernanke, *Central Bank Independence, Transparency, and Accountability* (May 26, 2010), https://perma.cc/M5V9-WANM. That is because "policymakers in a central bank subject to short-term political influence may face pressures to overstimulate the economy to achieve short-term output," even though such gains "are not sustainable and soon evaporate, leaving behind only inflationary pressures that worsen the economy's longer-term prospects." *Id.*

Given the Federal Reserve's "power to directly affect the short-term functioning of the U.S. economy," Congress has "insulate[d]" it "from direct presidential" and political "oversight." Brett M. Kavanaugh, *Separation of Powers During the Forty-Fourth Presidency and Beyond*, 93 Minn. L. Rev. 1454, 1474 (2009). Congress has funded the Board of Governors outside the appropriations process, *see* 12 U.S.C. §§ 243-44, authorized it to make independent recommendations to Congress, *id.*

§ 250, and allowed it to litigate "in its own name and through its own attorneys," *id.* § 248(p).

As particularly relevant here, Congress has protected the Federal Reserve Board's governors from at-will presidential removal. The Federal Reserve Act of 1913 (FRA) provided that governors would serve ten-year terms "unless sooner removed for cause by the President." Pub. L. No. 63-43, § 10, 38 Stat. 260. Although Congress temporarily removed the governors' for-cause protection in the Banking Act of 1933, *see* Pub. L. No. 73-66, § 6, 48 Stat. 166-67, the sponsor of that Act stated that the change was inadvertent, explaining that he had "no recollection of it," *Banking Act of 1935: Hearings Before the S. Comm. on Banking and Currency on S. 1715*, 74th Cong., 1st Sess. 398 (1935) (Sen. Carter Glass). Accordingly, Congress reinserted the protection in the 1935 Banking Act. Pub. L. No. 74-305, § 203, 49 Stat. 704-05. That congressional judgment has not wavered ever since. Thus, each governor now serves "a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President." 12 U.S.C. § 242.

That protection accords with the structure of central banks across the world. As of 2023, only 12 nations with central banks allow the removal of central-bank board members at the executive's discretion for policy reasons or for no reason at all. Davide Romelli, *Data on Central Bank Independence* (last visited Sept. 25, 2025), https://perma.cc/4DZF-3UWF. Those 12 nations are Bangladesh, Chile, China, Comoros, Iran, Kazakhstan, Laos, Morocco, Thailand, Tunisia, Turkmenistan, and Vietnam. *Id.*

B. Factual Background

In 2022, respondent Lisa D. Cook was nominated by President Biden and confirmed by the Senate to fill the remainder of an unexpired term on the Federal Reserve Board of Governors. App. 27a. The next year, Governor Cook was again nominated and confirmed as a governor, this time for a full fourteen-year term. *Id.* Her term is set to expire in 2038. *Id.*

Since his second inauguration, President Donald J. Trump has repeatedly chastised the Federal Reserve for its monetary-policy choices. In July 2025, the President urged that the "Fed should cut Rates by 3 Points" and "Bring down the Fed Rate, NOW!!!" D. Ct. Doc. 1, ¶ 34 (citation omitted). A month later, the President criticized Federal Reserve Board chair Jerome Powell, writing that "Jerome 'Too Late' Powell . . . is hurting the Housing Industry, very badly"; that "'Too Late' is a disaster!"; and that "'Too Late' Powell should resign." *Id.* ¶¶ 34, 36 (citations omitted).

William Pulte is the director of the Federal Housing Finance Authority (FHFA). In that role, Director Pulte has joined the President's attacks on the Federal Reserve, including by urging the President to fire Chair Powell due to alleged fraud associated with renovations to the Federal Reserve's buildings. D. Ct. Doc. 1, ¶¶ 41-42. Director Pulte has also urged the President and the Justice Department to investigate Democratic politicians for alleged mortgage fraud. *Id.* ¶ 40; *see* Michael Wilner, *A Trump Donor, Now a Regulator, Leads Effort To Accuse President's Foes of Mortgage Fraud*, L.A. Times (Aug. 26, 2025), https://perma.cc/8ZBH-CVSR.

On August 15, 2025, Director Pulte sent a letter to Attorney General Pamela

Bondi and one of her subordinates alleging that Governor Cook had "falsified bank documents and property records to acquire more favorable loan terms." D. Ct. Doc. 1-2, at 1. The letter specifically charged that Governor Cook had designated two properties as her primary residence. *Id.* Director Pulte publicly released the referral letter five days later, without notice to Governor Cook. D. Ct. Doc. 1, ¶ 43.

The President's reaction was immediate: A mere thirty minutes after Director Pulte released the letter, the President posted that "Cook must resign, now!!!" D. Ct. Doc. 1, ¶ 44 (citation omitted). Two days later, the President told reporters, "I'll fire her if she doesn't resign." *Id.* ¶ 45 (citation omitted).

On August 25, 2025, the President posted a letter on social media purporting to fire Governor Cook from the Federal Reserve's Board of Governors, "effective immediately." D. Ct. Doc. 1-4, at 1; *see* D. Ct. Doc. 1-3, at 1. The letter stated that Governor Cook was removed "[p]ursuant to [the President's] authority under Article II of the Constitution of the United States and the Federal Reserve Act of 1913, as amended." D. Ct. Doc. 1-4, at 1. Based on Director Pulte's claim of a contradiction regarding her mortgages, the President's letter asserted that there was "sufficient cause to remove [Governor Cook] from [her] position" due to alleged "deceitful and potentially criminal conduct in a financial matter" or "gross negligence in financial transactions." *Id.* The President did not send a copy of the letter to Governor Cook, nor did he provide advance notice or an opportunity for Governor Cook to respond. D. Ct. Doc. 1, ¶ 47. Nor did the Federal Reserve take any immediate action in response to the President's letter.

C. Proceedings Below

1. Three days after her purported termination, Governor Cook filed this suit in the United States District Court for the District of Columbia. The suit names as defendants the President, the Federal Reserve Board, and Chair Powell. D. Ct. Doc. 1, ¶¶ 4-6. It claims that the President's purported removal was not "for cause," *id.* ¶¶ 61-66, and that the President deprived Governor Cook of a hearing to which she was entitled by statute and by the Due Process Clause, *id.* ¶¶ 67-78. The complaint seeks declaratory relief, mandamus, and an injunction. *Id.* at 23. Governor Cook also sought a temporary restraining order to allow the courts to resolve these questions without altering the status quo. *See* D. Ct. Doc. 2.

Exercising the Federal Reserve's independent litigating authority, the Federal Reserve Board and Chair Powell filed a brief response to Governor Cook's motion for a temporary restraining order. D. Ct. Doc. 12. Those defendants stated that they did "not intend to offer arguments concerning Governor Cook's motion" but would "follow any order [the court] issues." *Id.* at 1.

Consistent with that filing, the Federal Reserve to date has not taken any steps to effectuate Governor Cook's purported removal from the Board of Governors. At all times since her purported firing, Governor Cook has received her salary and has had uninterrupted access to her office, email account, and work papers. She has participated fully in Federal Reserve business, including the September FOMC meeting, at which she voted to lower the United States' target interest rates.

2. The district court granted a preliminary injunction preserving the

status quo and barring the Federal Reserve Board or Chair Powell "from effectuating in any manner" Governor Cook's "removal from her position." App. 23a. The court ruled that Governor Cook was likely to succeed on her claim that the President had not validly removed her "for cause." *Id.* at 31a-50a. The court additionally ruled that Governor Cook was likely to succeed on her due-process argument because she had a "property interest in her fixed-term, for cause protected position" and did not receive the necessary process before her removal. *Id.* at 51a (capitalization altered).[1]

Finally, the district court concluded that the equitable factors favored preliminary relief, finding that the President's attempt to "prevent[] her from discharging her duties as a Federal Reserve Governor" would cause irreparable harm, *id.* at 62a, and that the equities "strongly cut in Cook's favor" due to "the public interest in Federal Reserve independence," *id.* at 68a, 70a.

3. The D.C. Circuit denied the President's request to stay the preliminary injunction pending appeal. App. 1a.

Judge Garcia, joined by Judge Childs, filed a concurring opinion. App. 2a-9a. Judge Garcia explained that Governor Cook's "due process claim is likely to succeed" given this Court's precedent that "a public official with 'for cause' protection from removal has a constitutionally protected property interest in her position." *Id.* at 2a (citation omitted). In light of his due-process conclusions and given the emergency posture, Judge Garcia saw "no need to address the meaning of 'for cause' in the

[1] The court did not reach Governor Cook's argument that "her purported removal violated procedural protections" as a statutory matter. App. 31a n.3.

Federal Reserve Act." *Id.* at 7a.

"As for the equitable factors," Judge Garcia explained that this case differed from others involving attempted presidential removals because "Cook's role at the Federal Reserve differs in relevant ways from the role of the officials" in other cases. App. 7a-8a. Because "the government agrees that the President may not direct the Federal Reserve's policy-making decisions," Judge Garcia found that the President had a less weighty interest in immediately effectuating Governor Cook's removal. *Id.* at 8a.

Judge Katsas dissented. App. 10a-22a. He concluded that Governor Cook was unlikely to succeed on her "for cause" argument because that language allows for terminations for any "cause relating to the conduct, ability, fitness, or competence of the officer," and because the President's decision reflected such a cause. *Id.* at 14a (citation omitted). He wrote that Governor Cook was not likely to succeed on her due-process claim because, "[a]s a principal officer of the United States, she serves in a position of public 'trust' that creates no property rights." *Id.* at 18a (citation omitted).

4. The President now seeks this Court's immediate intervention to alter the status quo. The Federal Reserve Board and Chair Powell—the enjoined defendants themselves—do not join that request. *See* Appl. ii.

ARGUMENT

"To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that

a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.*; *see Nken v. Holder*, 556 U.S. 418, 426 (2009) (considering "where the public interest lies" (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987))).

The President has not made the requisite showing on any of those factors. The relief he seeks would reverse the status quo, pave the way for Governor Cook's removal, and signal an end to the Federal Reserve's independence before this Court has had time to consider the issues on the merits. There is not even a reasonable probability that the Court will grant review at this juncture, given the case's preliminary posture and need for further factual development. Nor is the President likely to persuade the Court to adopt his arguments, especially after this Court went out of its way to single out the Federal Reserve's unique status and distinct history. That unique status, which the President does not contest in his application, forecloses his boundless interpretation of the phrase "for cause"; his assertion that Governor Cook was entitled to no process before her purported removal; and his claim that the district court lacked equitable authority to preserve the status quo. Finally, the equitable factors sharply cut against the President's request for immediate relief.

I. There is not a reasonable probability the Court will grant certiorari in this interlocutory posture.

The President's application falters at the outset because the Court is not likely to grant certiorari in this preliminary posture, particularly given the considered

judgment of the two courts below that the status quo should be preserved.

This case comes to the Court on a highly accelerated timeframe that has led to an underdeveloped factual record. The President first ordered Governor Cook to resign or be fired thirty minutes after a FHFA referral became public. When she did not, the President purported to fire her just five days later. Governor Cook sued three days after her purported removal and sought a temporary restraining order the same day. Less than a month has passed since the filing of this action.

In that time, fundamental flaws in the "mortgage fraud" allegations against Governor Cook have already come to light. The President claims that Governor Cook acted improperly by "claiming that both a property in Michigan and a property in Georgia would simultaneously serve as her principal residence." Appl. 2. But in fact, reports confirm that Governor Cook properly declared her Michigan home as her principal residence.[2] And they also show that as part of her mortgage application, Governor Cook accurately described the Georgia property in question as a "vacation home," "show[ing] that she had told the lender that the Atlanta property wouldn't be her primary residence."[3] Those facts are not "fraud," "deceitful," "potentially criminal," or "gross negligence." Appl. 2, 4, 7-8, 30, 36-37.

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[2] *See* Marisa Taylor & Chris Prentice, *Exclusive: No Evidence of Primary Residence Violation by Fed Gov Lisa Cook, Says Michigan Official*, Reuters (Sept. 15, 2025), https://perma.cc/4ZDW-W27L.

[3] Chris Prentice & Marisa Taylor, *Exclusive: Fed Governor Cook Declared Her Atlanta Property as "Vacation Home," Documents Show*, Reuters (Sept. 13, 2025), https://perma.cc/93WS-XSAW; *see* Steve Kopack, *Lisa Cook's Bank Documents Appear To Contradict Trump Administration's Mortgage Fraud Allegations*, NBC News (Sept. 12, 2025), https://perma.cc/DNW6-7QEF (similar).

Because of the hasty nature of Governor Cook's purported removal and the expedited litigation posture, neither the President (who is required to give Governor Cook an opportunity to defend herself, *see infra* at 30-36) nor the lower courts have considered a full factual record. When that record is compiled, it will demonstrate that Governor Cook never acted improperly with respect to her mortgages and thus will eliminate the President's stated ground for his purported removal.

This Court should therefore await further factual development before it reviews the legality of the President's purported firing. The President urges the Court to decide a host of novel legal questions about the operation of the statutory term "for cause" and what process is required before an officer may be removed under that standard. And he insists that the Court should act on an undeveloped record to immediately alter the composition of the Federal Reserve Board on an emergency basis. Yet Governor Cook could (and will) obviate the need to resolve those difficult questions by demonstrating that she committed neither "fraud" nor "gross negligence" in relation to her mortgages. Appl. 31; *see* App. 49a n.9. And she could (and will) develop a factual record to confirm that she never received anything like the notice and opportunity to be heard to which she is entitled. Because the American economy depends on the Federal Reserve's predictable and stable monetary-policy decisions, it would be imprudent for the Court to intervene in this interlocutory and uncertain posture in the status quo-altering manner the President requests. Instead, the Court should allow this case to proceed below and review the legality of the President's action—if necessary—only on a developed record.

II. The President is unlikely to succeed on the merits.

Even if the preliminary-injunction ruling warranted this Court's review, the President cannot make the necessary "strong showing" that he would prevail on the merits. *Nken*, 556 U.S. at 426. He is not likely to persuade this Court that removals "for cause" are exempt from judicial scrutiny or that the best meaning of "for cause" allows him to fire a Board governor for any reason he concludes makes a governor "unfit for office." The President is also unlikely to show that his purported removal of Governor Cook followed the process she is due under the Constitution and federal law. Finally, the President is unlikely to show that principles of equity bar a preliminary injunction to preserve the status quo.

A. The President's "for cause" decisions are reviewable in court.

For the first time in the Federal Reserve's 111-year history, a president has attempted to remove a Federal Reserve Board governor. The President insists (at 20-25) that, despite the Court's recent statement recognizing the Board's singular history and status, courts cannot review the lawfulness of that action. That is wrong.

1. Centuries of precedent foreclose the President's unreviewability argument. The Court's foundational case holds that whether an officer "has a legal right" to an office is "a question examinable in a court." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 167 (1803). And in two other landmark decisions, the Court reviewed and invalidated a president's termination of officials holding fixed tenures and removable only for cause. *Wiener v. United States*, 357 U.S. 349, 356 (1958); *Humphrey's Ex'r v. United States*, 295 U.S. 602, 632 (1935). As elaborated below, Congress

enacted the Federal Reserve's current "for cause" removal protections against the backdrop of the Court's decision in *Humphrey's Executor*, which had issued just months earlier. *See* App. 35a-36a; *infra* at 21-22. So when Congress passed that provision, it had every reason to expect that a removal from the Federal Reserve Board would likewise be subject to judicial review.

The President's contrary argument (at 21-22) does not rest on any textual or contextual feature of the for-cause-removal statute—rather, it relies on a fundamental misreading of *Reagan v. United States*, 182 U.S. 419 (1901). *Reagan* concerned a judge's decision to fire a commissioner who did not serve for a "fixed period" and was removable "for causes prescribed by law." *Id.* at 424-25. The critical question, the Court concluded, was "whether there were any causes of removal prescribed by law" at the time the statute was enacted. *Id.* at 425. "If there were, then the rule would apply that where causes of removal are specified by Constitution or statute, as also where the term of office is for a fixed period, notice and hearing are essential." *Id.* But because Congress had not "prescribed" any such causes, the Court held that "the appointing power could remove at pleasure or for such cause as it deemed sufficient," and that the judge's removal decision was consequently "not reviewable." *Id.* Any other interpretation, the Court reasoned, would in effect "hold the commissioners in office for life" because their terms would never expire and they could never be removed. *Id.* at 426. Thus, *Reagan* construed the relevant statute not as "a pure for-cause provision," Appl. 21, but instead as an "at pleasure" provision, 182 U.S. at 425—and the removal was unreviewable only for that reason.

This case is entirely unlike *Reagan*. In contrast to the commissioner there, Governor Cook serves for a "fixed period" of fourteen years. *See* 12 U.S.C. § 242. And Congress enacted the "for cause" provision here against the backdrop of *Humphrey's Executor*, which gives meaning to that statutory phrase. *See infra* at 21-22. Thus, there is no basis to argue that Governor Cook may be removed "at pleasure," with that decision "not reviewable." Indeed, the legislative record is abundantly clear that Congress did not mean for Federal Reserve Board governors to serve at the President's pleasure. *See Banking Act of 1935: Hearings Before the H.R. Comm. on Banking and Currency on H.R. 5357*, 74th Cong., 1st Sess. 275 (1935) (Rep. John B. Hollister) (arguing that for-cause protections are necessary because it is "very unwise to give the power of manipulation to the Executive entirely when it comes to the credit situation and the banking situation"). And if there were any doubt, the Court's subsequent decisions in *Humphrey's Executor* and *Wiener*—neither of which cites *Reagan*—confirm that the President's reading of *Reagan* is not tenable.[4]

The President additionally errs (at 21) in claiming that an established common-law tradition supports his non-reviewability rule. One of his four cited cases explained (in the context of a legislative removal) that it did not raise "a question . . . whether the assigned cause is sufficient." *City of Hoboken v. Gear*, 3 Dutch. 265, 287

[4] The President suggests that federal courts may review purported removals only if "the President identifies no cause at all." Appl. 20. He cites no authority for that exception to his rule, nor is it plausible that *Humphrey's Executor* and *Wiener* would have come out differently had the presidents simply used the word "cause." *Cf. Cummings v. Missouri*, 71 U.S. 277, 325 (1866) ("The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name.").

(N.J. 1859). Another made clear that the question of for-cause reviewability "is not argued." *United States ex rel. Garland v. Oliver*, 6 Mackey 47, 56 (D.C. 1887). A third simply reversed a decision requiring that "an investigation, in its character judicial," be held "before the governor was authorized to act." *Trimble v. Colorado*, 34 P. 981, 984 (Colo. 1893). And the last did not concern an executive removal but rather a removal effected by the vote of "a majority of the Board of Aldermen." *New York ex rel. Platt v. Stout*, 19 How. Pr. 171, 173 (N.Y. Sup. Ct. Gen. Term. 1860).

In contrast, there are numerous common-law cases reviewing the legality of for-cause removals. *See, e.g.*, *Florida v. Henry*, 53 So. 742, 742 (Fla. 1910) ("[T]he court may inquire into . . . whether the facts upon which the removing power acted were legal cause for removal."); *Bd. of St. Comm'rs v. Williams*, 53 A. 923, 925 (Md. 1903); *Speed v. Common Council of Detroit*, 57 N.W. 406, 407 (Mich. 1894). Indeed, two of the courts that issued the government's preferred decisions later recognized that for-cause removals were reviewable and found the stated cause insufficient. *New Jersey ex rel. Haight v. Love*, 39 N.J.L. (10 Vroom) 14, 21-22 (N.J. 1876); *New York ex rel. Lathers v. Raymond*, 129 A.D. 477, 481, 489 (N.Y. App. Div. 1908). Thus, the *American Law Reports* deemed it "well settled" just seven years before enactment of the statute at issue, "that the question" of the statutory authority for a removal "is one which may be reviewed by courts." *Conclusiveness of a Governor's Decision in Removing Officers*, 52 A.L.R. 7, 13-14 (1928) (collecting cases).

Ultimately, the President's plea for unreviewable discretion defies common sense about the basic nature of a for-cause-removal restriction. Congress gave the

Federal Reserve Board governors for-cause protection to alter "the general rule that the President possesses 'the authority to remove those who assist him in carrying out his duties.'" *Seila Law LLC v. CFPB*, 591 U.S. 197, 215 (2020) (quoting *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 513-14 (2010)). Yet if the President's position were correct, that enactment would make no difference at all: The President could remove a Federal Reserve Board governor at whim, free from any judicial scrutiny, so long as he declared the removal to be "for cause."

2. The President fares no better in suggesting that Governor Cook lacks a cause of action. Appl. 22. This Court has long recognized that "where [an] officer's powers are limited by statute, his actions beyond those limitations . . . are ultra vires his authority and therefore may be made the object of specific relief." *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689 (1949). That rule applies to presidential decisions: It would be "untenable to conclude that there are no judicially enforceable limitations on presidential actions, besides actions that run afoul of the Constitution or which contravene direct statutory prohibitions, so long as the President *claims* that he is acting pursuant to" statutory authority. *Chamber of Com. v. Reich*, 74 F.3d 1322, 1332 (D.C. Cir. 1996) (Silberman, J.). This Court has thus reviewed whether various presidential actions fall within statutory bounds. *See, e.g.*, *Hamdan v. Rumsfeld*, 548 U.S. 557, 635 (2006); *Dames & Moore v. Regan*, 453 U.S. 654, 671-75 (1981); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The Court will do so again in just two months. *See Trump v. V.O.S. Selections, Inc.*, __ S. Ct. __, 2025 WL 2601020, at *1 (Sept. 9, 2025). In none of its past cases has the

Court deferred to the President's statutory interpretation; in each, it has looked to the "plain language" of the statute and the traditional tools of statutory interpretation to decide whether the challenged action was permissible. *Dames & Moore*, 453 U.S. at 674.

In seeking to treat this suit differently, the President misunderstands both Governor Cook's claims and Congress's choices in structuring the Federal Reserve. The President analogizes (at 22, 24) to *Dalton v. Specter*, 511 U.S. 462 (1994), which held that courts may not review the reasonableness of a decision committed "to the discretion of the President." *Id.* at 474. But Governor Cook challenges no such decision. Instead, she contends that Congress placed statutory limitations on presidential removal authority and that the President acted "beyond those limitations" when he purported to remove her. *Larson*, 337 U.S. at 689. There is "a long history of judicial review" of suits challenging such "illegal executive action." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).[5]

B. The purported removal of Governor Cook was not "for cause."

The President did not remove Governor Cook "for cause." 12 U.S.C. § 242. A "for cause" removal provision permits removal based only on the recognized causes

[5] This Court's decision in *Nuclear Regulatory Commission v. Texas*, 605 U.S. 665 (2025), does not alter the analysis. *See* Appl. 22. *NRC* concerned "post-APA ultra vires review" of agency action—a context in which "alternative path[s] to judicial review" are available. 605 U.S. at 681-82. Here, by contrast, Governor Cook has no other means of preventing her unlawful removal from office. In any event, *NRC* recognizes that, even in the context there, review is available over "an attempted exercise of [executive] power that had been specifically withheld" by Congress. *Id.* at 681 (citation omitted). That is precisely the scenario at issue here.

for presidential removal of executive officers at the time the provision was enacted. Here, no recognized cause in either 1913 (when Congress originally enacted the Federal Reserve Board's "for cause" removal restriction) or 1935 (when Congress enacted the current version of the "for cause" restriction) would have justified Governor Cook's removal. The President's contrary interpretation of "for cause" would give him virtual carte blanche authority to fire any governor at any time—and thus would upend the Federal Reserve's longstanding tradition of independence.

1. The President did not purport to remove Governor Cook for a legally recognized "cause."

a. "It is a commonplace of statutory interpretation that 'Congress legislates against the backdrop of existing law.'" *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 398 n.3 (2013)). Here, the most pertinent backdrop is the existing law governing presidential removal of executive officers. Thus, when Congress restricts removal of an officer except "for cause," that provision allows removal only for the existing causes for presidential removal of executive officers at the time the removal provision was enacted. In 1913 and 1935, no such cause would have justified the President's purported removal of Governor Cook here.

In 1913, when Congress first enacted the "for cause" provision in the FRA, the only "causes" for presidential removal of executive officers in the U.S. Code were inefficiency, neglect, or malfeasance in office (INM). Amicus Br. of George Wharton Pepper, Appx. A, at 265-69, *Myers v. United States*, 272 U.S. 52 (1926); *see, e.g.*, Act of Feb. 4, 1887, § 11, 24 Stat. 383 (commissioners of the Interstate Commerce

Commission). Meanwhile, other statutes restricted the removal of certain non-Article III judges except "for cause." *See, e.g.*, Act of June 6, 1900, tit. I, ch. 1, § 10, 31 Stat. 325 (judges in the Alaska territory); Act of June 30, 1906, Pub. L. No. 59-403, § 7, 34 Stat. 816 (judges for the U.S. Court for China); Act of Mar. 19, 1906, Pub. L. No. 59-56, § 2, 34 Stat. 73 (judges for juvenile court in D.C). Given that such adjudicators must "exercise[] [their] independent judgment on the evidence before [them], free from pressures by the parties or other officials," *Butz v. Economou*, 438 U.S. 478, 513 (1978), Congress would have intended those "for cause" provisions to provide at least as much protection as the INM standard. The same is true of the Congress that enacted the FRA in 1913, since it viewed the Federal Reserve "as a distinctly nonpartisan organization whose functions are to be wholly divorced from politics." H.R. Rep. No. 63-69, at 43 (1913).

In 1935, when Congress reenacted the "for cause" provision, existing federal law contained only one additional "cause" (in a single statute) for presidential removal of executive officers beyond INM: "ineligibility." Act of June 21, 1934, Pub. L. No. 73-442, § 4, 48 Stat. 1194 (National Mediation Board). The primary "causes" for removal of executive officers thus remained INM. And "this Court's relevant precedents" in the era—of which Congress was presumptively "aware," *Bartenwerfer v. Buckley*, 598 U.S. 69, 80 (2023); *accord* Appl. 21-22—expressly equated INM provisions with "for cause" provisions.

Specifically, *Humphrey's Executor* was pending in this Court while Congress debated the Banking Act of 1935. *See* Gary Richardson & David W. Wilcox, *How*

Congress Designed the Federal Reserve To Be Independent of Presidential Control, 39 J. Econ. Persp. 221, 229 (2025). "Senators and witnesses discussed" *Humphrey's Executor*, and the Senate decided to "wait for the court to hand down its decision . . . before finalizing the language in the legislation." *Id.*; *see* App. 36a. The Court's decision upheld the constitutionality of a provision restricting removal of an FTC Commissioner except for INM and expressly described the provision as "precluding a removal except *for cause*." *Humphrey's Ex'r*, 295 U.S. at 631 (emphasis added); *see id.* at 629 (holding that Congress had power "to forbid [the FTC commissioner's] removal except for cause"). Three months later, Congress enacted the same "for cause" language that this Court had treated interchangeably with INM. Where, as here, "Congress employs a term of art 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *George v. McDonough*, 596 U.S. 740, 746 (2022) (citation omitted). Indeed, so strong is the assumption that a for-cause standard equates to the INM standard that this Court accepted that the INM standard protected the Securities and Exchange Commission—even though the agency's statute contained no express for-cause removal protection at all. *See Free Enter. Fund*, 561 U.S. at 496.

Here, the President's purported removal of Governor Cook was not based on INM or any other "cause" for removal of executive officers that existed in the U.S. Code in 1913 or 1935. The President stated that he had lost "confidence" in Governor Cook's "integrity," "competence," and "trustworthiness" based on her alleged "gross negligence" in private "financial transactions" before she assumed office. App. 29a. But the President does not and cannot contend that Governor Cook's alleged private,

pre-office conduct meets the INM standard—which focuses on an official's job performance—or that she is somehow ineligible to hold her position. Accordingly, the President did not remove Governor Cook "for cause." 12 U.S.C. § 242.[6]

b. The President erroneously accuses (at 29) Governor Cook of impermissible equating "for cause" with INM. But as explained above, "for cause" means for any recognized cause for presidential removal of executive officers existing at the time of the removal provision's enactment. *See supra* at 20. To be sure, inefficiency, neglect, and malfeasance in office were the primary—though not only—forms of "cause" for removal under federal law in 1935. But that does not mean that "for cause" is completely coextensive with INM. And even if "for cause" and INM substantially overlap, Congress "often . . . use[s] different words to denote the same concept." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012); *see, e.g.*, *Abuelhawa v. United States*, 556 U.S. 816, 821 (2009) (noting that different statutory terms have "equivalent meaning").

In using "for cause" to encompass INM, the 1935 Congress is in good company. Since *Humphrey's Executor*, this Court has often referred to INM and "for cause" equivalently. As noted, in *Free Enterprise Fund*, the Court described "the *Humphrey's Executor* standard of 'inefficiency, neglect of duty, or malfeasance in office'" as a "for-cause limitation[]" and looked to the INM standard in interpreting a statute that

[6] The President at times suggests that Governor Cook's alleged conduct would amount to "[f]raud'" or "felonies." Appl. 28 (citation omitted). But the President's letter purportedly terminating Governor Cook does not use the word "fraud," and he has elsewhere conceded that he had no basis to know Governor Cook's *mens rea* when he purported to remove her. D. Ct. Doc. 13, at 13.

was silent on removal. 561 U.S. at 487, 492. And in *Seila Law*, the Court observed that the Consumer Financial Protection Bureau director was "removable only for cause" where the relevant provision allowed removal "only for 'inefficiency, neglect of duty, or malfeasance in office.'" 591 U.S. at 207-08 (citation omitted).

The President emphasizes (at 29) this Court's statement in *Collins v. Yellen*, 594 U.S. 220 (2021), that the "for cause" removal restriction for the FHFA director "appears to give the President more removal authority" than statutes specifying particular bases for removal. *Id.* at 255. But the Court had no occasion to definitively interpret what causes that particular statute encompassed because it held the director must be removable at will. *See id.* at 256. And while various statutes delineated causes for removal beyond INM when Congress created the FHFA in 2008, *see* App. 41a, that was not the case in 1913 or 1935. That distinct legislative backdrop governs the proper interpretation of "for cause" in Section 242 for Federal Reserve Board governors. *See Monsalvo Velázquez v. Bondi*, 145 S. Ct. 1232, 1245 n.5 (2025) ("different statutes passed at different times against different regulatory backdrops may bear different meanings"). Indeed, in light of the Federal Reserve's special tradition of independence, it would be anomalous to construe Section 242's "for cause" restriction as giving the President *more* removal authority over Federal Reserve Board governors than members of other agencies with express INM protections.

The President also claims (at 30) that restricting removal to in-office conduct alone would "def[y] common sense" and "lead[] to absurd results." But this case does not present the scope of for-cause removal authority for an official convicted of (or

even indicted for) a serious offense. As the district court recognized, an incarcerated official would struggle to carry out his in-office duties, App. 44a-45a, which could satisfy the INM standard under its plain terms and would not be an "atextual exception[]" to that requirement, Appl. 31. In any event, Congress has enacted dozens of statutes across decades restricting removal to INM—which the President does not dispute is limited to in-office conduct—without absurd results ensuing. Moreover, Congress possesses the impeachment power, U.S. Const. art. I, §§ 2-3, which it has used to remove Senate-confirmed officeholders immune from presidential removal who were convicted of crimes, *see Nixon v. United States*, 506 U.S. 224, 226 (1993).[7]

2. The President's interpretation of "for cause" would destroy the Federal Reserve's historic independence.

For his part, the President offers a boundless interpretation of "for cause" that is scarcely distinguishable from "at will." Throughout the Federal Reserve's 111-year history, no president, Federal Reserve governor, or court has construed the for-cause protection in the President's proposed manner. Accepting that interpretation here

[7] To the extent Section 242's "for cause" provision could ever allow the President to remove a governor for pre-office conduct, it would impose an exceedingly high bar that the President has not satisfied. At common law, an executive could remove an officer for only one type of offense that had "no immediate relation to his office"—a crime "so infamous a nature[] as to render the offender unfit to execute any public franchise." *Rex v. Richardson*, 1 Burr. 517, 538-39, 97 Eng. Rep. 426, 438 (K.B. 1758). And to remove an officer for such an offense, it must have been "established by previous conviction by a jury, according to the law of the land." *Id.* at 439. In the years leading up to enactment of the "for cause" provision here, numerous state courts adopted that standard. *See, e.g.*, *Richards v. Town of Clarksburg*, 4 S.E. 774, 779 (W. Va. 1887); *Croly v. Bd. of Trs. of Sacramento*, 51 P. 323, 324 (Cal. 1897). Thus, if pre-office conduct could ever present a "cause" for removal, such cause would not exist here.

would eviscerate the Federal Reserve's longstanding independence, upend financial markets, and create a blueprint for future presidents to direct monetary policy based on their political agendas and election calendars.

The President maintains (at 28-29) that "the ordinary meaning of 'cause' comfortably covers any misconduct, whether during the officer's term or before it, that, in the President's judgment, renders the officer unfit to serve." But while many words take their meaning from ordinary speech, here the relevant interpretive principle is that "terms of art" are given their "technical," "specialized meaning[s]." Scalia & Garner, *supra*, at 73. As explained above, "for cause" is a term of art that has long been linked to INM as the paradigmatic legally recognized cause for removal of executive officers existing when Section 242 was enacted. Whatever would be true in other contexts, there would be no point in recognizing the Federal Reserve's singular history and structure, only to reduce governors to de facto at-will officers by virtue of a diluted standard of "cause."

The President also cites *Black's Law Dictionary*, which defines "for cause" as "relating to the conduct, ability, fitness, or competence of the officer." Appl. 25-26. But that inapposite definition cannot be squared with the President's own concession (at 31) that "mere policy disagreement" does not constitute cause. After all, the President could simply assert that, in his "judgment," a governor who refuses to lower interest rates lacks "competence" to serve or has engaged in "conduct" the President deems imprudent. *Id.* at 26, 29. The President's supposed "policy disagreement" constraint is thus irreconcilable with his purported definition of "for cause."

Moreover, the authority that *Black's Law Dictionary* cites for its definition supports Governor Cook, not the President. Specifically, the lead case cited construes a "for cause" removal restriction to provide for service "during good behavior, or so long as the appointee is competent to discharge the duties of the office, or efficient in the performance of them." *Bd. of St. Comm'rs*, 53 A. at 924. That case further emphasizes that "where the removal must be for cause, the power of removal can only be exercised when charges are made against the accused, and after notice, with a reasonable opportunity to be heard before the officer or body having the power to remove." *Id.* at 925 (citation omitted). Numerous other pre-1913 state cases interpret the term "for cause" in the same manner. *See, e.g.*, *Speed*, 57 N.W. at 407 ("[t]he misconduct for which [an] officer may be removed" under a for-cause provision "must be found in his act and conduct in the office from which his removal is sought . . . and affect the proper administration of the office"); *Missouri ex rel. Ragsdale v. Walker*, 68 Mo. App. 110, 119 (1896) (same).

The President also cites (at 26) Marriner Eccles' congressional testimony referencing removal of governors "for dishonesty or improper conduct." *Banking Act of 1935: Hearings Before the H.R. Comm. on Banking and Currency on H.R. 5357*, 74th Cong., 1st Sess. 275 (1935). It is unclear whether Eccles meant dishonesty or improper conduct *in office*. Regardless, he acknowledged that he was not "in a position to say what the cause [for removal] would be" and that "during the life of the Federal Reserve Board of over 20 years no member of the Board has ever been removed for cause." *Id.*

Nor does any precedent of this Court support the President's reading of "for cause." He cites *Wiener*, *Morrison v. Olson*, 487 U.S. 654 (1988), and *Free Enterprise Fund*, Appl. 26, but those decisions did not turn on or definitively construe the meaning of "for cause." Nothing in those decisions suggests that the "for cause" standard licenses the President to remove officers based on uncharged allegations of what he deems "gross[ly] negligen[t]" private, pre-office conduct. App. 29a.

The President further contends (at 26) that his reading of "for cause" to remove a governor is necessary to avoid "serious constitutional doubts." But in *Wilcox*, the Court recognized that the Federal Reserve's "unique[] structure[]" and "quasi-private" status distinguish it from other agencies when assessing "the constitutionality of for-cause removal protections." 145 S. Ct. at 1415. That recognition would have little meaning if a "for cause" restriction gave the President unreviewable discretion to simply deem any governor "unfit to serve" based on anything he deems "misconduct." Appl. 28-29. Such a view would effectively mean that governors serve at the President's pleasure, even though "'for cause' . . . does not mean the same thing as 'at will.'" *Collins*, 594 U.S. at 256 (alteration in original) (citation omitted).

Finally, the President's reading would disregard the Federal Reserve's "distinct historical tradition." *Wilcox*, 145 S. Ct. at 1415. Many presidents have disagreed with the Federal Reserve's monetary-policy choices. Caroline W. Tan, *What the Federal Reserve Board Tells Us About Agency Independence*, 95 N.Y.U. L. Rev. 326, 334-35 (2020). Any of those presidents could have encouraged his subordinates to investigate the governors whose votes he found disagreeable. "Because men are not

angels," those investigations would surely have provided some grounds—however flimsy, however dated, however contrived—to accuse governors of misconduct and remove them from office. *Gundy v. United States*, 588 U.S. 128, 155 (2019) (Gorsuch, J., dissenting). Yet in more than a century, no president has used that "highly attractive power"—which gives strong "reason to believe that the power was thought not to exist." *Printz v. United States*, 521 U.S. 898, 905 (1997).

This case vividly illustrates how the President's boundless reading would profoundly threaten the Federal Reserve's independence. The President purported to remove Governor Cook only after repeatedly criticizing her and her colleagues for failing to make monetary-policy choices that would prioritize short-term growth over long-term stability. *See supra* at 6. The President based his decision on a referral by a subordinate, who openly sought to alter the composition of the Federal Reserve Board by alleging that multiple governors whose policy decisions sometimes ran counter to the President's preferences—including Chair Powell—committed wrongdoing. *See supra* at 6-7. And the President rushed to try to effectuate Governor Cook's removal—calling on her to resign or be fired just thirty minutes after publication of the referral—without waiting to see whether the facts supported his claim, *see supra* at 7, much less whether members of his Cabinet (including his Treasury Secretary) could be accused of the same or analogous alleged wrongdoing.[8] This purported

[8] *See* Anthony Cormier & Zachary R. Mider, *Bessent, Like Fed Governor, Made Contradictory Mortgage Pledges*, Bloomberg (Sept. 17, 2025), https://perma.cc/759X-4WYN; Robert Faturechi et al., *Trump Is Accusing Foes With Multiple Mortgages of Fraud. Records Show 3 of His Cabinet Members Have Them*, ProPublica (Sept. 4, 2025), https://perma.cc/37SU-HGDK.

removal exemplifies why Congress meant "for cause" to be a meaningful constraint, not a trivial one.

C. Governor Cook was deprived of legally required process.

Governor Cook's purported removal was unlawful for the additional and sufficient reason that she did not receive the requisite process. Both the for-cause-removal statute and the Fifth Amendment entitle her to notice and a meaningful opportunity to contest the claims against her, which she did not receive here.

1. Governor Cook is to serve a fourteen-year term "unless sooner removed for cause by the President." 12 U.S.C. § 242. Under this Court's precedents, that statutory language entitles her to notice and a hearing prior to removal.[9]

The critical cases are *Reagan* and *Shurtleff v. United States*, 189 U.S. 311 (1903). In *Reagan*, the Court recognized a "rule" that "where causes of removal are specified by Constitution or statute, as also where the term of office is for a fixed period, notice and hearing are essential." 182 U.S. at 425. In *Shurtleff*, the Court reiterated that rule, writing (in the context of an INM statute) that "if the removal is sought to be made for those causes, or either of them, the officer is entitled to notice and a hearing." 189 U.S. at 314. This hearing requirement ensures that a president actually removes an officer for the causes specified by statute: "[I]f a removal is made without such notice, there is a conclusive presumption that the officer was not

[9] The district court did not reach this argument given its determination that Governor Cook was "likely to succeed on the merits of her other claims." App. 31a n.3. But Governor Cook may defend the preliminary injunction on any ground raised below. *See, e.g.*, *Murr v. Wisconsin*, 582 U.S. 383, 404 (2017). Thus, the President is not likely to succeed on his appeal without overcoming the statutory-process hurdle.

removed for any of those causes, and his removal cannot be regarded as the least imputation on his character for integrity or capacity." *Id.* at 317.

Shurtleff and *Reagan* reflect a background principle at common law that "[a] removal, without hearing the party removed, is bad." *Bagg's Case*, 11 Co. Rep. 93a, 94a, 77 Eng. Rep. 1271, 1272 (K.B. 1615) (Coke, C.J.) (syllabus); *see* 11 Co. Rep. at 99a-00b, 77 Eng. Rep. at 1279-80. Where an appointment "is made for definite term or during good behavior, and the removal is to be for cause," one treatise explained, "it is now clearly established by the great weight of authority that the power of removal can not, except by clear statutory authority, be exercised without notice and a hearing." Floyd R. Mechem, *A Treatise on the Law of Public Offices and Officers* § 454, at 287 (1890). Instead, "the existence of the cause . . . must first be determined after notice has been given to the officer of the charges made against him, and he has been given an opportunity to be heard in his defense." *Id.*; *see* Eugene McQuillin & Ray Smith, *Law of Municipal Corporations* § 575, at 426 (2d ed. 1940) (same). State cases from the relevant era articulate the same rule. *Ham v. Bd. of Police of Boston*, 7 N.E. 540, 543 (Mass. 1886); *Biggs v. McBride*, 21 P. 878, 881 (Ore. 1889); *Love*, 39 N.J.L. (10 Vroom) at 21-22. As one court put it, "[t]he great weight of authority supports the rule that, when an officer is appointed for a specified term . . . and provision is made generally for removal, or for grounds specifically stated, in the absence of a clear mandate of statute to the contrary, notice and opportunity must be given the officer to be heard in his own defense before his removal becomes final." *Bryan v.*

Landis, 142 So. 650, 651-52 (Fla. 1932).[10]

Contemporary jurists have recognized that these authorities require notice and a hearing when a president seeks to remove an official with for-cause-removal protections. As Justice Breyer explained, "we have previously stated that *all* officers protected by a for-cause removal provision and later subject to termination are entitled to 'notice and [a] hearing.'" *Free Enter. Fund*, 561 U.S. at 536 (Breyer, J., dissenting) (citing *Reagan* and *Shurtleff*). Or, as Judge Griffith put it, "[i]t appears well-settled that an officer with removal protection is entitled to notice and some form of a hearing before removal." *PHH Corp. v. CFPB*, 881 F.3d 75, 135 (D.C. Cir. 2018) (Griffith, J., concurring) (citing *Reagan* and *Shurtleff*). The President has offered no persuasive basis to disregard this understanding of for-cause-removal provisions.

To be sure, Congress has sometimes expressly provided for notice and a hearing upon the removal of officials with for-cause protections. *See, e.g.*, 29 U.S.C. § 153(a); *cf.* Appl. 14. But that is because Congress often legislates "in a more general excess of caution" to "'remov[e] any doubt' as to things not particularly doubtful in the first instance." *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416, 435

[10] Once more, the President misconstrues state precedents. *See* Appl. 13. His first cited case—*In re Carter*, 74 P. 997 (Cal. 1903)—recognizes "that in the great majority of the decided cases the power of removal could be exercised . . . only by a proceeding which involved a notice to the officer and a hearing of a charge." *Id.* at 318. It reached a different conclusion only because the statute at issue specifically referred to "written notice" and not to a hearing. *Id.* at 320. The other cases likewise do not involve statutes authorizing executive removals simply "for cause." *See Trimble*, 34 P. at 984 ("for cause to be stated in writing"); *New York ex rel. Gere v. Whitlock*, 47 Sickels 191, 197 (N.Y. 1883) ("for any cause deemed sufficient to himself"); *Gear*, 3 Dutch. at 286 ("the council, for cause").

(2018) (alteration in original) (citation omitted). Congress's "hyper-vigilant" approach in certain statutes, *id.*, does not suggest the absence of a default notice and hearing rule in "for cause" provisions.

Even if this Court's case law did not speak directly to the question, the "canon of constitutional avoidance" would support reading the statute to give Governor Cook a notice and hearing right. *Clark v. Martinez*, 543 U.S. 371, 381 (2005). That canon "is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Id.* Governor Cook's interpretation of the for-cause statute is "reasonable"—indeed, it is the best one, for the reasons already explained—and it avoids the need to consider whether the President's refusal to afford proper notice and a hearing also violated the Due Process Clause.

2. If the Court reaches the constitutional issue, this Court's due-process cases likewise require notice and a hearing. At the Founding, as the President admits, "English courts treated offices as property." Appl. 12; *see* 2 William Blackstone, *Commentaries on the Law of England* 36 (1766). That understanding carried into early American practice: *Marbury*, for instance, found that once his commission was signed, William Marbury had a "vested legal right" to serve as justice of the peace. 5 U.S. (1 Cranch) at 162; *see* Jed Handelsman Shugerman, *Venality: A Strangely Practical History of Unremovable Offices and Limited Executive Power*, 100 Notre Dame L. Rev. 213, 282-85 (2024) (explaining that the First Congress recognized property interests in offices). In line with that history, this Court has "held that a public

official with 'for cause' protection from removal has a constitutionally protected interest in her position." App. 2a (Garcia, J., concurring) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538-39 (1985)). Such officials are entitled to "some form of pretermination hearing" to "present [their] side of the story." *Loudermill*, 470 U.S. at 542 (citation omitted).[11]

The President musters no persuasive argument to dispute the original public meaning of the Due Process Clause. He points to no case suggesting that, as an original matter, Governor Cook lacks a property interest in her office. Instead, he cites post-Founding cases that either concern a state election dispute over an office without for-cause protection, *see Taylor v. Beckham*, 178 U.S. 548 (1900), or that stand for the proposition that Congress can alter an official's statutory removal protection, *see Crenshaw v. United States*, 134 U.S. 99 (1890). That latter proposition is not in dispute here: Property interests "stem from an independent source"—frequently, a statute—and so Congress often has latitude to take away the same interests that it creates. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *contra* Appl. 16. But when Congress validly creates for-cause protections, it establishes a property right that the President may not eliminate without due process.[12]

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[11] The President asks (at 15) a series of rhetorical questions about what a hearing might look like. He helps answer those questions two pages later (at 17), citing to an example of "notice and a hearing" prior to a presidential removal. *See* Aditya Bamzai, *Taft, Frankfurter, and the First Presidential For-Cause Removal*, 52 U. Rich. L. Rev. 691, 729-37 (2018).

[12] The President's state-court cases (at 12-13) interpret the Fourteenth Amendment, not the Fifth. The 77 years of republican government between those amendments may have changed the public's understanding of property rights in office and thus informed how the Fourteenth Amendment applies to state officials; that

The President's reliance on Article II (at 13-15) is misplaced in the circumstances of this case. Article II generally prohibits Congress from limiting a president's power to remove officers of the United States, *see Myers v. United States*, 272 U.S. 52, 163-64 (1926), and so the Constitution prevents most principal officers from enjoying the for-cause protection needed to create a due-process right. But where the for-cause protection constitutionally exists—and the President pointedly does not assert a right to remove Governor Cook without cause, *see* Appl. 2 n.1—the due process protections naturally follow without raising any Article II problems. At bottom, the President's position just ignores what this Court has already recognized: The Federal Reserve, a "uniquely structured, quasi-private entity," is different. *Wilcox*, 145 S. Ct. at 1415. Thus, Governor Cook is differently situated from other principal officers and similarly situated to those government officials whom the President may not remove except for cause.

3. The President is also unlikely to succeed in arguing (at 17-19) that his purported removal of Governor Cook gave her the process she is due, much less that a hearing would be pointless. To start, the argument is forfeited, because the President "d[id] not dispute" in the court of appeals "that [he] provided Cook no meaningful notice or opportunity to respond." App. 7a (Garcia, J., concurring).

In any event, the President strains reality in stating that Governor Cook received "notice of the charges" against her and "an opportunity to present [her] side of

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question is not presented here. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 82 (2022) (Barrett, J., concurring).

the story." Appl. 17-18 (quoting *Loudermill*, 470 U.S. at 546). The President demanded Governor Cook's resignation on social media less than thirty minutes after the publication of Director Pulte's referral letter. *See supra* at 7. And he purported to remove her through another post a mere five days later. At no point did he invite a response to the allegations—to the contrary, his public comments made clear that he was not interested in hearing Governor Cook's response and that she should either "resign" or be "fire[d]." *Supra* at 7. The President cites no authority suggesting that this sort of fact pattern could possibly satisfy due process.

The President also errs in questioning the utility of a hearing here. He concedes that the "right to a hearing does not depend on demonstration of certain success." Appl. 18-19 (citation omitted). And he acknowledges that all Governor Cook must show is "the existence of a material factual dispute." *Id.* at 19.

There is clearly such a factual dispute in this matter. Governor Cook has consistently maintained that the allegations against her are "unsubstantiated, untested, and unaddressed," D. Ct. Doc. 17, at 13-14, and indeed those allegations are refuted by the public record, *see supra* at 12. To be sure, the breakneck pace and appellate posture of this litigation has not yet permitted her to provide a full-throated rebuttal of the President's false accusations. But when she is given a proper forum to address the allegations—a forum that the President's hasty action and this case's emergency posture have thus far not allowed—she intends to refute the claims against her and demonstrate the errors of the President's rush to judgment here.

D. The district court's preliminary injunction was proper.

The President's final merits contention (at 31) is that "the district court's preliminary injunction . . . exceeded its remedial authority." That is incorrect.

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025) (citation omitted). And the President's own cited treatise demonstrates that a court sitting in equity has the same power to preserve the status quo in the context of an attempted removal. As it explains, "[w]hile . . . courts of equity uniformly refuse to interfere by the exercise of their preventive jurisdiction to determine questions relating to the title to office, they frequently recognize and protect the possession of officers *de facto*." 2 James L. High, *Treatise on the Law of Injunctions* § 1315, at 866 (2d ed. 1880). In particular, "the actual incumbents of an office may be protected, pending a contest as to their title, from interference with their possession, and with the exercise of their functions." *Id.*; *see, e.g.*, *Reemilin v. Mosby*, 26 N.E. 717, 718 (Ohio 1890). "[T]he granting of an injunction in such case in no manner determines the questions of title involved, but merely goes to the protection of the present incumbents." 2 High, *supra*, § 1315, at 867.

That statement of equitable power fits this case perfectly. The district court did not "reinstate[]" Governor Cook. Appl. 33. It did not need to, because she has consistently received her salary and exercised her duties since the purported removal, including by voting at the September FOMC meeting. *See supra* at 8. Nor did the district court seek, in this preliminary, equitable posture, to "determine[] the

questions of title involved." 2 High, *supra*, § 1315, at 867. That question will await final judgment, at which point Governor Cook's requests for legal relief (including declaratory relief and mandamus) will render moot the President's equitable arguments. *See* Appl. 34. Instead, the district court barred the Federal Reserve Board and Chair Powell "from effectuating in any manner Plaintiff's removal from her position as a member of the Board of Governors" until she could try her case to judgment. App. 23a. Or, in the language of the President's cited treatise, the district court simply "protected" Governor Cook "from interference with [her] possession, and with the exercise of [her] functions." 2 High, *supra*, § 1315, at 866. That relief is proper.

The fact that Governor Cook has not been removed distinguishes this case from other removal cases to come to the Court in recent months. In those cases, the President's removal took effect immediately due to the actions of his chosen subordinates. *See, e.g.*, *Wilcox*, 145 S. Ct. at 1415.[13] Here, by contrast, the Federal Reserve Board's independence stands as an obstacle to implementing Governor Cook's removal. Granting the President relief and altering the status quo would thus essentially prejudge the question of the Federal Reserve Board's independence, contradicting this Court's recent reaffirmance of the Board's unique status.

III. The equitable factors cut sharply against a stay.

The President's application also falls short on the equitable factors.

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[13] Because Governor Cook seeks only to preserve the status quo here, her case also presents distinct remedial questions from *Trump v. Slaughter*, No. 25-332, which involves a final judgment reinstating a removed official.

1. The President will not be irreparably harmed absent a stay. As noted, the Federal Reserve is "uniquely structured" in a "distinct historical tradition" of independence, *see Wilcox*, 145 S. Ct. at 1415, and "the government agrees that the President may not direct the Federal Reserve's policy-making decisions," App. 8a (Garcia, J., concurring); *see* Appl. 2 n.1. That independence distinguishes this case from all others in which the President claimed harm from an official continuing to wield authority and exercise policy discretion over his objection. *Cf.* Appl. 36 (citing *Wilcox*, 145 S. Ct. at 1415). Because the President does not control the Federal Reserve, he suffers no irreparable harm from Governor Cook's "continu[ing] to exercise" her duties while the appeal proceeds. *Wilcox*, 145 S. Ct. at 1415.

In response, the President repeats his various charges against Governor Cook, contending that "the American people" lack "confidence in her integrity" and so her "continued service" is "harming the Board." Appl. 36-37 (citations omitted). But those claims are sharply contested, and the timing of the President's filing in this Court strongly cuts against his theory. Although the President asked the D.C. Circuit to rule by September 15, before the September Federal Open Market Committee meeting, D.C. Cir. Mot. 4, he did not ask this Court for relief until after the FOMC meeting concluded. Having chosen to delay his stay request by several days—perhaps because he understood the chaos that removing Governor Cook before the FOMC meeting could create in the financial markets—he cannot now establish any need for immediate relief. Against this backdrop, the President's request to alter the status quo now through an emergency stay would *create* a "disruptive effect," not

avoid one. *Wilcox*, 145 S. Ct. at 1415; *see* App. 9a (Garcia, J., concurring).

2. Finally, the balance of the equities and the public interest decisively favor preserving the status quo and keeping the district court's preliminary injunction in place.

The American economy depends on Federal Reserve independence. "[T]hreats that policy makers won't be able to serve out their terms of office" can "lead to unstable financial markets and worse economic outcomes." Paul Volcker, Alan Greenspan, Ben Bernanke & Janet Yellen, *America Needs an Independent Fed*, Wall St. J. (Aug. 5, 2019), https://perma.cc/9UP4-HGAK. Ousting Governor Cook on an interim basis, while her claims are pending in district court, could have dire repercussions for the financial markets. It could even raise the intolerable possibility that another governor would be confirmed during the pendency of this litigation, requiring a court to decide between two claimants to the same seat. *See* D.C. Code § 16-3501 (*quo warranto* statute).

That chaos and market disruption would irreparably harm Governor Cook and disserve the public interest. In this "genuinely extraordinary situation," Governor Cook has a weighty interest in avoiding a change to the status quo that would permit her ouster from the Federal Reserve Board. *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974). And the public is best served by stability, not needless turmoil, in the stewardship of our Nation's central bank.

CONCLUSION

The Court should deny the President's application for a stay.

Respectfully submitted,

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