No. 26-304

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

DEVONTE DEVON JACKSON, et al.,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Subject to limited exceptions, the Federal Vacancies Reform Act of 1998 (FVRA) is the "exclusive means for temporarily authorizing an acting official to perform the functions and duties" of an office requiring Senate confirmation. 5 U.S.C. § 3347(a). When a Senate-confirmed officer "dies, resigns, or is otherwise unable to perform the functions and duties of the office," "the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity." *Id.* § 3345(a) & (a)(1). The President may designate a different Senate-confirmed officer, *id.* § 3345(a)(2), or a sufficiently senior agency employee, *id.* § 3345(a)(3). But a statute conferring "general authority" on an agency head "to delegate duties" may not displace the FVRA. *Id.* § 3347(a) & (b).

The questions presented are:

1. Whether the FVRA's automatic-succession rule, 5 U.S.C. § 3345(a)(1), elevates to acting officer a person designated "first assistant" after the vacancy arose.

2. Whether the FVRA's exclusivity provision, 5 U.S.C. § 3347, bars an agency head from delegating all of the delegable duties of a vacant office to a single person, thereby circumventing the means for designating an acting officer specified in § 3345(a) and the time limits specified in § 3346.

CORPORATE DISCLOSURE STATEMENT

Respondents are individuals and have nothing to disclose.

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INTRODUCTION

The Constitution prescribes the manner of selecting officers who exercise significant executive power. For many of those offices, the Constitution requires the President to obtain the Senate's advice and consent before appointing someone. Yet for decades, when vacancies arose in those offices, the Executive Branch often ignored that constitutional mandate, installing replacements to serve indefinitely in an acting capacity and thereby bypassing the Senate's role. Congress enacted the Federal Vacancies Reform Act of 1998 (FVRA) to curb the Executive Branch's repeated encroachments on the Senate's advice-and-consent prerogative.

The FVRA governs the process for temporarily filling a covered vacancy. First, and by default, the first assistant to the vacant office may serve temporarily as an acting officer. The first assistant, having served as second-in-command to the departed officer, is the office's paradigmatic custodian. Therefore, in the event of a vacancy, the FVRA automatically bestows on the first assistant the acting title. Recognizing that, at times, the office of first assistant may also be vacant, Congress permitted the President to choose an acting officer from two additional categories: either a Senate-confirmed officer serving in a different office or a sufficiently senior employee within the same agency.

The Executive Branch now seeks to create a fourth category: anyone it subsequently labels a "first assistant" at the agency, even if that person never served as second-in-command for a single day before

the vacancy arose. Alternatively, the government contends that the FVRA's constraints are irrelevant because it can indefinitely delegate all the duties of numerous vacant offices to anyone it chooses. The Ninth Circuit correctly rejected those atextual interpretations. The Second and Third Circuits have done the same when confronted by similar gambits to fill vacant U.S. Attorney positions.

There is no genuine conflict warranting review. Each court of appeals to address the first-assistant question agrees that the FVRA clearly forecloses the government's theory. On the delegation question, the government invokes a lone, inapposite Federal Circuit decision that confronted a narrower issue and interpreted a different provision of the FVRA.

The government insists that the issue is critical, but the Ninth Circuit's decision leaves the Executive Branch with ample options for filling vacancies and carries limited practical implications. Even as the courts below held that Sigal Chattah was unlawfully serving as acting U.S. Attorney, they did not dismiss the indictments, and the prosecutions remain pending. Nationwide, courts have dismissed only two indictments—one involving former FBI Director James Comey and the other involving New York Attorney General Letitia James—based on the unlawful appointment of acting U.S. Attorneys, and even those courts have done so without prejudice. *United States v. James*, 810 F. Supp. 3d 752, 768 (E.D. Va. 2025), *appeal docketed*, No. 25-4673 (4th Cir. Dec. 22, 2025); *United States v. Comey*, 810 F. Supp. 3d 768, 786-87 (E.D. Va. 2025), *appeal docketed*, No. 25-4674 (4th Cir. Dec. 22, 2025).

The government also elides a slew of vehicle problems, including two unresolved jurisdictional questions that this Court would need to resolve before reaching the merits. First, whether the collateral-order doctrine applies to a disqualification order is an antecedent question of first impression. Second, there are serious mootness concerns, both because Ms. Chattah's appointment would have expired under the FVRA even had she been properly installed, and because there is a pending nomination to fill this vacancy. This Court should not wade through such murky waters in service of resolving splitless questions of limited significance, particularly where the lower courts have repeatedly reached the right result.

The petition for certiorari should be denied.

STATEMENT OF THE CASE

The FVRA safeguards the Senate's advice-and-consent role, while establishing a process for the continued operation of the government.

The Appointments Clause of the Constitution "requires that the President obtain 'the Advice and Consent of the Senate' before appointing 'Officers of the United States.'" *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 292 (2017) (quoting U.S. Const. art. II, § 2, cl. 2). It also gives Congress alone the power to "establish[]" those offices "by Law" and "vest the Appointment of … inferior Officers, as [it] think[s] proper, in the President alone … or in the Heads of Departments." U.S. Const. art. II, § 2, cl. 2.

The Framers knew firsthand the dangers of tyranny and feared a President who may seek to appoint individuals "personally allied to him" who "possess[] the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure." The Federalist No. 76, at 513 (A. Hamilton) (Jacob E. Cooke ed., 1961). By requiring Senate confirmation of certain presidential appointees (so-called PAS positions), the Framers sought to "promote 'a judicious choice' for 'filling the offices of the Union.'" *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 759-60 (2025) (quoting The Federalist No. 76, at 455 (A. Hamilton) (C. Rossiter ed., 1961)).

Recognizing that vacancies may arise in PAS offices and that Senate confirmation takes time, Congress authorized stopgap measures for the temporary designation of acting officers. Since the Founding, "Congress has given the President limited authority to appoint acting officials to temporarily perform the functions of a vacant PAS office without first obtaining Senate approval." *SW General*, 580 U.S. at 294 (cataloging vacancies acts dating back to President Washington's first term). Those statutes have regularly been the subject of political strife, however. In the 1970s, for example, the Department of Justice argued that certain agency heads "had independent authority apart from the [then-existing] Vacancies Act to temporarily fill vacant offices." *Id.* Congress swiftly rejected that interpretation, amending the Vacancies Act to clarify that the Act provided the exclusive means for designating an acting officer. *See id.* at 295. Undeterred, the Executive Branch continued to install acting officials in PAS positions for lengthy periods without submitting nominations. *See id.*

Against that background, Congress enacted the FVRA in an effort to "establish a process that permits the routine operation of the government to continue, but that will not allow the evasion of the Senate's constitutional authority to advise and consent to nominations." 144 Cong. Rec. S6414 (daily ed. June 16, 1998) (statement of Sen. Thompson). The Act employs four levers to accomplish that goal: First, the FVRA limits who may temporarily perform the duties of a vacant PAS office. *See* 5 U.S.C. § 3345. Second, it restricts the length of time an acting official may serve to 210 days (subject to certain exceptions). *See id.* § 3346. Third, it seeks to prevent circumvention by providing that, apart from office-specific vacancies statutes and recess appointments, the FVRA is "the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any [PAS] office." *Id.* § 3347(a). Finally, it enforces those requirements by providing that if an unlawfully designated official performs certain functions, those actions "shall have no force or effect" and "may not be ratified." *Id.* § 3348(d)(1)-(d)(2).

Section 3345 limits the President's authority to designate acting officers. Subsection (a)(1) provides the default rule: "[T]he first assistant to the [vacant] office … shall perform the functions and duties of the office temporarily in an acting capacity." 5 U.S.C. § 3345(a)(1). There are two exceptions to that default rule. The President can either select a person who was confirmed to a different PAS position, *id.* § 3345(a)(2), or designate a senior government employee who has worked at the agency for at least 90 days in the year preceding the vacancy at a GS-15 or higher pay rate, *id.* § 3345(a)(3). Although they are intentionally

circumscribed, the categories still provide the Executive Branch substantial latitude. If the President does not want the first assistant to serve as acting officer, he or she may select the replacement from a thousand-odd PAS officers across the federal government in addition to the potentially thousands of senior employees within the agency. *See* Pet. 33.

Section 3347 then provides that the FVRA is "the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any [PAS] office" unless an alternative statute "expressly" authorizes another designation method or the President makes a recess appointment. 5 U.S.C. § 3347(a). Thus, where the FVRA is not exclusive because there is an office-specific vacancy statute, both statutes operate alongside each other. *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 11 (D.C. Cir. 2019), *abrogated on other grounds by Garland v. Cargill*, 602 U.S. 406 (2024). The FVRA's exclusivity provision further states that a statutory grant of "general authority to the head of an Executive agency … to delegate duties" does not displace the FVRA's processes and restrictions. 5 U.S.C. § 3347(b). In so providing, Congress rejected the Department of Justice's position "that where a department's organic act vests the powers and functions of the department in its head and authorizes that officer to delegate such powers and functions … such authority supersedes the Vacancies Act's restrictions." S. Rep. No. 105-250, at 3 (1998).

Congress has provided a detailed scheme for appointing interim U.S. Attorneys.

This case involves the appointment of U.S. Attorneys, who wield federal prosecutorial power within a given district. In keeping with the office's weighty responsibilities, Congress has maintained the Senate's prerogative to advise and consent to the appointment of U.S. Attorneys since their inception in the Judiciary Act of 1789. *See* Judiciary Act of 1789, ch. 20, 1 Stat. 73, 92; 28 U.S.C. § 541(a).

In addition to the FVRA, Congress has provided specific authorities for the appointment of temporary U.S. Attorneys. In particular, since 1986, Congress has authorized the Attorney General to appoint a person to temporarily fill a vacant U.S. Attorney office until the Senate confirms the presidential appointee to that office or the 120-day term for the temporary appointment expires, whichever comes first. 28 U.S.C. § 546(a), (c). That temporary appointee cannot be someone whom the Senate refused to confirm. *Id.* § 546(b). If the 120-day term expires, "the district court for such district may appoint a United States attorney to serve until the vacancy is filled." *Id.* § 546(d).

The U.S. Attorney for Nevada resigns, and the Attorney General appoints an acting U.S. Attorney in violation of the FVRA's limits.

After a change in administration, PAS officers customarily resign to allow the incoming President to staff the new administration. Consistent with that

custom, in January 2025, the U.S. Attorney for the District of Nevada resigned. Pet. App. 3a.

In accordance with section 3345(a)(1) of the FVRA, the first assistant to the vacant office served as acting U.S. Attorney. Pet. App. 36a. That was true until March 2025, when Attorney General Pam Bondi appointed Sigal Chattah as interim U.S. Attorney under section 546(a). *Id.* The day before her 120-day term expired, Ms. Chattah resigned. *Id.* Her resignation letter "stated that she 'looked forward to continuing to lead the U.S. Attorney's Office for the District of Nevada.'" Pet. App. 4a (cleaned up). The same day, on July 28, 2025, the government hired Ms. Chattah as a "special attorney" in the Department of Justice and the Attorney General designated her "First Assistant U.S. Attorney." *Id.* Following that maneuver, Ms. Chattah claimed to continue exercising the powers of the U.S. Attorney well beyond the 120-day deadline—now purportedly as "acting U.S. Attorney" under section 3345(a)(1) of the FVRA. *Id.*

Respondents are indicted, and the district court grants their motion to disqualify Ms. Chattah but refuses to dismiss their indictments.

On or after July 29, 2025, grand juries indicted Respondents Devonte Devon Jackson, Giann Icob Salazar Del Real, and Jorge Enriquez, Jr. Pet. App. 4a. Respondents moved to dismiss their indictments or, alternatively, to disqualify Ms. Chattah, on the ground that she was not validly serving as acting U.S. Attorney. Pet. App. 4a-5a. They argued that section 3345(a)(1) reaches only the first assistant in place when the vacancy arises; that the FVRA's exclusivity

provision bars the Attorney General from conferring a U.S. Attorney's full powers by delegation; and that her prolonged service violated the Appointments Clause. Pet. App. 43a, 61a, 67a n.9.

On September 30, 2025, the district court agreed that Ms. Chattah's service was unlawful. Pet. App. 35a-77a. It held that section 3345(a)(1) operates automatically and "only on first assistants in place when vacancies begin," because the government's reading would render the President's limited alternatives in section 3345(a)(2) and (a)(3) largely superfluous. Pet. App. 46a-47a, 54a-55a. And it held that section 3347 forecloses the Attorney General from using general delegation statutes to give Ms. Chattah all of a U.S. Attorney's powers. Pet. App. 61a-67a. It did not reach Respondents' Appointments Clause argument. Pet. App. 67a n.9.

The court disqualified Ms. Chattah from supervising the prosecutions but denied the motions to dismiss, reasoning that the indictments were signed by Assistant U.S. Attorneys whose authority derives from the Attorney General. Pet. App. 70a-76a. At the government's request, the court stayed its disqualification orders pending appeal, out of a "spirit of solicitude" to the Executive Branch. Pet. App. 85a.

The government appealed the disqualification orders, and Respondents cross-appealed the denial of the motions to dismiss. Pet. App. 6a.

The President nominates a U.S. Attorney on the eve of argument, and the Ninth Circuit affirms the district court's decision.

On February 12, 2026, the Ninth Circuit heard oral argument in this case. Pet. App. 2a. The day before the argument—more than a year after the vacancy arose—the President nominated George Kelesis to be the U.S. Attorney for the District of Nevada. Pet. App. 6a.

The Ninth Circuit affirmed the disqualification orders, rejecting the government's two theories. The first theory was that Ms. Chattah was lawfully serving as acting U.S. Attorney under the FVRA's automatic-succession rule, 5 U.S.C. § 3345(a)(1), because six months after the vacancy arose, the Attorney General named her First Assistant U.S. Attorney. Pet. App. 15a. The Ninth Circuit disagreed. It held that the "FVRA's text and structure are unambiguous: The statute does not permit the executive to fill an existing vacancy by designating a new first assistant." Pet. App. 13a. The court explained that the automatic-succession rule operates of its own force "at the 'single, immediate' moment at which the vacancy arises," and therefore reaches only the first assistant serving at the time. Pet. App. 13a-14a. The FVRA's two alternatives permit the President to designate a new acting officer after the vacancy arises, but only from a defined pool of eligible officials detailed in subsections (a)(2) and (a)(3). Pet. App. 17a-18a. If the government were correct, "the carefully calibrated limits imposed by subsections (a)(2) and (a)(3) would be insignificant, if not entirely superfluous," because an agency head could "in effect[] appoint almost anyone by installing

that person as a first assistant." Pet. App. 18a (cleaned up).

The government's second theory was that Ms. Chattah could serve as de facto acting U.S. Attorney because the Attorney General had delegated to her all the functions and duties of the vacant office. Pet. App. 28a. The Ninth Circuit held that this "argument is foreclosed by the FVRA's exclusivity provision," 5 U.S.C. § 3347. Pet. App. 28a. Although "the Attorney General has broad authority to designate individuals to perform certain functions and duties of a vacant office," Pet. App. 31a (cleaned up), "[t]he Attorney General's unqualified delegation of all of the U.S. Attorney's functions and duties to a single person is precisely the kind of de facto appointment of an acting officer, premised on the Attorney General's 'general authority to delegate duties,' that section 3347(b) prohibits," Pet. App. 32a (cleaned up). The court expressly reserved "what kinds of more limited delegations might be permissible." Pet. App. 32a.

The Ninth Circuit then dismissed Respondents' cross-appeals for lack of jurisdiction pursuant to the collateral-order doctrine. Pet. App. 32a-34a.

Every other court of appeals that has confronted similar maneuvers by the Executive Branch has reached the same conclusion as the Ninth Circuit. The Third Circuit affirmed the disqualification of a post-vacancy First Assistant in the District of New Jersey. *See United States v. Giraud*, 160 F.4th 390, 407 (3d Cir. 2025). The Second Circuit affirmed a similar disqualification in a case arising from grand jury subpoenas issued by a putative acting U.S. Attorney in the

Northern District of New York. *See In re Grand Jury Subpoenas to the Office of the New York State Attorney General*, 188 F.4th 595, 615 (2d Cir. 2026), *petition for cert filed*, No. 26-348 (U.S. Sep. 15, 2026). And district courts outside of those circuits have reached similar results in related cases. *See, e.g.*, *Comey*, 810 F. Supp. 3d at 786; *James*, 810 F. Supp. 3d at 768; *see also United States v. Ramirez*, 807 F. Supp. 3d 1086 (C.D. Cal. 2025); *United States v. Ramirez-Martinez*, No. 1:22-cr-01721-KWR, 2026 WL 113431 (D.N.M. Jan. 14, 2026).

REASONS TO DENY CERTIORARI

I. The decision below does not warrant review.

This case does not involve a conflict among the circuits. On the first-assistant question, every court of appeals to consider the issue agrees with the Ninth Circuit. On the delegation question, the government relies on a single Federal Circuit decision that addressed the application of a different provision of the FVRA to a single discrete delegated function.

Nor does the government's prediction of administrative "chaos" require the Court to step in. The FVRA provides the Executive with several pathways to temporarily fill vacancies during presidential transitions. And those pathways, in turn, give the Executive substantial latitude to choose from a thousand-odd PAS officers across the federal government in addition to the potentially thousands of sufficiently senior agency employees. The government similarly lacks a basis for its catastrophizing about how the decision will affect

U.S. Attorney's Offices: Prosecutions in Nevada and elsewhere have continued unabated with only two affected indictments nationwide.

A. There is no circuit split.

The government does not even attempt to argue that the decision below conflicts with that of any other court of appeals on the first question presented. Every court of appeals to consider the question agrees with the Ninth Circuit that the automatic-succession rule reaches only the first assistant in place when the vacancy arose. *See In re Grand Jury Subpoenas*, 188 F.4th at 610; *Giraud*, 160 F.4th at 397-401.

There is no circuit split on the second question either—namely, whether section 3347's exclusivity provision prohibits an agency head from installing a de facto acting officer by delegating all of the vacant office's delegable duties to a single person. The Ninth Circuit held that the Attorney General's general delegation authority "does not permit him to vest all of the functions and duties of a vacant office in a single person." Pet. App. 32a. The Second and Third Circuits agree. *Supra* 11-12; Pet. 30.

The government cites only one purportedly conflicting decision: *Arthrex, Inc. v. Smith & Nephew, Inc.*, 35 F.4th 1328 (Fed. Cir. 2022). *See* Pet. 29. That case involved vacancies in the offices of Director and Deputy Director of the Patent and Trademark Office (PTO). A patent holder maintained that during those vacancies the PTO had impermissibly delegated to the Commissioner of Patents the duty to decide rehearing requests related to claims of patentability. 35

F.4th at 1331-32. The Federal Circuit disagreed, holding that "the FVRA applies only to non-delegable duties" and "deciding rehearing requests is a delegable duty." *Id.* at 1335.

The narrow holding in *Arthrex* is not in conflict with the decision below. The Federal Circuit expressly cabined its holding to the delegation of a *single* authority: "the duty to decide rehearing requests." *Arthrex*, 35 F.4th at 1339 & n.5. The court emphasized that the challenged rehearing authority was "the only power at issue in this case," and thus the court's decision went "no broader." *Id.* And the Federal Circuit reached its conclusion by applying section 3348's definition of "function or duty." *Id.* at 1335-36. But that definition expressly applies only "[i]n this section"—that is, in section 3348. When Arthrex raised an argument based on section 3347(b), the Federal Circuit concluded that the section "does not actually apply to the Director at all," because the PTO "is a subagency of the Department of Commerce" and therefore "is not an 'Executive agency' under the FVRA." *Id.* at 1339.

The Federal Circuit thus had no occasion to consider the question at issue here: whether section 3347's exclusivity provision prohibits the head of an executive agency from using a general-delegation statute to delegate all the office's duties to a single person. To the extent there is some tension between the reasoning of the Federal Circuit and the decision below, that is no basis for this Court's intervention. *Arthrex* has little practical significance to the questions presented here: no court of appeals has followed it in this context, and the Federal Circuit—whose

jurisdiction is limited in scope—is unlikely to confront the appointment of a U.S. Attorney. *See* 28 U.S.C. § 1295.

Moreover, unlike in *SW General*, where the government maintained that further percolation was unlikely because most relevant challenges would arise in the D.C. Circuit, the questions in this case have continued to percolate in the lower courts. *See, e.g.*, *United States v. James*, No. 25-4673 (4th Cir.); *United States v. Comey*, No. 25-4674 (4th Cir.); *Abramowitz v. Lake*, No. 26-5086 (D.C. Cir.); *Widakuswara v. Lake*, No. 26-5087 (D.C. Cir.); *see also In re Grand Jury Subpoenas* (U.S. No. 26-348).[1] And the government asserts that there are nine other districts outside the Ninth Circuit with the same U.S. Attorney leadership structure, though it never identifies them. Pet. 32. This Court will thus have ample opportunity to see whether a meaningful split develops. Unless and until one does, there is nothing for this Court to resolve.

B. The government vastly overstates the effect of the decision below.

With no genuine split to rest on, the government resorts to exaggeration and fearmongering. It claims that the decision below "threatens chaos during the next presidential transition" and "poses an immediate

[1] Certiorari should be denied in *In re Grand Jury Subpoenas* for the reasons noted in the New York Attorney General's brief. But if this Court elects to grant review, it should grant certiorari in both cases to consider the full range of relevant fact patterns and consolidate the cases.

threat to the operations of five U.S. Attorney's Offices in the Ninth Circuit." Pet. 29, 31. That concern has no basis in fact or law. The decision below forecloses only two maneuvers—(1) designating a new first assistant after the vacancy arises to serve as acting officer, and (2) vesting all of a vacant office's functions and duties in a single person to create a de facto acting official outside of the FVRA's procedures. Pet. App. 13a, 32a. The decision leaves intact the multiple methods Congress prescribed for temporarily filling vacant offices.

1. The government's fearmongering ignores that Congress already has supplied the Executive Branch with a complete framework for temporarily filling vacancies during a presidential transition, and the decision below leaves all of that framework untouched. For instance, a President can still use the designation methods in section 3345(a)(2) and (a)(3). The second of those, (a)(3), provides for the designation of senior career officials as acting officers precisely because many first-assistant positions may be empty during a presidential transition. Pet. App. 24a. Congress also extended permissible acting service to roughly a year for vacancies that arise during a transition. 5 U.S.C. § 3349a(b). And if the President submits a nomination for the office during that time, the acting official may continue to serve during the pendency of that nomination and for an additional 210 days if the nomination fails. *Id.* § 3346. The upshot is that an acting official might validly serve under the FVRA for more than two-and-a-half years. *See* Anne Joseph O'Connell, *Actings*, 120 Colum. L. Rev. 613, 631 (2020). And were that not enough, there are approximately 40 other statutes—including section 546 for U.S. Attorneys—that supplement the FVRA for particular

offices. *See* 5 U.S.C. § 3347(a); S. Rep. No. 105-250, at 16-17.

The government's warnings of "chaos" thus do not stem from an inability to fill vacant offices. Rather, the government protests that the Executive Branch cannot install its preferred acting officials for an indefinite period of time. But the inability to do that is not a crisis; it is the result of our constitutional design. *See supra* 3-4. Nor will the Executive Branch become paralyzed if it cannot exercise its newly claimed authority to install backfilled first assistants. In over a quarter century, the government provides only 31 examples of post-vacancy first assistant acting officers, Pet. 18, which hardly amounts to an entrenched practice of any kind. *Cf. SW General*, 580 U.S. at 307-08 (rejecting the notion that 112 examples constitute historical practice); *Giraud*, 160 F.4th at 400 (calling the "practice of elevating later-named first assistants" "a recent development").

2. The government's claim that the decision below poses a threat to the operation of U.S. Attorney's Offices fares no better. Take this case, for example. Despite holding that Ms. Chattah was unlawfully serving as acting U.S. Attorney, the courts below did not dismiss the indictments. During the current administration, only two indictments have been dismissed in the entire country following the unlawful appointment of acting officers. And both were dismissed *without prejudice*, following a separate holding that the acting official's service violated the Appointments Clause. *James*, 810 F. Supp. 3d at 762-63, 768; *Comey*, 810 F. Supp. 3d at 780, 786-87. Trials in Nevada have proceeded. Indeed, although the first

court of appeals to address these questions affirmed the disqualification of an acting U.S. Attorney back in 2025, *Giraud*, 160 F.4th at 407, the government has identified no chaos resulting from that decision over the past year, nor are Respondents aware of any such chaos.

Notably, the government neglected to seek certiorari in *Giraud*, which undermines its claims about the importance of the questions presented. The government suggests it eschewed further litigation because the New Jersey district court appointed a successor interim U.S. Attorney under section 546(d). Pet. 30. That claim is dubious. After the Third Circuit's decision, the government attempted a different type of delegation in New Jersey, which the district court found invalid. *United States v. Naviwala*, 825 F. Supp. 3d 451, 494-501 (D.N.J. 2026). The government then acquiesced in the district court's chosen interim U.S. Attorney, rather than attempt to fire that individual and seek certiorari in *Giraud* or an interlocutory appeal in *Naviwala*. *Cf. Rogoff v. Trump*, No. 26-6445 (9th Cir.) (involving the government's claim that the President may fire a section 546(d) appointee).

3. Contrary to the government's suggestion, granting review in this case would not resolve any uncertainty regarding the boundaries of the government's ability to delegate. Pet. 32. The Ninth Circuit held only that the FVRA bars the Attorney General from delegating all of a vacant office's functions and duties to a single individual; the court of appeals expressly declined to decide whether a "more limited delegation[] might be permissible." Pet. App. 32a. The government protests that, when it attempted to divide

U.S. Attorney duties among several officials, the District of New Jersey rejected that approach. Pet. 32 (citing *Naviwala*, 825 F. Supp. 3d at 494-501). But *this* case does not present that question. The Ninth Circuit had no occasion to decide how a divided delegation fares under the FVRA, and its opinion does not purport to answer it. Pet. App. 32a. Nor did the government seek appellate review in *Naviwala*, as noted above; instead, it successfully moved to have the defendants' appeal dismissed for lack of jurisdiction pursuant to the collateral-order doctrine. *See* Motion to Dismiss Appeal, *United States v. Naviwala*, No. 26-1896 (3d Cir. Apr. 20, 2026). Having declined to seek further review in the case that squarely raised the divided-delegation question, the government cannot now invoke the resulting uncertainty as a reason for this Court to take up that issue in a case where the issue is not presented.

In any event, a ruling that section 3347 permits such delegations would not resolve the issue because the government's delegation scheme would still face a serious constitutional challenge under the Appointments Clause. The government's theory would allow officials who have never been confirmed to exercise every delegable power of a vacant PAS office indefinitely. Arrangements of that kind raise "grave constitutional concerns." *SW General*, 580 U.S. at 313 & n.1 (Thomas, J., concurring). Even if this Court granted and reversed, the Appointments Clause challenge—which Respondents raised below, but the lower courts did not address—would remain open on remand in this case and in other cases. At most, reviewing the statutory delegation question would shift the battleground from the FVRA to the Constitution.

II. This case is a poor vehicle.

Before this Court can reach the questions presented, it would need to resolve two antecedent jurisdictional questions that the petition ignores and the parties have never briefed. The first is whether the Ninth Circuit had appellate jurisdiction pursuant to the collateral-order doctrine. The second is whether any live controversy will remain by the time the Court could rule: the FVRA's time limits may obviate the need to resolve the first question presented, and the confirmation of the pending nominee could moot the case entirely. Either issue could prevent the Court from reaching the merits, and both would need to be resolved first.

A. This case requires the Court to resolve an unsettled question about the scope of the collateral-order doctrine.

The Ninth Circuit reached the questions presented only by treating the order disqualifying Ms. Chattah as an immediately appealable collateral order under 28 U.S.C. § 1291. Pet. App. 6a. But this Court has never held an order disqualifying government counsel to be immediately appealable. And such a rule sits in tension with every decision in which this Court has addressed the appealability of attorney-disqualification orders. Because this Court has an independent obligation to assure itself of its jurisdiction and that of the court below, *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006), the unsettled question of whether there was an immediately appealable collateral order here poses a barrier to this Court's review.

The final-judgment rule confines appellate jurisdiction to "final decisions of the district court," and it applies "with the utmost strictness in criminal cases." *Flanagan v. United States*, 465 U.S. 259, 263, 265 (1984). The collateral-order doctrine is a "stringent" and "modest" exception that reaches only orders that "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) [are] effectively unreviewable on appeal from a final judgment." *Will v. Hallock*, 546 U.S. 345, 349-50 (2006).

This Court has addressed the appealability of attorney-disqualification orders three times, each time holding that the order was not immediately appealable. *See Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 377 (1981); *Flanagan*, 465 U.S. at 263, 269-70; *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 440 (1985). Several courts of appeals, however, have made an exception for orders disqualifying government counsel. *See United States v. Williams*, 68 F.4th 564, 571 (9th Cir. 2023) (collecting cases). This Court has not addressed the vitality of this exception. But the Court has had plenty of opportunity "to expand the 'small class' of collaterally appealable orders," and yet has consistently "kept it narrow and selective in its membership." *Will*, 546 U.S. at 350. Indeed, the Court declined an invitation to expand the collateral-order doctrine just last term. *See GEO Grp., Inc. v. Menocal*, 607 U.S. 438 (2026); *see also id.* at 453 (Thomas, J., concurring) ("[The Court] should not expand the … collateral order doctrine beyond orders that our precedents have already held to be immediately appealable.").

In sum, there is substantial doubt regarding whether the disqualification orders at issue in this case were immediately appealable. The court of appeals answered the question in the affirmative in a single sentence, citing Ninth Circuit precedent holding that disqualification of an *entire* U.S. Attorney's Office is an appealable collateral order. Pet. App. 6a (citing *Williams*, 68 F.4th at 570). For this Court to reach the questions that the government presents for review, it would first need to decide a substantial question of appellate jurisdiction that could make the government's questions merely advisory.

B. Two mootness questions cast doubt on this Court's jurisdiction.

Two mootness issues complicate the Court's ability to grant the only relief the government seeks: vacating Ms. Chattah's disqualification from prospective supervision of the prosecutions. Pet. App. 32a-34a, 68a-74a; *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (explaining that a live controversy must persist "through all stages" of the litigation).

First, whether Ms. Chattah may supervise the prosecutions as acting U.S. Attorney is likely moot because even if she had been properly installed, the FVRA's time limits have now run. Under the FVRA's presidential-transition provision, a first assistant could serve for 300 days from inauguration, or until November 16, 2025. *See* 5 U.S.C. § 3349a(b). The statute tolls that period while a nomination is pending before the Senate, *see id.* § 3346(a)(2), but the President did not nominate Mr. Kelesis until February 11, 2026, Pet. App. 6a. On a straightforward reading of the

statute, then, any authority Ms. Chattah possessed as an acting officer lapsed during the roughly three-month period when no nomination was pending. *See* 5 U.S.C. § 3349a(b).

The government asserts that "the FVRA's time limits have not expired," but it does not explain how it reaches that conclusion. Pet. 14. Below, the government argued that a subsequent nomination allows a time-lapsed acting official to spring back into service. Gov't C.A. Resp.-and-Reply Br. 16-17 n.2*; see also* Brief for the Respondent in Opposition, *Rush v. O'Malley*, No. 23-243, 2024 WL 199071, at *9 (U.S. Jan. 12, 2024). Essentially, it has proffered an atextual reading of a provision that this Court has rightly described as a tolling provision. *See SW General*, 580 U.S. at 296. To assess whether this dispute is still live, the Court will need to resolve whether section 3346(a)(2) not only tolls the FVRA's time limits while a nomination is pending but also revives acting service that has already lapsed. That threshold question was neither fully briefed nor decided below, and this Court has repeatedly declined to address it. *See Dahle v. O'Malley*, 144 S. Ct. 549 (2024); *Rush v. O'Malley*, 144 S. Ct. 999 (2024).

Second, a Senate-confirmed official may fill the vacancy soon, which would obviate the need to resolve whether Ms. Chattah may supervise the prosecutions as acting U.S. Attorney, either under the FVRA or through delegation. The President nominated Mr. Kelesis nearly nine months ago, and the nomination remains pending in the Senate. Pet. App. 6a. Should the Senate confirm him while the petition is pending (or while the case is before the Court if certiorari were

granted), there would be no vacancy for Ms. Chattah to fill and no live controversy for this Court to resolve.

III. The decision below is correct.

The Ninth Circuit correctly held that the Attorney General unlawfully designated Ms. Chattah to lead the U.S. Attorney's Office.

A. The Ninth Circuit correctly interpreted section 3345(a)(1).

Under the FVRA, when vacancies occur, the incumbent first assistant *automatically* becomes the acting officer. Congress also provided a means for temporarily filling a vacancy if there is no incumbent first assistant. But Congress did not authorize the Executive Branch to select an acting officer by hiring a new employee months after the vacancy arises and designating her first assistant.

1. The FVRA's text is "unambiguous." Pet. App. 13a. Section 3345(a)(1) provides that when a PAS official "dies, resigns, or is otherwise unable to perform the functions and duties of the office, … the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity." 5 U.S.C. § 3345(a)(1). The use of "shall" and Congress's present-tense verb choice ("dies, resigns, or is otherwise unable") establish that the first assistant is automatically elevated the moment the vacancy arises. Pet. App. 13a; *SW General*, 580 U.S. at 303. Because (a)(1) is directly tied to the vacancy, it refers to "the first assistant serving at the time the vacancy begins." Pet. App. 14a.

Moreover, this automatic-succession provision references "*the* first assistant," not *a* first assistant. By contrast, subsections (a)(2) and (a)(3) allow the President to choose "*a* person" or "*an* officer or employee." The "use of the definite article" in (a)(1), as opposed to the indefinite articles in (a)(2) and (a)(3), "indicates that only one first assistant is subject to immediate, automatic elevation." Pet. App. 14a. Similarly, (a)(2) and (a)(3) provide that the President "may" select someone else to fill a "vacant office," thus distinguishing those discretionary provisions from (a)(1)'s automatic default rule, which applies only at the vacancy's onset. Pet. App. 14a-15a.

The structure of section 3345 bolsters that conclusion. Pet. App. 17a-20a. As discussed, section 3345(a)(1) is an automatic default rule that governs the succession unless the President designates someone who meets the conditions in either subsection (a)(2) or (a)(3). The government's interpretation of (a)(1) as authorizing a later first assistant to become the acting officer creates a vast loophole. It is hard to imagine why Congress would have drafted such specific limits in (a)(2) and (a)(3) if anyone could be selected to serve as "first assistant" under (a)(1).

The government's interpretation also eviscerates Congress's decision to limit who may *select* an acting officer. Congress's admonition that "the President (and only the President)" may displace the automatic-succession rule, 5 U.S.C. § 3345(a)(2) & (a)(3), means nothing if an agency head could select anyone to serve in an acting capacity so long as they are given the title "first assistant." The government objects that under its theory, subsections (a)(2) and (a)(3) are still

relevant for 22 offices with Senate-confirmed first assistants. Pet. 22. On that reading, (a)(2) and (a)(3) are relevant to just over 1% of PAS offices. The Ninth Circuit correctly declined to adopt an interpretation that would render two-thirds of the text of section 3345(a) "entirely superfluous in all but the most unusual circumstances." *TRW Inc. v. Andrews*, 534 U.S. 19, 29 (2001).

The history of the FVRA further confirms that section 3345(a)(1) provides only for the automatic succession of the *incumbent* first assistant. Throughout the 1970s and 1980s, the political branches regularly clashed over the Executive's efforts to bypass the Senate's advice and consent by installing acting officials. *SW General*, 580 U.S. at 294-95. The conflict came to a head when the Clinton administration attempted to install Bill Lann Lee as an acting official after the Senate declined to confirm him, despite him not serving as "a first assistant to a qualified 'officer.'" Steven J. Duffield & James C. Ho, Note, *The Illegal Appointment of Bill Lann Lee*, 2 Tex. Rev. L. & Pol. 335, 349 (1998). Congress enacted the FVRA against the backdrop of that dispute as a means of protecting the Senate's constitutional role in appointments. *SW General*, 580 U.S. at 294-95.

2. The government's arguments to the contrary are unavailing.

The government first highlights section 3345(a)(1)'s use of "office-centric language"—namely, its reference to the "first assistant to the office," rather than the predecessor statute's phrase "his first assistant." Pet. 14-15. But that change is fully

consistent with the automatic elevation of an incumbent that Congress intended. Since the provision kicks in when a vacancy occurs, there is no "officer" present; thus, the statute must refer to the first assistant to the just-vacated office.

The government's reliance on section 3345(a)'s use of the "present tense" and the word "perform" is no more convincing. Pet. 15-16, 19. The government confuses the present tense with the present perfect. Had Congress written that a first assistant may serve when the officer "has died, resigned, or otherwise become unable to perform the functions and duties of the office," that might support its claim that (a)(1) applies to "whoever the first assistant may be at any given moment." Pet. 16. Instead, Congress drafted a provision in the present tense that automatically elevates the existing first assistant at the moment the vacancy occurs, and directs only that individual to "perform" the relevant functions.

The government reads too much into the absence of backward-looking language in the first-assistant provision at section 3345(a)(1). Pet. 16. In section 3345(a)(3), Congress specified that to be eligible to serve as an acting officer, a senior employee must have served 90 days at the agency during the 365-day period preceding the vacancy. Similarly, it specified that an acting officer may not be the nominee for the permanent position unless the officer served 90 days as the first assistant during the 365-day period preceding the vacancy. 5 U.S.C. § 3345(b)(1)(A). The first-assistant provision, by contrast, does not impose comparable restrictions on the incumbent first

assistant's tenure. Thus, no backward-looking language is needed.

Next, the government cites a 2022 provision defining the term "first assistant" in the context of an Inspector General statute that it believes contains a clearer incumbency requirement. Pet. 16-17. But later-drafted and unrelated amendments from 2022 provide scant guidance "about how courts should interpret the [FVRA's] provisions" from 1998. *Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998). And it is hardly illustrative that Congress felt the need to specifically define "first assistant" in 2022 after the Executive Branch began installing post-vacancy first assistants and asserting that the FVRA authorized such a maneuver. *See L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 27-28 (D.D.C. 2020); *Designation of Acting Assoc. Att'y Gen.*, 25 Op. O.L.C. 177, 179-81 (2001).

Failing to overcome the FVRA's unambiguous text, the government resorts to its own "longstanding positions." Pet. 3, 17-18. The government first relies on opinions from the Office of Legal Counsel and the Government Accountability Office. Pet. 17-18. But those opinions are not entitled to deference. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024). Nor are they persuasive. Both agencies initially acknowledged an incumbency requirement. *Guidance on Application of Federal Vacancies Reform Act of 1998*, 23 Op. O.L.C. 60, 64 (1999); U.S. Gov't Accountability Off., GAO-01-468R, *Eligibility Criteria for Individuals to Temporarily Fill Vacant Positions Under the Federal Vacancies Reform Act of 1998*, at 2 (Feb. 23, 2001). And the agencies' change of position

relied on two flawed arguments. The first argument—that section 3345(a)(1) uses office-centric language—has no merit for the reasons explained above. *See supra* 26-27; 25 Op. O.L.C. at 179-80. And the second argument relied on a premise that this Court rejected in *SW General*—that section 3345(b)(1)'s bar on certain nominees serving as acting officers applies only when the acting officer is the first assistant. 25 Op. O.L.C. at 180-81; *cf. SW General*, 580 U.S. at 307.

The government next claims Congress has "acquiesced in" its practice because the Executive Branch has installed at least 31 backfilled first assistants in the past 25 years. Pet. 18. In *SW General*, the government identified "112 individuals" who served as acting officers pursuant to its mistaken interpretation of the FVRA; yet the Court concluded that "Congress's failure to speak up does not fairly imply that it has acquiesced in the Board's interpretation." 580 U.S. at 307-08. By comparison, evidence that the government has contravened the statute 31 times is woefully inadequate to establish that Congress has acquiesced in the Executive Branch's overreach.

Nor is this a context in which government practice is illuminating. "Long settled and established practice may have great weight in interpreting constitutional provisions about the operation of government," particularly where the political branches are in accord. *CFPB v. Cmty. Fin. Servs. Ass'n of Am. Ltd.*, 601 U.S. 416, 442 (2024) (Kagan, J., concurring) (cleaned up); *see also NLRB v. Noel Canning*, 573 U.S. 513, 543 (2014) (considering 200 years of historical practice when interpreting the Recess Appointments Clause). By contrast, the Executive's novel interpretation of a

28-year-old statutory provision enacted in the wake of sustained interbranch conflict is not entitled to any weight whatsoever. *See In re Grand Jury Subpoenas*, 188 F.4th at 609.

As a last resort, the government dreams up hypotheticals, imagining a terrorist attack that kills both a PAS officer and the incumbent first assistant. Pet. 20. But Presidents may issue standing orders of succession under subsections (a)(2) or (a)(3) to cover such crises. And if that were insufficient, Congress must go back to the drawing board to address this policy concern. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 35 (2020); *In re Grand Jury Subpoenas*, 188 F.4th at 609-10.

3. If any doubt remains, the Ninth Circuit's interpretation is preferable because it avoids serious constitutional questions raised by the government's approach. *See Kennedy*, 606 U.S. at 775. The government's interpretation would permit the Attorney General to select inferior officers without appointment power conferred "by Law," in direct violation of the Appointments Clause. U.S. Const. art. II, § 2, cl. 2. Indeed, a department head "has no constitutional prerogative of appointment to offices independently of the legislation of congress." *United States v. Perkins*, 116 U.S. 483, 485 (1886). And the FVRA does not vest any appointment power in agency heads. *See* 5 U.S.C. § 3345. The government's reading of subsection (a)(1) would transform the Attorney General's power to bestow a regulatory title ("first assistant") that covers future vacancies into the ultimate constitutional power to appoint an inferior officer, even though the

Attorney General lacks the requisite congressional authorization to exercise that power.

B. The Ninth Circuit correctly interpreted section 3347.

The government argues that, regardless of whether she was serving lawfully as acting U.S. Attorney, Ms. Chattah need not be disqualified because the Attorney General delegated to her all the same authorities that an acting official could exercise. Pet. 25. If that were true, the President would never need to nominate a single U.S. Attorney; the Attorney General could fill each of the 93 U.S. Attorney positions permanently through delegation. The FVRA does not permit such circumvention of its terms.

1. The text of section 3347 unambiguously forbids the Attorney General from creating a de facto acting officer by delegating all the functions and duties of the vacant U.S. Attorney position to another individual. 5 U.S.C. § 3347(a). The Executive Branch has only two statutory avenues to install a temporary U.S. Attorney: 5 U.S.C. § 3345 and 28 U.S.C. § 546. Those authorities "are the exclusive means for temporarily authorizing an acting official to perform the functions and duties of" a U.S. Attorney. 5 U.S.C. § 3347(a). Although the Attorney General is vested with all the powers of a U.S. Attorney, *see* 28 U.S.C. § 509, and may delegate certain functions to other employees, *see id.* § 510, the FVRA expressly forbids the use of such general delegation statutes to circumvent the statute's exclusivity provision. More precisely, the FVRA provides that it remains the exclusive means for temporarily filling a vacancy even when there is a

"statutory provision providing general authority to the head of an Executive agency … to delegate duties statutorily vested in that agency head." 5 U.S.C. § 3347(b).

The FVRA's history confirms that plain reading. Congress enacted section 3347 specifically because "the Department of Justice maintained that its general vesting and delegation authority permitted the Attorney General to reassign the duties of … Senate-confirmed positions to other officials of the Department." *Gonzales & Gonzales Bonds & Ins. Agency, Inc. v. U.S. Dep't of Homeland Sec.*, 107 F.4th 1064, 1078 n.7 (9th Cir. 2024) (cleaned up). "The general delegation exclusion in § 3347(b) addresses this specific problem of agencies evading the requirements for designating acting officers." *Id.* (cleaned up). The statute therefore expressly "forecloses the argument raised by the Justice Department that 28 U.S.C. §§ 509 and 510, rather than the Vacancies Act, apply to vacancies in that department." S. Rep. No. 105-250, at 17.

2. The government's counterarguments repeat the position that Congress already rejected, and none can be squared with the FVRA's text, structure, or history.

Start with the text. The Executive insists that section 3347's non-circumvention provision applies only to formal "acting officials" and not officials who merely perform the functions and duties of the office temporarily by delegation. Pet. 26. But nothing in the FVRA distinguishes between an "acting official" and an official performing the functions of a vacant office

through delegation. For the purposes of the FVRA, an "acting official" *is* the official who "perform[s] the functions and duties" of the vacant office temporarily. 5 U.S.C. § 3345(a)(1)-(3). It is circular to say that because Ms. Chattah was not appointed in conformance with the FVRA, she therefore is not an "acting official" to whom the FVRA's exclusivity provision applies. The upshot of the government's position is that anyone can be an acting official so long as they do not call themselves an acting official. That statutory legerdemain proves too much.

The government's fallback textual argument fares no better. Unable to find support in section 3347, the government turns to section 3348, the FVRA's remedies provision. Pet. 27. The government asserts that the remedies provision applies only to nondelegable functions and duties: An improper acting officer's performance of a nondelegable function "shall have no force or effect" and "may not be ratified," 5 U.S.C. § 3348(d)(1) & (2), while performance of a delegable function is presumptively invalid, but subject to defenses and ratification. *See Gonzales*, 107 F.4th at 1076-80. But the definition of "function or duty" found in the remedies provision applies only "[i]n this section." 5 U.S.C. § 3348(a). The government does not explain how a definition expressly confined to section 3348 extends to section 3347. Pet. 27.

The government's reading also cannot be reconciled with the statute's structure because it would neuter Congress's carefully constructed scheme. If section 3347 applies only to offices with nondelegable functions, the statutory appointments framework would be almost entirely meaningless. Many—

perhaps most—offices possess no nondelegable functions. *See Kajmowicz v. Whitaker*, 42 F.4th 138, 151 (3d Cir. 2022). The government asserted below that *all* of the U.S. Attorney's functions are delegable. Pet. App. 31a. Under the government's view, statutes mandating nomination and confirmation (like 28 U.S.C. § 541), and vacancies statutes (like the FVRA and 28 U.S.C. § 546), would be superfluous as applied to the many offices without nondelegable functions, because an agency head could simply use vesting-and-delegation authority to create de facto acting officers instead. *See In re Grand Jury Subpoenas*, 188 F.4th at 611. Indeed, if section 3347 merely prohibited an agency head from delegating nondelegable duties, the statute would "make no sense," Pet. App. 64a, because if a duty is nondelegable, by definition another "statute" or "regulation" already prohibits its delegation, *see* 5 U.S.C. §§ 3348(a)(2)(A)(i), (B)(i)(I). These "bizarre" features of the government's interpretation would upend the statutory regime. *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994) (cleaned up).

Finally, history offers the government no refuge. Although the government again invokes "longstanding practice," it can conjure up only two examples. Pet. 27-28. It also relies on an OLC opinion acknowledging that "an agency's [general delegation] statute does not provide authorization for filling PAS positions on a temporary basis." 23 Op. O.L.C. at 62; *see* Pet. 27. And it cites a GAO opinion that discusses section 3348 but not section 3347. Pet. 28. Such a thin and equivocal record is woefully insufficient to overcome the plain text and structure of section 3347.

3. If doubt remains, the Appointments Clause again cautions against the government's reading. Vesting a de facto acting officer with all the functions and duties of a vacant office is not an appointment authorized "by Law" and thus violates the Appointments Clause. U.S. Const. art. II, § 2, cl. 2. Worse, because delegees have no end date, the government's reading "would allow the Executive to bypass the Appointments Clause's requirement of Senate confirmation altogether whenever a PAS office's duties are wholly delegable." *In re Grand Jury Subpoenas*, 188 F.4th at 611. The Appointments Clause is designed to check precisely that variety of limitless Executive discretion. *See SW General*, 580 U.S. at 293; *supra* 3-4.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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