No. _____

IN THE
# Supreme Court of the United States

OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION,

*Petitioner,*

v.

SPACE EXPLORATION TECHNOLOGIES CORPORATION, ENERGY TRANSFER, L.P., LA GRANGE ACQUISITION, L.P., AUNT BERTHA, *doing business as* FINDHELP, NATIONAL LABOR RELATIONS BOARD, WILLIAM B. COWEN, *in his official capacity as Acting General Counsel of the National Labor Relations Board*, DAVID M. PROUTY, *in his official capacity as Member of the National Labor Relations Board*, JOHN DOE, *in their official capacity as Administrative Law Judge of the National Labor Relations Board*,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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## QUESTION PRESENTED

1. In *Collins v. Yellen*, this Court held that "the unlawfulness of [a] removal provision does not strip [an insulated officer] of the power to undertake the other responsibilities of his office[.]" 594 U.S. 220, 258 n.23 (2021). Because such an officer still wields lawful authority, parties seeking relief on a removal-protection claim must show that the removal protections caused a "compensable harm" by interfering with the President's authority to remove the officer at issue. *Id.* at 259–260. Unlike every other court of appeals to address the issue, the Fifth Circuit understands *Collins*' causal-harm requirement to apply only to requests for retrospective relief. According to the Fifth Circuit, a properly appointed Executive official who is improperly insulated exercises "unlawful power[,]" and simply appearing before that official is a "here-and-now injury" that warrants relief. App. 31a, 34a.

The question presented is:

Whether courts may enjoin proceedings of the National Labor Relations Board by finding only that removal protections afforded NLRB members and administrative law judges are likely unconstitutional, without any further showing of harm?

## LIST OF PARTIES

Petitioner is the Office and Professional Employees International Union ("OPEIU"). Petitioner sought to intervene several times in 24-10855, *Aunt Bertha v. NLRB*, one of the three consolidated cases that are the subject of this Petition. Petitioner has moved to intervene before this Court in order to pursue the Question Presented in this Petition.

Both Plaintiffs-Appellees and Defendants-Appellants in the proceedings below are Respondents in this matter. Respondents who were Plaintiffs-Appellees before the court of appeals are Space Exploration Technologies Corporation, Aunt Bertha d/b/a Findhelp, Energy Transfer, L.P. and La Grange Acquisition, L.P. Respondents who were Defendants-Appellants before the court of appeals are the National Labor Relations Board ("NLRB"), William B. Cowen, in his official capacity as Acting General Counsel of the NLRB, David M. Prouty, in his official capacity as Member of the NLRB, and John Doe, in their official capacity as Administrative Law Judge of the NLRB.[1]

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[1] In the caption below, Jennifer Abruzzo is named as the General Counsel of the NLRB, Gwynne A. Wilcox is named as a Member of the NLRB, and Marvin E. Kaplan is listed, alternatively, as Member, Chairman, and General Counsel of the NLRB.

General Counsel Abruzzo and Member Wilcox were removed by the President on January 27, 2025. Member Kaplan's term expired on August 27, 2025. Accordingly, neither Member Wilcox, Member Kaplan, nor General Counsel Abruzzo are currently serving on the NLRB in any official capacity.

The Fifth Circuit did not timely substitute the proper parties under Fed. R. App. P. 43(c)(2). In compliance with S. Ct. R. 35(3), OPEIU substitutes the correct parties. At the time the Motion seeking leave to intervene for the purpose of filing this Petition was filed, Members Wilcox and Kaplan's positions have not been filled. On February 3, 2025, the President appointed William B. Cowen as Acting General Counsel.

## RELATED PROCEEDINGS

The proceedings identified below are directly related to the above-captioned case in this Court.

*Space Exploration Technologies Corporation v. NLRB*, No. 24-50627, 24-10855, 24-40533, 151 F.4th 761 (5th Cir. Aug. 19, 2025).

*Aunt Bertha v. NLRB*, No 4:24-cv-00798, 2024 WL 4202383 (N.D. Tex. Sept. 16, 2024).

*Energy Transfer, L.P. v. NLRB*, No. 3:24-cv-198, 742 F. Supp. 3d 755 (S.D. Tex. July 29, 2024).

*Space Exploration Technologies Corporation v. NLRB*, No. 24-cv-00203, 741 F. Supp. 3d 630 (W.D. Tex. July 23, 2024).

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## INTRODUCTION

This case presents an important question at the heart of a wave of litigation aimed at stopping federal agencies from faithfully executing the law: What showing of harm is sufficient to warrant enjoining federal agency proceedings because the officials overseeing the proceedings may be unconstitutionally insulated from removal? According to this Court's decision in *Collins v. Yellen*, 594 U.S. 220 (2021), the required showing is considerable. In *Collins*, this Court explained that, where an unconstitutionally insulated Executive official is "properly appointed[,]" the actions taken by that official are not "void." *Id.* at 257–58 (emphasis omitted). That is because "the unlawfulness of the removal provision does not strip the [Executive official] of the power to undertake the other responsibilities of his office[.]" *Id.* at 258 n.23. In order to obtain relief on a removal-protection claim, a party has to show the removal provision caused "compensable harm" by interfering with the President's ability to remove the official. *Id.* at 259–260. Concretely, the party must make a substantial showing: for instance, that the President tried to remove the Executive actor but a court returned the official to office, or the President expressly disapproved of the official's actions but believed the statutory provisions to prohibit removal. *Id.*

Every court of appeals but the Fifth Circuit to address the question of causal harm understands *Collins*' showing requirement to apply to any request for relief, whether retrospective or prospective.[1] But according

[1] The Government too has consistently understood *Collins*' causal-harm requirement this way. *See, e.g.,* Br. in Opp., *Leachco, Inc. v. CPSC*, 22-7060, at 18 n.4 (Nov. 14, 2024) (Solicitor General brief arguing that *Collins*' causal harm requirement applies whether seeking retrospective or prospective relief); Br. of

to the Fifth Circuit, the harm that a party must show to obtain a preliminary injunction on such a claim is: nothing. According to the divided panel decision below, simply appearing before properly-appointed but likely unconstitutionally insulated NLRB members or administrative law judges ("ALJs") is a "here-and-now injury[.]" App. 31a. Because the "Constitution does not countenance unlawful power[,]" *id.* at 34a, no additional showing of harm actually caused by the removal protections is necessary; instead, the "harm . . . is the process[,]" *id.* at 32a (emphasis omitted).

The deep circuit split on this issue calls out for this Court's intervention. The decision below effectively halts enforcement of the National Labor Relations Act within the Fifth Circuit, and endangers all federal agency proceedings that utilize ALJs. The public that relies on agencies to enforce Congress's statutes should not have to countenance such interference with the President's ability to take care that the laws are faithfully executed. *Collins* made clear that an unconstitutionally insulated Executive official still exercises lawful authority unless and until the removal protections interfere with the President's authority to remove that

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Appellees, *Northside Pharmacy, L.L.C. v. DEA*, No. 25-20200, at 5–13 (5th Cir. Sept. 17, 2025) (Dept. of Justice brief arguing that district court properly dismissed removal-protection claim because plaintiff failed to allege a compensable harm caused by removal protections); Br. of Appellees, *Express Scripts, Inc., v. FTC,* No. 25-1383, at 13–18 (8th Cir. May, 19, 2025) (Dept. of Justice brief arguing that district court properly denied injunctive relief because plaintiff failed to show compensable harm caused by removal protections); Reply Br. of Appellants, *Walmart Stores v. Chief Admin. L. Judge*, No. 24-11733, Dkt. No. 25 at 14 (11th Cir. Sept. 20, 2024) (Dept. of Justice brief: "proposed asymmetry [between prospective and retrospective relief] is incoherent and ignores logic of *Collins*").

actor. But the court below cabined *Collins* to a case about retrospective relief, and instead focused on a case solely about jurisdiction—*Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023)[2]—to find that prospective relief was appropriate because the insulated official exercised "unlawful power." This Court should grant this petition in order to make clear that unconstitutional removal protections themselves—with no showing of causal harm—do not make an insulated official's action unlawful, retrospectively or prospectively.

## OPINIONS BELOW

The opinion of the court of appeals is reported at 151 F.4th 761 and reprinted at App. 1a–45a. The district court decision in *Aunt Bertha v. NLRB*, the case involving OPEIU, is unreported and reprinted at App. 51a–59a. The district court decisions in the two cases consolidated with *Aunt Bertha v. NLRB* are reported at 742 F. Supp. 3d 755 and 741 F. Supp. 3d 630, respectively, and reprinted at App. 73a–89a and 91a–101a.

## JURISDICTION

The court of appeals entered its judgment on August 19, 2025. App. 1a–45a. This Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

## RELEVANT STATUTORY PROVISIONS

Relevant statutory and regulatory provisions are reproduced in the Appendix, App. 103a–118a.

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[2] Br. for U.S. in Opp., *Alpine Secs. Corp. v. FINRA*, No. 24-904, at 13 (Apr. 25, 2025) ("The Court's analysis in *Axon* [] focused solely on subject-matter jurisdiction" and "did not speak to what constitutes irreparable harm for purposes of the extraordinary remedy of a preliminary injunction" (quotation marks omitted)).

## STATEMENT OF THE CASE

### I. Statutory Background

The National Labor Relations Act ("NLRA" or "the Act") vests employees with the "right to self-organization, to form, join, or assist labor organizations, to bargain collectively . . . and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection," as well as the right to refrain from any such activities. 29 U.S.C. § 157. The Act's unfair labor practice provisions establish that no employer or union may interfere with, restrain, or coerce employees in exercising this right, 29 U.S.C. §§ 158(a)(1), (b)(1), and proscribe a number of other actions, such as refusing to bargain in good faith, or discriminating against employees because of their support or opposition to a union, *id.* §§ 158(a)(3), (a)(5), (b)(3).

The NLRA did not "merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties." *Garner v. Teamsters*, 346 U.S. 485, 490 (1953). Rather than providing a private cause of action, it assigned "application of its rules to a specific and specially constituted tribunal"—the Board—that was vested with exclusive jurisdiction to adjudicate unfair labor charges. *Id.* Whenever such a charge is brought before the Board, it must "state its findings of fact" and render an "opinion" whether the charged party has "engaged in or is engaging in" the unfair labor practice alleged. 29 U.S.C. § 160(c). When the Board so finds, it must order that the respondent "cease and desist from such unfair labor practice," and is empowered to "take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of [the Act.]" *Id.*

This Board consists of five members "appointed by the President by and with the advice and consent of

the Senate" to serve five-year, staggered terms. 29 U.S.C. § 153(a). Intending that the Board act with independence, Congress mandated that these members be removable "by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause." *Id.*

While both form part of the same agency, authority within the NLRB is bifurcated between the five-member Board, whose function is primarily adjudicatory, and the General Counsel, who prosecutes charges brought under the NLRA. The General Counsel exercises "final authority" over "the investigation of charges and issuance of [unfair labor practice complaints], and in respect of the prosecution of such complaints," and supervises all agency employees with the exception of administrative law judges ("ALJs") and Board members' legal assistants. 29 U.S.C. § 153(d).

In exercising its adjudicatory authority, Congress authorized the Board to hire "examiners"—the pre-1970s terminology used to refer to ALJs[3]—when "necessary for the proper performance of its duties." 29 U.S.C. § 154(a); *see also* 5 U.S.C. § 3105 (general agency hiring authority for ALJs). The Board routinely relies on ALJs as first-line hearing officers to "inquire fully into the facts as to whether [a] Respondent has engaged in or is engaging in an unfair labor practice" as alleged by the General Counsel in a complaint. 29 C.F.R. § 102.35(a).

To fulfill this duty, the NLRBs ALJs are afforded powers related to their fact-finding function, including issu-

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[3] *See Nash v. Califano*, 613 F.2d 10, 14–15 (2d Cir. 1980) (describing history of "hearing examiner" position); Pub. L. No. 95-251, 92 Stat. 183, § 3 (Mar. 27, 1978) (Act of Congress superseding statutory references to "examiners" with "administrative law judges").

ing or revoking subpoenas, receiving evidence, examining witnesses, and regulating the course of a hearing. 29 C.F.R. §§ 102.35(a)(1)–(13). Following a hearing, the assigned ALJ issues a recommended decision and order that contains "findings of fact, conclusions of law, and the reasons or grounds for the findings and conclusions, and recommendations for the proper disposition of the case." 29 C.F.R. § 102.45(a). The ALJ's proposed order itself does not, however, have legal force. Following issuance of the decision, parties may file "exceptions to the [ALJ's] decision or to any other part of the record or proceedings" to the Board. 29 C.F.R. § 102.46(a). Only when no exceptions are filed shall the ALJ's "recommended order . . . become the order of the Board and become effective as therein prescribed." 29 U.S.C. § 160(c).[4]

The NLRB's ALJs enjoy the same tenure protections provided to all ALJs in the federal system, which stem from the Administrative Procedure Act of 1946 ("APA").[5] An ALJ may be removed "by the agency in which the [ALJ] is employed only for good cause established and determined by the Merit Systems Protection Board ["MSPB"] on the record after opportunity for hearing." 5 U.S.C. § 7521. Any such process must be initiated by the NLRB, which would file a complaint against the ALJ with the MSPB. *See* 5 C.F.R.

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[4] Because the Board's orders are also not self-executing, ALJ decisions are two steps removed from being legally binding. In order to secure compliance with a Board decision, the Board must petition a court of appeals for enforcement. 29 U.S.C. § 160(e).

[5] *See* Administrative Procedure Act of 1946, § 11, Pub. L. No. 79–404, 60 Stat. 244 ("[E]xaminers shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission . . . after opportunity for hearing and upon the record thereof"); Civil Service Reform Act of 1978, § 204(a), Pub. L. No. 95-454, 92 Stat. 1111 (promulgating current version).

§ 1201.137(b). That action, in turn, is heard by an ALJ within the MSPB, whose initial decision is subject to review by the three-member MSPB. 5 C.F.R. §§ 1201.140(a)(1)–(2). MSPB members are officers appointed by the President with the advice and consent of the Senate, and can only be removed from office by the President for "inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. §§ 1201, 1202(d).

## II. Facts and Procedural History

Petitioner OPEIU is a labor organization that represents office, professional, and clerical workers nationwide. In early 2023, workers employed by Respondent Aunt Bertha d/b/a Findhelp, a non-profit organization that facilitates access to social services, sought to organize with OPEIU. No. 4:24-cv-00798 (N.D. Tex. Aug. 20, 2024), Dkt. No. 4 at 4. In a secret-ballot election administered by the NLRB, a majority of Findhelp employees voted to be represented by OPEIU. *Id.* Although OPEIU prevailed in the election, it contended that Findhelp had committed serious unfair labor practices in the lead-up to the critical vote, including engaging in impermissible surveillance of workers' organizing activities, discriminatorily prohibiting workers from discussing union activity and, ultimately, unlawfully terminating several union supporters. Following an investigation, in April 2024 the NLRB's General Counsel found that these charges appeared to have merit, 29 C.F.R. § 101.8, issued an administrative complaint against Findhelp, and scheduled the charges for a hearing before an ALJ to be held on September 23, 2024. No. 4:24-cv-00798 (N.D. Tex. Aug. 20, 2024), Dkt. No. 4 at 10–18.

Approximately a month before the ALJ hearing was to take place, Findhelp filed suit in district court, seeking a preliminary injunction against the NLRB pro-

ceedings. Findhelp contended that ALJs and NLRB members were unconstitutionally insulated from Presidential removal and that certain remedies the NLRB was seeking triggered Findhelp's Seventh Amendment right to a jury trial. Compl., No. 4:24-cv-00798 (N.D. Tex. Aug. 20, 2024), Dkt. No. 1. Findhelp did not, however, make any argument that the President—then President Biden—sought to remove the ALJ assigned to its case, or any member of the NLRB. Instead, Findhelp argued that the mere existence of the removal restrictions threatened it with irreparable harm sufficient to warrant an injunction freezing all NLRB proceedings against it.

On September 16, 2024, the district court granted the motion on the ALJ claim alone, concluding that "having to participate in a constitutionally defective administrative process that is created by the removal provisions" caused Findhelp sufficient harm to warrant preliminary injunctive relief.[6] App. 56a. The NLRB was thus barred from proceeding on the charges pending against Findhelp, leaving OPEIU and the workers it represented no forum to press their claims.

The NLRB took an interlocutory appeal to the Fifth Circuit. Shortly thereafter, OPEIU moved to intervene, while the NLRB requested that the court consolidate the appeal with two other cases, *Space Explorations Technologies Corporation v. NLRB*, No. 24-50627, ("*SpaceX*") and *Energy Transfer, L.P. v. NLRB*, No. 24-40533, where district courts had granted other employers injunctions against NLRB proceedings on an identical theory of harm. While OPEIU's intervention motion was denied in an order

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[6] The district court did not rule on Findhelp's Seventh Amendment claims relating to remedial issues, App. 53a, and those claims are not before this Court.

without reasoning, *see* App. 71a, the Fifth Circuit granted the NLRB's motion to consolidate the three cases, with *SpaceX* designated as the lead case.[7]

The Fifth Circuit then affirmed the preliminary injunctions in a divided 2-to-1 panel decision. The panel majority found Respondents likely to succeed on the merits of their claims as to both ALJs' and Board members' removal protections. App. 20a–28a. Viewing the question through the prism of "irreparable harm," the majority rejected the argument that Respondents "must prove a distinct injury flowing from the constitutional violations" to be entitled to relief. App. 28a. Relying on this Court's decision in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), the majority held that a showing of specific harm stemming from removal restrictions was necessary only when parties seek "retrospective relief from final agency action." *Id.* at 31a. When prospective relief from agency proceedings was at stake, the Fifth Circuit majority concluded, "the proceeding *is* the injury," and "no further showing . . . is required." *Id.* at 32a.

Judge Wiener dissented. In his view, this Court's remedial holding in *Collins* could not be cabined to retrospective relief. Instead, Judge Wiener reasoned, *Collins* drew a stark distinction between claims that an officer was unlawfully *appointed* and claims that a duly-appointed officer is unlawfully *insulated from removal*. In the former case, an officer is "vested with authority that was never constitutionally theirs," thus rendering his actions void *ab initio*. App. 36a. But in the latter scenario—presented in these cases—"the

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[7] Because the Fifth Circuit's consolidation order designated the *SpaceX* appeal, No. 24-50627, as the lead case and instructed parties to file all documents therein, all citations to the Fifth Circuit docket relate to this case number.

unlawfulness of the removal provision does not strip [the officer] of the power to undertake the other responsibilities of his office." *Id.* (quoting *Collins*, 594 U.S. at 258 n.23). Thus, Judge Wiener concluded, in the absence of any showing that the President had been frustrated in removing any of the challenged officers, Respondents failed to demonstrate that the removal restrictions made the officers "illegitimate" decisionmakers or otherwise "tainted" the lawfulness of their actions. *Id.* at 37a.

After the NLRB advised the parties that it would not seek further review of the Fifth Circuit's judgment, OPEIU moved to intervene again with the aim of pursuing this petition. 5th Cir. Dkt. No. 274 (Oct. 1, 2025). Despite Findhelp's non-opposition to the motion, 5th Cir. Dkt. No. 283 (Oct. 6, 2025), the Fifth Circuit again denied OPEIU's motion. App. 47a–50a. OPEIU then moved this Court for leave to intervene for the purpose of filing this petition for writ of certiorari.

## REASONS FOR GRANTING THE WRIT

### I. The decision below creates a square circuit split on whether plaintiffs must show a harm caused by removal protections to gain prospective relief.

In *Collins*, this Court addressed whether a party was entitled to a remedy undoing an act of an executive branch official who was unconstitutionally insulated from removal. The Court held that such relief was warranted only when the removal protections "inflict[ed] compensable harm" by actually interfering with the President's authority to remove the insulated official. *Collins*, 594 U.S. at 259–260. Since *Collins*, the courts of appeals have uniformly applied this causal-harm requirement to deny retroactive relief on

a removal-protection claim. *See, e.g., CFPB v. L. Offs. of Crystal Moroney, P.C.*, 63 F.4th 174, 180 (2d Cir. 2023), *cert. denied,* 144 S. Ct. 2579 (2024); *CFPB v. Nat'l Collegiate Master Student Loan Tr.*, 96 F.4th 599, 615 (3d Cir. 2024); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 149 (4th Cir. 2023); *Cmty. Fin. Servs. Assoc. of Am. v. CFPB*, 51 F.4th 616, 632 (5th Cir. 2022) ("*CFSA*"); *Calcutt v. FDIC*, 37 F.4th 293, 315-16 (6th Cir. 2022), *rev'd on other grounds*, 598 U.S. 623 (2023); *Bhatti v. FHFA*, 97 F.4th 556, 559 (8th Cir. 2024); *Decker Coal Co. v. Pehringer*, 8 F.4th 1123, 1138 (9th Cir. 2021); *Integrity Advance, LLC v. CFPB*, 48 F.4th 1161, 1170 (10th Cir. 2022); *Rodriguez v. Soc. Sec. Admin.*, 118 F.4th 1302, 1315 (11th Cir. 2024).

Three courts of appeals—the Second, Sixth, and Tenth—explicitly understand that the reasoning of *Collins*' causal-harm requirement also extends to requests for prospective relief, while the Third Circuit has implied that it agrees. Additionally, two others—the Fourth and D.C. Circuits—reject the argument that this Court's decision in *Axon* displaced any need to show additional harm to gain preliminary relief.[8]

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[8] As mentioned earlier, the Government too has consistently taken this position. *See, e.g.,* Br. in Opp., *Leachco, Inc.*, No. 22-7060 at 18 n.4 (Solicitor General brief arguing that Collins' causal harm requirement applies whether seeking retrospective or prospective relief); Br. of Appellees, *Express Scripts, Inc.*, No. 25-1383 at 13–18 (Dept. of Justice brief arguing that district court properly denied injunctive relief because plaintiff failed to show compensable harm caused by removal protections); Br. of Appellees, *Northside Pharmacy*, No. 25-20200 at 5–13 (Dept. of Justice brief arguing that district court properly dismissed removal-protection claim because plaintiff failed to allege a compensable harm caused by removal protections); Reply Br. of Appellants, *Walmart Stores v. Chief Admin. L. Judge*, No. 24-11733, Dkt. No. 25 at 14 (same).

The Fifth Circuit originally was in line with these courts of appeals. *See CFSA*, 51 F.4th at 631. But no more. The majority below determined that *Axon* wiped away the causal-harm requirement when a party seeks prospective relief, "in a way that the Tenth and Sixth Circuits have expressly rejected, and the Second Circuit implicitly rejected." App. 44a (Wiener, J., dissenting). The courts of appeal are now squarely split on the causal-harm requirement for requests for prospective relief. This means that the same removal-protection claim and request for preliminary injunctive relief will succeed within the Fifth Circuit, but would be denied in at least the Second, Fourth, Sixth, Tenth and D.C. Circuits, and likely the Third. Only this Court can now establish uniformity, and this is the case in which to do so.

**Sixth Circuit.** The Sixth Circuit was the first court of appeals to address whether *Collins*' causal-harm requirement applied only to requests for retrospective relief. In addressing removal-protection claims over tenure protections afforded Federal Deposit Insurance Corporation directors and ALJs, the Sixth Circuit said, "*Collins* [] provides a clear instruction: To invalidate an agency action due to a removal violation, that constitutional infirmity must 'cause harm' to the challenging party." *Calcutt*, 37 F.4th at 316 (quoting *Collins*, 594 U.S. at 260). When the plaintiff argued that *Collins* was inapplicable as it addressed only retroactive relief, the Sixth Circuit held that its "determination as to whether an unconstitutional removal protection 'inflicted harm' remains the same whether the petitioner seeks retrospective or prospective relief[.]" *Id.*

The Sixth Circuit then applied its understanding of *Collins*' causal-harm requirement to a motion for an injunction pending appeal on removal claims identi-

cal to those before the court below. *YAPP USA Auto. Sys., Inc. v. NLRB*, No. 24-1754, 2024 WL 4489598, at *2–3 (6th Cir. Oct. 13, 2024), *application for writ of injunction pending appeal denied*, No. 24A348 (Oct. 15, 2024). The Sixth Circuit explained that "even if the removal protections of the NLRB Board members and ALJs are unconstitutional, [the employer] is not automatically entitled to an injunction" because "a party challenging an agency's removal protection scheme is not entitled to relief unless that unconstitutional provision inflicts compensable harm." *Id.* at *2 (cleaned up). And the Sixth Circuit rejected the plaintiff's reading of *Axon*, noting that the case "did not address the merits of [the removal-protection] claims, but rather assessed whether federal courts have *jurisdiction* to hear the claims on their merits." *Id.* at *3 (emphasis in original). Accordingly, the Sixth Circuit—with language indicating the entrenchment of its position—held that "[b]ecause *Axon* did not overrule *Collins*—or, by extension, *Calcutt*—we are bound by our prior ruling." *Id.*

**Tenth Circuit.** The Tenth Circuit reached the same conclusion in *Leachco, Inc. v. Consumer Prod. Safety Comm.*, 103 F.4th 748 (10th Cir. 2024), *cert. denied* 145 S. Ct. 1047 (2025). There, the plaintiff sought a preliminary injunction to enjoin a hearing before an ALJ of the Consumer Products Safety Commission, based on claims of unconstitutional tenure protections extended to both the ALJ and Commission members. *Id.* at 749. The Tenth Circuit discussed *Collins*' required causal harm, and stated that it agreed with those courts of appeals that have held that "*Collins*' relief analysis applies to both retrospective and prospective relief." *Id.* at 757. The court explained that "[t]o establish harm under *Collins* [in order to obtain a preliminary injunction], Leachco would need to

make a showing that the challenged removal provisions actually impacted, or will impact, the actions taken by the CPSC against it." *Id.* And the court rejected the argument that *Axon* displaced *Collins*' need to show causal harm: "*Axon* does not help Leachco establish irreparable harm because *Axon* did not address the issue of irreparable harm." *Id.* at 758. Instead, "*Axon* only addressed whether the petitioners . . . could initially bring collateral challenges in federal district court to the constitutionality of [the relevant] agencies' structure[,]" which is a "strictly jurisdictional question." *Id.* And the Tenth Circuit signaled the perdurability of its decision when it stated that converting a "limited jurisdictional holding" into "an entitlement on the merits to a preliminary injunction in every case where such constitutional challenges are raised . . . cannot be the law under current Supreme Court or Tenth Circuit precedent[.]" *Id.* at 759.

**Second Circuit.** The Second Circuit similarly does not distinguish between retrospective and prospective relief to determine if *Collins*' causal harm is required. In *Law Offices of Crystal Moroney*, a plaintiff sought to enjoin the Consumer Financial Protection Bureau from prospectively enforcing an administrative subpoena. The Second Circuit held that "the Supreme Court's reasoning that an officer's actions are valid so long as she was validly appointed applies with equal force regardless of the relief sought by the party challenging the officer's actions." 63 F.4th at 179–81.

**Other similarly aligned circuits.** The D.C. Circuit has additionally refused to apply *Axon* as the court below did, finding that "*Axon* at most says that, as a matter of statutory jurisdiction, a federal-court challenge to an unconstitutional appointment can begin before the agency acts. It does not say that every

agency proceeding already underway must immediately be halted because of an asserted constitutional flaw." *Alpine Sec. Corp. v. Fin. Indus. Reg. Auth.*, 121 F.4th 1314, 1336 (D.C. Cir. 2024), *cert. denied*, 145 S. Ct. 2751 (2025). Similarly, the Fourth Circuit—just two days after the decision below issued—affirmed the denial of preliminary relief on a removal-protection claim, holding that "*Axon* addressed only a distinct jurisdictional question[,]" "[b]ut" "'did not speak to what constitutes irreparable harm for purposes of the extraordinary remedy of a preliminary injunction.'" *Manis v. U.S. Dept. of Ag.*, No. 24-1367, 2025 WL 2389422, at *4 (4th Cir. Aug. 21, 2025) (cleaned up). The Third Circuit also doubts that *Axon* created a valid retrospective/prospective distinction for *Collins*' causal-harm requirement. In refusing to vacate an NLRB order due to the removal protections afforded NLRB members and ALJs, the court explained that "*Axon* addressed [only] whether the plaintiff must proceed before an agency at all" and, while not resolving the retrospective/prospective argument, "not[ed] that other courts of appeal have declined to distinguish between retrospective and prospective relief when applying *Collins*." *NLRB v. Starbucks Corp.*, 125 F.4th 78, 88 (3d Cir. 2024).

**Fifth Circuit.** The Fifth Circuit's decision stands diametrically opposed to these courts of appeals. Yet, the Fifth Circuit initially aligned with them. In *CFSA*, the court dismissed the argument that *Collins* applied only to retrospective relief, holding that "*Collins* did not rest on a distinction between prospective and retrospective relief." *CFSA*, 51 F.4th at 631. After this Court vacated that decision on other grounds, *CFPB v. Cmty. Fin. Servs. Ass'n of Am.,* 601 U.S. 416 (2024), the Fifth Circuit reinstated this portion of its decision, *Cmty. Fin. Servs. Ass'n of Am., v. CFPB*, 104

F.4th 930 (5th Cir. 2024), *petition for cert. docketed*, No. 24-969.

But the court below made an abrupt turn. The majority now says that *Collins* only "governs retrospective relief from final agency action." App. 31a. And that "*Community Financial* likewise involved retrospective relief from a final rule[.]" *Id.* In contrast, the injury suffered by the employers was "*Axon*'s injury: the 'here-and-now injury' of 'being subjected to unconstitutional agency authority.' And that harm is irreparable." *Id.* (quoting *Axon*, 598 U.S. at 191). According to the majority, because "the proceeding *is* the injury[,] [t]he harm . . . *is* the process[,]"the NLRB's proceeding is an exercise of "unlawful power." *Id.* at 32a, 34a (emphasis in original). And *Axon* is not limited to "jurisdiction" as "its reasoning fits irreparable harm hand-in-glove: once an unconstitutional proceeding begins, the damage is done." *Id.* at 32a. While the majority made no mention of the courts of appeals who take a different approach to *Axon* and the *Collins* causal-harm requirement, Judge Wiener in dissent recognized that the majority's decision "creates a circuit split." *Id.* at 42a.

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The Fifth Circuit's application of *Axon*'s "here-and-now" injury—in place of *Collins*' causal-harm requirement—to requests for prospective relief in removal-protection cases squarely conflicts with the Fourth, Sixth, and Tenth Circuits, implicitly conflicts with the Second Circuit, and likely conflicts with the D.C. Circuit and Third Circuit. This square circuit split is outcome determinative, as starkly illustrated by the decision below and the Sixth Circuit's decision in *YAPP*, two cases that addressed identical requests to enjoin NLRB proceedings. And because the Sixth Cir-

cuit's and Tenth Circuit's—as well as the D.C. Circuit's—decisions were based on their reading of both this Court's and the circuits' own prior precedents, this split will persist without this Court's intervention. The question presented, then, warrants this Court's review.

## II. The decision below is wrong.

The outcome-determinative split among the circuits is sufficient to warrant granting review. But this Court should also grant review because the courts of appeals that require a showing of causal harm to obtain prospective injunctive relief are more faithful to this Court's *Collins* decision, while properly understanding this Court's holding in *Axon*. The panel majority below overreads *Axon* to provide not just for jurisdiction but also for automatic irreparable harm in cases where a party alleges a constitutionally infirm agency structure. This Court should grant review to correct the Fifth Circuit's error.

### A. *Collins* directly addresses what a plaintiff must *show* to obtain a remedy on a removal-protection claim.

1. In *Collins*, shareholders of Fannie and Freddie Mac asked this Court to set aside an amendment to agreements between the companies and the Department of Treasury that replaced a fixed-rate formula for quarterly dividends with a variable rate that resulted in the companies transferring massive payments to Treasury. 594 U.S. at 227, 257. According to the shareholders, because unconstitutionally insulated directors of the Federal Housing Financing Agency adopted and implemented this amendment, the directors "lacked constitutional authority" and so "their actions were [] void *ab initio*." *Id*. at 257.

Eight Justices agreed that the shareholders were not automatically entitled to relief undoing the amendment, finding that the shareholders' argument "is neither logical nor supported by precedent." *Id.* As Justice Alito explained in his majority opinion, "All the officers who headed FHFA during the time in question were properly *appointed*. . . . As a result, there is no reason to regard any of the actions taken by the FHFA in relation to the [] amendment as void." *Id.* at 257–58 (emphasis in original). This Court distinguished between the types of constitutional violations—such as an improper appointment, *see Lucia v. SEC*, 585 U.S. 237 (2018), or a bankruptcy judge's exercise of power constitutionally committed to an Article III judge, *Stern v. Marshall*, 564 U.S. 462 (2011)—in which the Executive official "exercise[d] [] power that the actor did not lawfully possess[,]" and removal-protection violations, where "there is no basis for concluding that [the Executive official] lacked the authority to carry out the functions of the office." *Collins,* 594 U.S. at 258. That is because "the unlawfulness of the removal provision does not strip the Director of the power to undertake the other responsibilities of his office[.]" *Id.* at 258 n.23.

But that did not necessarily mean that the shareholders were entitled to no relief. "[I]t is still possible for an unconstitutional provision to inflict compensable harm." *Id.* at 259–260. This Court offered examples of when an unconstitutionally insulated official may no longer be exercising authority properly granted him:

> Suppose, for example, that the President had attempted to remove a Director but was prevented from doing so by a lower court decision holding that he did not have 'cause' for removal. Or suppose that the President had made a public statement expressing displeasure with actions taken by a Director

> and had asserted that he would remove the Director if the statute did not stand in the way.

*Id.* at 259–260. "In those situation, the statutory provision would clearly cause harm[,]" because the Executive official no longer exercises authority lawfully possessed. *Id.* at 260. But without that showing, the Executive actor wields lawful authority, and there is no compensable harm caused by the removal protections.

The concurring Justices further highlighted the distinction between lawful and unlawful exercises of authority by insulated actors. For instance, Justice Thomas expressed his "serious [] doubt that the shareholders can demonstrate that any relevant action by an FHFA Director violated the Constitution[,]" and so were likely "not entitled to a remedy." *Id.* at 270–71 (Thomas, J., concurring). That is because "[t]he mere existence of an unconstitutional removal provision [] generally does not automatically taint Government action by an official unlawfully insulated," and there is "no barrier to [an unconstitutionally insulated official] exercising power in the first instance." *Id.* at 267.

Justice Kagan, joined by two other Justices, agreed: "[O]ur Appointments Clause precedents have little to say about remedying a removal problem . . . the [insulated agency officers], unlike those with invalid appointments, possessed the 'authority to carry out the functions of the office.'" *Id.* at 274 (Kagan, J., concurring) (quotation omitted).

Under *Collins*, then, the decisive question for remedial purposes on a removal-protection claim is whether the removal protections caused harm by interfering with the President's constitutional authority to remove the insulated official. And as the Second, Fourth, Sixth, Tenth, D.C., and likely Third Circuits recognize, this

Court's reasoning for requiring causal harm in removal-protection cases was not limited to requests for retrospective relief. If an improperly insulated officer lawfully exercised authority such that their actions cannot be unwound after-the-fact, then that officer also lawfully exercises authority in ongoing proceedings. *See* Br. for the U.S. Petitioner, *Trump v. Slaughter*, No. 25-332, at 36 (Oct. 10, 2025) ("an agency's unconstitutional tenure protection does not automatically make its actions void" (citing *Collins*, 594 U.S. at 259)). But once the removal protections have interfered in one of the ways *Collins* describes, then retrospective *or* prospective relief may be available, because the official no longer exercises lawful authority from the point of interference on. Without this showing, however, *neither* retrospective nor prospective relief is available; removal restrictions alone do not render an official's action unlawful.

2. In explaining its causal-harm requirement, the Court cautioned against confusing what a plaintiff must *allege* to gain standing on a removal-protection claim with what a plaintiff must *show* in order to obtain a remedy. The Court stated that "[w]hat we said about standing in *Seila Law* [*LLC v. CFPB*, 591 U.S. 197 (2020)] should not be misunderstood as a holding on a party's entitlement to relief based on an unconstitutional removal restriction." *Collins,* 594 U.S. at 258 n.24 (citing *Seila Law*, 591 U.S. at 209–13). This was provided in response to Justice Gorsuch, who in dissent argued for voiding the amendment and, in support of that position, cited to *Seila Law*'s affirmation "that unconstitutionally insulating an officer from removal 'inflicts a here-and-now injury' on affected parties." *Id*. at 279 (Gorsuch, J., concurring in part) (internal quotation marks omitted) (quoting *Seila Law*, 591 U.S. at 212). But as Justice Alito explained, this Court in *Seila Law* "held that a plaintiff that challenges a statutory

restriction on the President's power to remove an executive officer can establish standing by showing that it was harmed by an action that was taken by such an officer and that the plaintiff *alleges* was void." *Id*. at 258 n.24 (emphasis added). That is, a plaintiff can establish standing to bring a removal-protection claim by merely alleging that an action an unconstitutionally insulated official has taken is void. But the majority indicated that *Seila Law*'s "here-and-now injury" language was limited to allegations required to establish standing—rather than what must be shown to obtain relief—when it explained that *Seila Law*'s "holding on standing does not mean that actions taken by such an officer are void *ab initio* and must be undone." *Id*.

### B. *Axon* solely addresses what a plaintiff must *allege* to establish federal district court jurisdiction over a removal-protection claim.

None of the employer Respondents put forth any evidence that the removal protections afforded NLRB members and ALJs caused the type of harm identified in *Collins*. Nor could they. The President *has* removed a Board member, and that member is not currently on the Board. *See Trump v. Wilcox*, 145 S. Ct. 1415 (2025). And the President declared that the removal protections afforded ALJs are unconstitutional and so no barrier to his removal authority, yet he has not removed or expressed a desire to remove the ALJs assigned to the NLRB proceedings in the consolidated cases below. *See* Letter from Sarah M. Harris, Acting Solicitor General, to the Honorable Mike Johnson, Speaker of the United States House of Representatives (Feb. 20, 2025), https://www.justice.gov/oip/media/1390336/dl?inline.

But the majority below still found that preliminary relief was warranted. Relying on this Court's *Axon* de-

cision, the majority held that the plaintiff employers would suffer "the 'here-and-now injury' of 'being subjected to unconstitutional agency authority.' And that harm is irreparable." App. 31a (quoting *Axon*, 598 U.S. at 191). The majority waved away *Collins* by relegating it to only "govern[ing] retrospective relief from final agency action[,]" whereas in the cases before the court, "the proceeding *is* the injury. The harm is not downstream from the process—it *is* the process." *Id.* at 32a (emphasis in original). According to the majority, *Axon*'s "reasoning fits irreparable harm hand-in-glove: once an unconstitutional proceeding begins, the damage is done. . . . No further showing—such as how the outcome might differ under a valid structure—is required. Waiting until the end would be no remedy at all." *Id.* As such, the unconstitutionally insulated NLRB officials wielded "unlawful power." *Id.* at 34a.

By relying on *Axon*'s here-and-now injury language, the panel majority did exactly what this Court cautioned against in *Collins*—it conflated allegations sufficient to get to court with the showing sufficient to get relief. App. 41a ("the majority opinion mistakenly conflates the *jurisdictional ability* of district courts to hear and issue injunctive relief in 'here-and-now' injury cases with the burden placed on the party seeking *injunctive relief*" (Wiener, J., dissenting) (emphasis in original)). This Court in *Axon* decided only the jurisdictional question of where removal-protection claims "may be heard[,]" *Axon*, 598 U.S. at 180, and did so by looking to what the parties *alleged*, s*ee, e.g., id.* at 182 ("Each suit *charged* that some fundamental aspect of the Commission's structure violates the Constitution; that the violation made the entire proceeding unlawful; and that being subjected to such an illegitimate proceeding causes legal injury (independent of any rulings the ALJ might make)." (emphasis added)); *id.* at

189 ("[Plaintiffs] *charge* that an agency is wielding authority unconstitutionally in all or a broad swath of its work." (emphasis added)). Specifically, this Court explained that "[t]he harm Axon and Cochran *allege* is being subjected to unconstitutional agency authority—a proceeding by an unaccountable ALJ." *Id.* at 191 (emphasis added) (internal quotation marks omitted). And that alleged harm "is 'a here-and-now injury'" that could not be remedied after the fact. *Id.* (quoting *Seila Law*, 591 U.S. at 212); *see also id.* at 192 ("What makes the difference here is the nature of the claims and accompanying harms that the parties are *asserting*. . . . Axon and Cochran *protest* the 'here-and-now' injury of subjection to an unconstitutionally structured decisionmaking process." (emphasis added)).

*Axon*, then, holds only that plaintiffs who allege a here-and-now injury from being subjected to an unconstitutionally structured decisionmaking process led by an improperly insulated official could bring their claim in district court. But this Court did not indicate that the parties in *Axon* had shown that they were in fact subject to an unconstitutionally structured decisionmaking process, or that appearing before an unconstitutionally insulated official would necessarily subject the parties to such a process. Instead, it merely reported what the parties alleged, and found those allegations sufficient to grant jurisdiction in district court.[9] But to actually *show* that the parties were subject to an unconstitutionally structured decisionmaking process, the parties must look to this Court's one case that

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[9] Importantly, the Government reads *Axon* the same way. Br. for U.S. in Opp., *Alpine Secs. Corp. v. FINRA*, No. 24-904, at 13 (Apr. 25, 2025) ("The Court's analysis in *Axon* [] focused solely on subject-matter jurisdiction, as evidenced by its emphasis on plaintiffs' *allegations* and *claims*." (emphasis in original)).

addressed what needs to be shown to obtain relief on a removal-protection claim—*Collins*. Without *Collins*' causal-harm showing, the parties are not entitled to relief, because there is no unconstitutionally structured decisionmaking process.

As such, the majority below erred when it found that the employer Respondents "would suffer the here-and-now injury of being subjected to unconstitutional agency authority" simply by appearing before unconstitutionally insulated NLRB members and ALJs, and that "[n]o further showing . . . is required" to obtain relief. The "proceeding *is* the injury" only where *Collins*' causal harm is present; otherwise, the proceeding is a lawful exercise of the authority properly granted the agency officials, not of "unlawful power."[10]

The Fifth Circuit's holding improperly displaces *Collins*' on-point discussion of the showing required to obtain relief in removal-protection cases with *Axon*'s off-point evaluation of allegations to determine jurisdiction over removal-protection claims. This Court should grant review to clarify that *Collins* governs all

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[10] Indeed, the majority's theory here seems to resurrect arguments raised by a minority of Fifth Circuit judges pre-*Collins*, and rejected by both the Fifth Circuit *en banc* and this Court. *Compare Collins v. Mnuchin*, 938 F.3d 553, 627 (5th Cir. 2019) (en banc) (Willett, J., dissenting in part) ("Unconstitutional protection from removal, like unconstitutional appointment, is a defect in authority."), *with id.* at 593 (opinion of Haynes, J.) ("[r]estrictions on removal are different" from appointment-violation cases because in removal-restrictions cases "the officers are duly appointed by the appropriate officials and exercise authority that is properly theirs") *and Collins*, 594 U.S. at 258 ("[T]here is no basis for concluding that an [unconstitutionally insulated Executive official] lacked the authority to carry out the functions of the office.").

requests for relief—retrospective or prospective—on removal-protection claims.

## III. The question presented is important.

The Fifth Circuit's anomalous decision on *Collins*' causal-harm requirement creates a circuit split with significant implications for federal agencies and the public that relies on them. Over the past few years, parties have flooded district courts around the country with removal-protection suits that seek to enjoin agency proceedings. Petitioner is aware of at least *three dozen* such cases involving just the NLRB. Eight of those were filed after the Fifth Circuit's decision. *Import Motors II, Inc. v. NLRB,* No. 3:25-cv-07284 (N.D. Cal. Aug. 27, 2025); *Sacramento Behavioral Healthcare Hosp., LLC v. NLRB,* No. 2:25-cv-02475 (E.D. Cal. Aug. 29, 2025); *Hoffmann Bros. Heating & Air Conditioning, Inc. v. NLRB, et al.*, No. 4:25-cv-01356 (E.D. Mo. Sept. 10, 2025); *Malloy Toyota v. NLRB,* No. 5:25-cv-00097 (W.D. Va. Sept. 15, 2025) (voluntarily dismissed on October 16, 2025); *Aimbridge Emp. Serv. Corp. v. NLRB,* No. 4:25-cv-01014 (E.D. Tex. Sept. 16, 2025); *Precision Walls, Inc. v. NLRB,* No. 3:25-cv-00789 (E.D. Va. Sept. 26, 2025); *Tram Bar Co-Packing, LLC v. NLRB,* No. 3:25-cv-00326 (W.D. Pa. Oct. 1, 2025); *Rieth-Riley Constr. Co., Inc. v. NLRB*, No. 1:25-cv-1269 (W.D. Mi. Oct. 20, 2025). The three consolidated cases below are then not one-offs, but are part of a wave of such litigation that will likely grow following the Fifth Circuit's decision.

The implications of that are far-reaching. The Fifth Circuit's decision makes every unfair labor practice proceeding within its jurisdiction subject to preliminary injunction. *See Hudson Inst. of Process Rsch. Inc. v. NLRB*, No. 4:24-cv-989, 2025 WL 2431645, at *3 (E.D. Tex. Aug. 22, 2025) (issuing preliminary injunc-

tion based on decision below, and recognizing that the "Fifth Circuit provides the Court with a clear answer" as to whether sufficient harm exists to issue an injunction). And the NLRB has no ability to litigate unfair labor practice allegations outside of the administrative process; nor is there a private right of action for victims of unfair labor practices to seek relief outside the NLRB's process. *See* 29 U.S.C. §§ 160(a)–(f). The effect of the decision below is then to indefinitely pause enforcement of the National Labor Relations Act—the primary federal labor law covering most private workplaces—within the Fifth Circuit, with no end in sight.

This is not a problem limited to the NLRA. Parties have brought similar removal-protection claims against other federal agencies. *See, e.g., Walmart, Inc. v. Chief Admin L. Judge*, 144 F.4th 1315, 1320 (11th Cir. 2025) (proceedings where U.S. Immigration and Customs Enforcement identified over 11,000 violations of immigration law recordkeeping requirements); *Rabadi v. U.S. Drug Enf't Admin.*, 122 F.4th 371, 374 (9th Cir. 2024) (proceedings suspending physician for prescribing controlled substances without medical justification). And because the Fifth Circuit's decision finding the ALJ removal protections unconstitutional is not limited to the NLRB, every federal agency that relies on ALJs to preside over agency proceedings is vulnerable to having its proceedings indefinitely enjoined by a Fifth Circuit court. Indeed, the Government has told this Court that the decision below is "disrupting the work of federal agencies." Appl. for Stay, *Trump v. Slaughter*, 25A264, at 29 (Sept. 4, 2025).

And this is not just a problem for those that reside in the Fifth Circuit. Because the split between circuits is outcome determinative, parties seeking in-

junctions will forum shop into the Fifth Circuit. *See, e.g., Space Exploration Techs., Corp. v. NLRB*, 129 F.4th 906, 908–10 (5th Cir. 2025) (recounting procedural history, including contested motion to transfer), *Amazon.com Servs. LLC v. NLRB*, 151 F.4th 221, 225–26 (5th Cir. 2025) (similar).

While this Court typically does not grant certiorari in the preliminary injunction posture, the harm threatened by the decision below is extraordinary. Because the theory of harm undergirding the preliminary injunctions here is equally applicable to any agency proceeding, courts in the Fifth Circuit will continue to enjoin NLRB—and any number of other agency—proceedings. The public that relies on federal agencies to protect and enforce their rights and promote compelling national interests such as safeguarding the free flow of commerce, *see* 29 U.S.C. § 151, and enforcing our nation's immigration and controlled substance laws—are left with no remedial recourse. This Court's immediate intervention is needed to restore the NLRB's—and potentially dozens of other agencies'—proceedings in the Fifth Circuit, and to make clear to all lower courts facing these issues that a showing of causal harm is required to grant prospective relief.

## IV. This case is the right vehicle to address the question presented.

This is the case to address whether parties must meet *Collins*' causal-harm requirement to obtain prospective relief on a removal-protection claim. The issue is cleanly presented and was determinative below. There is no need to await a different vehicle; the question is purely a legal one and so a different case with a different agency will present no different arguments. And reversing the Fifth Circuit would have immediate practical effects. It would allow the enjoined NLRB

proceedings to finally continue, allowing OPEIU to proceed with the charges currently pending before the NLRB, and remove the threat of injunction looming over all agency adjudications within the Fifth Circuit's jurisdiction. Waiting will prolong the uncertainty regarding the ability of federal agencies to fulfill their missions and faithfully execute the law. This Court should take this case, and address this important question now.

## CONCLUSION

The Court should grant the petition for writ of certiorari.

Respectfully Submitted.

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