No. 25A662

In the Supreme Court of the United States

DAREN K. MARGOLIN, APPLICANT

v.

NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

REPLY IN SUPPORT OF APPLICATION TO STAY THE MANDATE

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TABLE OF CONTENTS

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A stay of the mandate is amply warranted to preserve this Court's ability to swiftly and summarily reverse the court of appeals' indefensible decision below. The role of courts is to "'call balls and strikes,'" not to take "a turn at bat." *Clark* v. *Sweeney*, 2025 WL 3260170, at *1 (U.S. Nov. 24, 2025) (per curiam) (citation omitted). Yet here, days after being summarily reversed in *Sweeney*, the Fourth Circuit took another improper turn at the plate by refusing to stay the mandate in a case with an even more egregious party-presentation violation.

This time, the Fourth Circuit rushed to give effect to a ruling that had spontaneously adopted an argument that respondent affirmatively *waived*—namely, the unheard-of assertion that the Civil Service Reform Act of 1978 (CSRA), Pub. L. No. 95-454, 92 Stat. 1111, loses its otherwise pellucid preclusive effect if a lack of a quorum at the Merit Systems Protection Board (MSPB) or the lack of removal protections for the MSPB and Special Counsel persuades a court that the CSRA is not "function[ing] as intended." Appl. App. 16a. Until the decision below, no court had entertained the theory that district courts should undertake putative fact-finding in each case about whether the CSRA is working the way Congress would have wanted in 1978—not

least because that theory contravenes this Court's decisions in *Elgin* v. *Department of the Treasury*, 567 U.S. 1 (2012), and *United States* v. *Fausto*, 484 U.S. 439 (1988). Statutory meaning is fixed; it does not constantly refresh based on "factual developments" that raise "questions" about an agency's "functionality." Opp. 22. Once the panel correctly recognized that this case involved federal-personnel claims within the MSPB's purview, the case should have been open and shut.

Respondent offers no compelling response to those two independent grounds for summary reversal. As to party presentation, respondent contends that ordinary party-presentation rules do not apply to arguments *for* subject-matter jurisdiction. Many precedents of this Court refute that erroneous premise. Respondent also downplays the Fourth Circuit's novel check-for-functionality test as consistent with respondent's arguments below—glossing over respondent's undisputed, repeated concessions that Congress's intent to channel claims "is manifest in the CSRA" such that the CSRA's general preclusive effect is not "at issue here." Resp. C.A. Br. 17; D. Ct. Doc. 72, at 22 (Feb. 15, 2023). As for the merits, respondent weakly defends the Fourth Circuit's approach to CSRA preclusion by relying on irrelevant legislative history. Respondent ignores the text Congress enacted and this Court's reasoning in *Fausto* and *Elgin*—all of which establish that Congress created the CSRA as a comprehensive, exclusive scheme without regard to whether MSPB members or the Special Counsel are removable at will. And respondent does not dispute that one of the Fourth Circuit's supposedly material developments—the MSPB's lack of quorum—no longer exists.

This Court should intervene to protect its ability to correct those brazen departures from this Court's precedents. The court of appeals' amorphous, fact-intensive "functioning-as-intended" standard risks indefinitely delaying the CSRA's proper op-

eration within the Fourth Circuit and threatens countless other administrative-review schemes. Meanwhile, further district-court proceedings risk mooting this appeal such that the government would have to wait for some "other opportunit[y] to challenge the panel's holding." Opp. 30. Yet respondent asks (Opp. 25-27) this Court to await a remand, discovery, fact-finding, and appeal—and to wait for the Court to resolve the constitutionality of removal restrictions for the MSPB and Special Counsel—just to reject the Fourth Circuit's egregious errors. The answer to such prolific contravention of the Court's precedents should not be to wait and see just how much instability will ensue. Instead, this Court should stay the mandate to facilitate its swift and orderly review of the government's impending petition for a writ of certiorari and summarily reverse.

A. The Court Of Appeals Disregarded The Party-Presentation Principle

Respondent does not dispute the predicates of the party-presentation violation here: (1) the Fourth Circuit granted relief on a novel theory that no party advanced—that the whole CSRA channeling scheme may be inoperative until further district-court fact-finding ascertains whether the scheme currently functions as Congress supposedly intended—based on post-oral argument factual developments that no party raised; (2) respondent affirmatively waived any argument that the CSRA does not generally preclude district-court jurisdiction over federal personnel claims; (3) the Fourth Circuit rejected respondent's only actual argument—that its specific claims fell outside the CSRA's channeling scheme; and (4) the court provided the parties no opportunity to address its novel theory. Appl. 15-16. This Court unanimously vacated or reversed judgments involving less acute party-presentation violations in *United States* v. *Sineneng-Smith*, 590 U.S. 371 (2020), and *Clark* v. *Sweeney*, 2025 WL 3260170 (Nov. 24, 2025) (per curiam). That same course is overwhelmingly likely

here. Respondent's rejoinders are unpersuasive.

First, respondent incorrectly contends (Opp. 14-16) that the party-presentation principle does not apply to arguments in *favor* of subject-matter jurisdiction. But, as noted, Appl. 17, this Court held that an Article III standing argument was "forfeited" in *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 434 n.6 (2021), and Justice Thomas observed last Term that "arguments for jurisdiction are not exempt from principles of party presentation and forfeiture," *Monsalvo Velázquez* v. *Bondi*, 604 U.S. 712, 743 (2025) (Thomas, J., dissenting). Respondent dismisses (Opp. 16-17) those authorities as insufficiently "weight[y]." But the proposition is well settled: "Although a party cannot forfeit a claim that [a court] lack[s] jurisdiction, it can forfeit a claim that [the court] possess[es] jurisdiction." *Scenic Am., Inc.* v. *United States Dep't of Transp.*, 836 F.3d 42, 53 n.4 (D.C. Cir. 2016). "[W]hile federal courts must ensure that they do not *lack* subject-matter jurisdiction, even if the parties fail to identify any jurisdictional defect, there is no corresponding obligation to *find and exercise* subject-matter jurisdiction on a basis not raised by the parties." *Behrens* v. *JPMorgan Chase Bank, N.A.*, 96 F.4th 202, 206-207 (2d Cir. 2024); see *id.* at 208 (collecting cases).

Accordingly, in the standing context, this Court has carefully distinguished between the situation where jurisdiction "has erroneously been assumed below" (a question the Court is "obliged to examine * * * *sua sponte*") and the situation where jurisdiction "has been *denied* below" (something "we do not examine"). *Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 110 (2001) (per curiam). In *California* v. *Texas*, 593 U.S. 659 (2021), for example, this Court declined to consider the dissent's "novel theory" of standing on party-presentation grounds. *Id.* at 674; accord *id.* at 683-685 (Thomas, J., concurring) (documenting forfeiture). While the dissenters vigorously disputed whether that theory was preserved, all nine Justices took for granted that

ordinary forfeiture and party-presentation rules govern arguments in favor of subject-matter jurisdiction, see *id.* at 703-705 (Alito, J., dissenting). And here, respondent did not just forfeit but affirmatively *waived* the argument the Fourth Circuit adopted—making the party-presentation violation even clearer.

Respondent cites no contrary precedent of this Court. Respondent invokes abstention cases recognizing courts' "virtually unflagging obligation" to exercise jurisdiction. Opp. 15 (quoting *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976)). But that "unflagging obligation" does not displace the ordinary bounds of the adversarial process, let alone address the more specific cases regarding forfeitures of arguments in favor of jurisdiction.

Respondent also cites (Opp. 15-16) several inapt court-of-appeals cases. In one, the court ordered supplemental briefing on standing, then agreed with a theory raised in a supplemental brief that relied on an intervening Supreme Court decision. *Schoenthal* v. *Raoul*, 150 F.4th 889, 905 n.12 (7th Cir. 2025). In another, the court recognized its obligation to permit "'the parties to frame the issues for decision'" and adopted a theory of standing that was consistent with the plaintiff's core theory even if not "fully flesh[ed] out." *In re Financial Oversight & Mgmt. Bd. for P.R.*, 110 F.4th 295, 315 (1st Cir. 2024) (quoting *Greenlaw* v. *United States*, 554 U.S. 237, 243 (2008)). In a third, no party had raised standing, but the court appropriately assured itself of jurisdiction before reaching the merits. *K.P.* v. *LeBlanc*, 627 F.3d 115, 122-124 (5th Cir. 2010). Those cases do not adopt a categorical exception to ordinary waiver and forfeiture principles. Nor do those cases support the Fourth Circuit's tack below of transforming this appeal from one about whether the CSRA covers respondent's particular claims into a soup-to-nuts reexamination of the CSRA's functionality.

Second, respondent argues (Opp. 17) that the court of appeals' theory that the

CSRA may not preclude *any* claims "was consistent" with its argument that the CSRA does not preclude *its* claims. Belying any consistency, however, respondent conceded below that it was *not* challenging the CSRA's general preclusive effect and was simply disputing the CSRA's application to its particular claims. Resp. C.A. Br. 13, 17; D. Ct. Doc. 72, at 22; see Appl. 15-17. Regardless, respondent's fleeting effort (Opp. 18-19) to distinguish the court of appeals' approach from the decisions this Court rejected in *Sineneng-Smith* and *Sweeney* fails. *Sineneng-Smith* is particularly on point: There, a court of appeals transformed an as-applied First Amendment challenge into a facial one. 590 U.S. at 374-375. Here, the court of appeals transformed respondent's dispute about the CSRA's preclusive effect as applied to *its* claims into a challenge to the CSRA's preclusive effect for *all* claims. That as-applied-to-facial reframing is precisely what *Sineneng-Smith* rejected as "well beyond the pale." *Id.* at 380.

Further, the error here is arguably worse than the Fourth Circuit's party-presentation violation in *Sweeney*, and not just because the Fourth Circuit made the same error again. There, the prisoner "identified many of the[] failures" on which the court of appeals ultimately relied; he just framed them as errors by defense counsel, not by the court. *Sweeney* v. *Graham*, 2025 WL 800452, at *8 (4th Cir. Mar. 13, 2025). Here, respondent's actual argument—that its free-speech and vagueness claims were not the type of claims that Congress channeled to the MSPB, see Opp. 31-36—bears no resemblance to the court of appeals' proposed inquiry into the CSRA's general "functionality." Appl. App. 16a. And respondent undisputedly waived the argument that the court adopted. Appl. 15.

B. The Court Of Appeals Disregarded Controlling Precedent

1. A stay of the mandate is independently warranted because the Court is also likely to summarily reverse the court of appeals for defying *Elgin* v. *Department*

of the Treasury, 567 U.S. 1 (2012), and *United States* v. *Fausto*, 484 U.S. 439 (1988), and disrupting the CSRA's preclusive effect. As those cases hold, "the CSRA provides the exclusive avenue to judicial review when a qualifying employee challenges an adverse employment action." *Elgin*, 567 U.S. at 5. Respondent's members are undisputedly CSRA-covered personnel. Appl. App. 92a-93a. And they challenge what the court of appeals correctly held was a CSRA-covered personnel action. *Id.* at 23a-25a. Under this Court's precedents, that should have ended the inquiry: this case cannot proceed in district court and must proceed before the MSPB. Appl. 18-19.

Respondent now agrees (Opp. 23) with the court of appeals that *Elgin* and *Fausto* apply only when the Special Counsel and "MSPB [a]re functioning as Congress intended," which respondent now contends cannot happen if the President can remove those actors at will. Respondent insists (Opp. 24) that "[t]he court of appeals did not find that the CSRA's meaning had changed," but "that Congress had *always* intended the statute to withdraw district-court jurisdiction only if the agencies provided employees with adequate and independent review of their claims." But again, that was not respondent's theory below. Appl. 15-17. And respondent does not dispute that half of the Fourth Circuit's theory—that the MSPB's lack of a quorum might have precluded the CSRA from functioning as Congress intended—no longer holds, since the MSPB now has a quorum. Appl. 10 n.*. Respondent's defense of the decision below (Opp. 21-22) thus rests on the notion that removal protections are so central to the CSRA's scheme that it currently lacks preclusive effect—and needs further district-court investigation—because this Court issued an interim order allowing the removal of one MSPB member to take effect; the D.C. Circuit upheld that removal last Friday, after the court of appeals denied rehearing en banc; and the Office of Special Counsel is currently headed by an acting appointee.

That theory borders on the absurd. This Court has never suggested that the CSRA precludes district-court jurisdiction only so long as the MSPB or Special Counsel actually operate in certain ways or enjoy tenure protections. Instead, as respondent seems to recognize, *Elgin* and *Fausto* rely on the CSRA's "elaborate," "painstaking" textual framework for reviewing federal employment actions, which evinces Congress's intent to foreclose suit in district court. Opp. 2, 23 (quoting *Fausto*, 484 U.S. at 443; then quoting *Elgin*, 567 U.S. at 11). That framework is just as elaborate and painstaking as when Congress enacted the CSRA in 1978. This Court's precedents are therefore "directly on point" and bind the lower courts as a matter of vertical stare decisis. Appl. App. 49a (Quattlebaum, J., dissenting from denial of rehearing en banc). "Conditions may have changed, but the statute"—and this Court's precedents—"ha[ve] not." *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537, 547 (1943).

Respondent's contrary contentions about congressional intent (Opp. 20) overwhelmingly rely on legislative history, which "is not the law." *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 523 (2018). The only statutory evidence respondent cites (Opp. 21) of Congress's supposed desire for agency independence over all else is the Special Counsel's and MSPB's removal protections. But the CSRA's preclusive effect does not depend on those removal protections. Tellingly, *Elgin* and *Fausto* do not even mention the protections that respondent now casts as the linchpin of the CSRA. See *Elgin*, 567 U.S. at 5-6, 11-12; *Fausto*, 484 U.S. at 445-449. Instead, "the CSRA's 'elaborate' framework'"—namely, its detailed procedures for challenging federal personnel actions before the MSPB—"demonstrates Congress' intent to entirely foreclose judicial review." *Elgin*, 567 U.S. at 11 (quoting *Fausto*, 484 U.S. at 443).

The court of appeals' approach effectively treats the Special Counsel's and MSPB members' removal protections as inseverable, bringing down the CSRA's en-

tire channeling regime based on those two unconstitutional subsections. Appl. 21. Respondent calls this a "non-sequitur" (Opp. 27) since the MSPB could still exist in some form without channeling. But providing an "'integrated scheme'" for reviewing federal personnel actions was "[*t*]*he* purpose of the CSRA," as Congress sought "to replace an 'outdated patchwork of statutes and rules'" that "produced 'wide variations'" in outcomes. *Elgin*, 567 U.S. at 13 (quoting *Fausto*, 484 U.S. at 444-445) (emphasis added). That integrated scheme operates whether or not the Special Counsel and MSPB have removal protections. While Congress may have "preferred an independent [agency] to a dependent one," that does not mean that "Congress would have preferred a dependent [agency] to *no agency at all*"—or, here, no channeling at all. *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 236 (2020) (plurality opinion).

Notably, in *Seminole Tribe of Florida* v. *Florida*, 517 U.S. 44 (1996), this Court rejected the proposition that a change in a statute's operation—there the unconstitutionality of its central enforcement provision—could take away its preclusive effects. Appl. 20. Respondent distinguishes that case (Opp. 28-29) as involving a statutory cause of action, not a constitutional one, and suggests that it might violate due process to deny all judicial review of a colorable constitutional claim. But *Elgin* already held that the CSRA offers "meaningful review" of constitutional claims in the Federal Circuit, foreclosing any due-process objection. 567 U.S. at 21. Respondent also diminishes CSRA preclusion as a "judicial creation" (Opp. 28), but this Court's cases hold otherwise: Preclusion comes straight from "the statutory language" and "the structure of the statutory scheme." *Fausto*, 484 U.S. at 449.

Respondent analogizes (Opp. 24-25) CSRA preclusion to the requirement in the Prison Litigation Reform Act (PLRA) that prisoners exhaust "such remedies as are available." 42 U.S.C. 1997e(a). As respondent notes, the PLRA does not require a

prisoner to pursue an administrative remedy that, as a factual matter, is "not capable of use to obtain relief." *Ross* v. *Blake*, 578 U.S. 632, 643 (2016). But the CSRA's very different text—which does not require that an administrative remedy be "available"—confirms that no factual inquiry into the MSPB's existing functionality is appropriate here. The CSRA's text remains just as preclusive today as in 1978.

2. Respondent devotes significant space (Opp. 31-36) to a purported "alternative ground for affirmance": that its challenge to the alleged change in the conditions of its members' federal work falls outside the CSRA's channeling scheme.* Respondent does not explain why that as-applied preclusion argument would justify withholding a stay of the mandate given the destabilizing effects of the Fourth Circuit's far broader holding as to CSRA preclusion generally. See Appl. 18-19. Further, the district court and the panel correctly and unanimously rejected this argument, Appl. App. 20a-31a, 92a-112a; the en banc dissenters took no issue with that analysis, *id.* at 58a n.4; and the concurring judges did not even mention it, see *id.* at 35a-47a.

The universal consensus rejecting respondent's contention is plainly correct. When deciding whether a claim falls within a "'comprehensive review process'" like the CSRA, this Court considers three factors: (1) whether "precluding district court jurisdiction [would] 'foreclose all meaningful judicial review'"; (2) whether the claim is "'wholly collateral to [the] statute's review provisions'"; and (3) whether the claim is "'outside the agency's expertise.'" *Axon Enter., Inc.* v. *FTC*, 598 U.S. 175, 186 (2023)

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* While respondent calls this an "alternative ground for affirmance" (Opp. 31), this argument would effectively change the court of appeals' judgment line from a vacatur and remand to a reversal, since it would lead to denying the motion to dismiss rather than remanding for further factual development. Because respondent "seeks to change the judgment below," it would need to file a cross-petition to raise this argument in this Court. Stephen M. Shapiro et al., *Supreme Court Practice* § 6.35, at 6-132 (11th ed. 2019). But the court of appeals' fact-bound rejection of this argument manifestly fails this Court's standards for certiorari.

(quoting *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 212-213 (1990)).

In this Court, respondent addresses only the first factor, claiming (Opp. 32-33) that it could not obtain meaningful review under the CSRA because it is not challenging a CSRA-covered action. That argument is doubly wrong. First, within the CSRA's reticulated scheme, Congress's choice to permit remedies for some claims but not others "displays a clear congressional intent to deny" review, not to send the excluded claims to district court. *Fausto*, 484 U.S. at 447; see Gov't C.A. Br. 21-29. Second, the court of appeals correctly held that respondent *is* challenging a personnel action covered by Chapter 23 of the CSRA, so Congress did not deny relief at all. Appl. App. 23a-25a. The CSRA defines a covered "'personnel action'" to include a "significant change in duties, responsibilities, or working conditions." 5 U.S.C. 2302(a)(2)(A)(xii). As the district court explained, respondent alleges that the challenged policy "affects how judges interact with their supervisors and the EOIR, governs what types of speaking or writing they may do within their official capacities, and enforces these restrictions through traditional workplace disciplinary measures." Appl. App. 97a. Those allegations go directly to respondent's members' working conditions and fall within the CSRA.

In arguing otherwise, respondent relies (Opp. 32-33) almost exclusively on the vacated decision in *Feds for Medical Freedom* v. *Biden*, 63 F.4th 366 (5th Cir.) (en banc), vacated as moot, 144 S. Ct. 480 (2023), which held that a federal vaccine mandate fell outside the CSRA. As the government's petition for a writ of certiorari in that case explained, the Fifth Circuit's decision contravened *Elgin* and *Fausto* and created a circuit conflict. Pet. at 17-22, *Biden* v. *Feds for Med. Freedom*, 144 S. Ct. 480 (2023) (No. 23-60). The Fourth Circuit correctly declined to follow it here. Respondent also invokes (Opp. 1, 33) *United States* v. *National Treasury Employees Un-*

ion, 513 U.S. 454 (1995) (*NTEU*), which addressed on the merits a First Amendment challenge to a statue limiting outside compensation to federal employees. But as respondent recognizes (Opp. 33), *NTEU* does not "even mention[] the possibility of CSRA preclusion" and thus offers no support for respondent's argument.

Separately, respondent urges (Opp. 34) that judicial review under Chapter 23 would not be "meaningful" because the Special Counsel might reject respondent's members' complaints. Those members, however, never filed a complaint with the Special Counsel, so such speculation is unwarranted. Appl. App. 27a. Regardless, that not every claim might ultimately survive the agency review process is a feature, not a bug, of the scheme Congress enacted. See *Fausto*, 484 U.S. at 447-452.

Respondent also asserts that it should be able to leapfrog the MSPB because its First Amendment claim is a "here-and-now" injury akin to the separation-of-powers violation of an unconstitutionally structured agency. Opp. 34 (quoting *Axon*, 598 U.S. at 191). But as this Court recognized in *Elgin*, "the MSPB routinely adjudicates * * * claims that an agency took adverse employment action in violation of an employee's First * * * Amendment rights" and "these claims must be brought within the CSRA scheme." 567 U.S. at 12. As every judge to consider this claim has concluded, respondent's First Amendment claim to its members' federal working conditions is a bread-and-butter claim that Congress channeled via the CSRA.

C. A Stay Of The Mandate Is Necessary To Protect This Court's Jurisdiction And Avoid Needless Confusion In The Lower Courts

1. The court of appeals' novel functionality test is ill-defined and malleable, threatening to disrupt the MSPB's operations and create ongoing lower-court chaos and indefinite fishing expeditions absent this Court's intervention. Appl. 21-23. Notably, respondent does not dispute that, until the decision below, lower courts rou-

tinely enforced the CSRA's channeling regime even when the MSPB lacked a quorum. Appl. 22-23. Nor does it deny that the court of appeals' reasoning threatens numerous other agency-review schemes and would seemingly require fact-finding in every case before channeling can proceed. Appl. 22-24.

Respondent downplays those consequences (Opp. 30-31) even as its newly unveiled discovery requests confirm the problem. Respondent will seek (Opp. 31) purportedly "targeted discovery into whether outside officials are directing the work of the [Office of Special Counsel (OSC)] and MSPB; whether the OSC and MSPB are delaying or denying review of administrative complaints; whether the OSC and MSPB are otherwise thwarting judicial review of employee complaints;" and—most ominously—"etc." That request—which appears to contemplate at minimum an inquiry into how the Executive Branch (*i.e.*, "outside officials") oversees its own agencies—thus threatens improper discovery into executive-branch operations. Appl. 25; cf. *U.S. DOGE Serv.* v. *CREW*, 145 S. Ct. 1981 (2025).

That inquiry is also a recipe for upending the CSRA's longstanding channeling regime in the lower courts while unnecessary and inappropriate fact-finding proceeds. Respondent minimizes (Opp. 36-37) the consequences of the court of appeals' rule because the district-court opinions to date have contained alternative rationales. But a channeling regime that requires every district court to make factual findings about how much executive-branch oversight is too much; whether the MSPB is acting nefariously when it denies complaints or is just doing its job; and whether "thwarting" is happening (Opp. 31) will inevitably produce a Rorschach test of "judges' views on political whims of the most recent administration." Appl. App. 65a (Quattlebaum, J., dissenting from denial of rehearing en banc).

In the meantime, litigants will have no idea whether (or when) they must fol-

low the CSRA's procedures, and the CSRA's "integrated scheme" will be for naught. See *Elgin*, 567 U.S. at 13 (quoting *Fausto*, 484 U.S. at 445); Appl. 25. Respondent asserts (Opp. 38) that the government suffers no injury when claims do not go to the MSPB. But Congress thought otherwise, setting up a "comprehensive and integrated review scheme" to permit "a unitary and consistent Executive Branch position on matters involving personnel action" without the "wide variations" that characterized the pre-CSRA regime. *Fausto*, 484 U.S. at 449, 454. The court of appeals' decision throws that entire process into jeopardy.

Those destabilizing effects warrant this Court's review now. Appl. 24-25. Respondent objects to the interlocutory posture and considers (Opp. 37) it "banal" that changed "facts" would change the "legal analysis" of the CSRA's preclusive effect. Respondent thus claims (Opp. 26) that this Court's "review would be premature" without "an evidentiary record." But the CSRA's preclusive effect is a question of statutory interpretation that turns on the CSRA's "text and structure," *Elgin*, 567 U.S. at 12, not a novel fact-based inquiry into "the loss of agency independence" (Opp. 37). Awaiting an irrelevant evidentiary record would let the consequences of the Fourth Circuit's error snowball with no corresponding benefit for this Court's review.

Yet respondent urges further delay—asking this Court to await (Opp. 25) not only a remand and appeal with "review by this Court" "in due course," but also (Opp. 26-27) *Trump* v. *Slaughter*, No. 25-332 (argued Dec. 8, 2025), or a future case about MSPB removals, or even (Opp. 30) some yet further future case "to challenge the panel's holding." That is delay for delay's sake. Meanwhile, the panel's holding is plainly wrong, threatens rampant confusion over all manner of agency-review schemes, and obstructs the scheme Congress enacted.

To effectuate this Court's review, a stay of the mandate is appropriate. Re-

spondent does not dispute that this appeal risks being mooted by events in district court should the mandate issue. Appl. 25. Respondent hedges as to whether the government could maintain this appeal even if it were to prevail on remand and in a later appeal months from now—presumably because it will oppose such relief. *E.g.*, Opp. 29 ("Even if that were correct"); Opp. 30 ("there *may* still be a case or controversy"); *ibid.* ("there *may* be good cause"); *ibid.* (calling harms "speculative"). Only a stay of the mandate can ensure this Court's orderly review of the government's forthcoming petition seeking summary reversal, to be filed in the coming weeks.

Respondent offers no countervailing equities that would justify withholding a stay of the mandate. Appl. 25. Respondent decries (Opp. 39) what it calls a "patently unconstitutional" "prior restraint" on immigration judges. But respondent concededly declined (Opp. 40) to seek a preliminary injunction of the current 2021 policy and chose to wait out the litigation, which has now lasted over four years since that policy took effect. Given the years of stays, remands, discovery, fact-finding, appeals, and certiorari petitions that respondent appears to envision, it is respondent's approach that would "substantially delay" resolution of this case. Opp. 40. The most expeditious course would be for this Court to swiftly act on the government's petition and summarily reverse the decision below. Because the court of appeals already rejected the only argument that respondent actually raised, that will end this case.

* * * * *

For the foregoing reasons and those stated in the government's application, the Court should stay the court of appeals' mandate.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

DECEMBER 2025