

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ALVIN BROWN, in his official capacity,

*Plaintiff,*

v.

DONALD J. TRUMP, in his official capacity  
as President of the United States; JENNIFER  
HOMENDY, in her official capacity as  
Chairman of the National Safety  
Transportation Board; NATIONAL SAFETY  
TRANSPORTATION BOARD,

*Defendants.*

Case No. 1:25-cv-01764-DLF

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

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## INTRODUCTION

On January 29, 2025, a U.S. Army helicopter collided with an American Airlines plane over the Potomac River near Washington Reagan National Airport, killing 67 people. Two days later, a medical evacuation plane crashed in Philadelphia, killing 8 people. A year before, a ship crashed into the Francis Scott Key Bridge in Baltimore, causing it to collapse and kill 6 people. After each of these accidents, as it has done in thousands of transportation accidents over the decades, the National Transportation Safety Board (NTSB) came on the scene to investigate the probable cause of the accidents, so that it can recommend ways to prevent future accidents.<sup>1</sup> The NTSB has no authority to compel anyone to follow its recommendations, yet many of its recommendations are adopted by other agencies and private industry because of the NTSB's expertise and reputation for objectivity and thoroughness.

That expertise and reputation is rooted in Congress's thoughtful design of the NTSB. The NTSB's primary function is to conduct vigorous investigations and make unbiased safety recommendations, even if they are critical of other agencies. To serve that end, in 1974, Congress moved the NTSB out of the Department of Transportation and created it as an independent expert agency headed by five Board members, only three of whom can be from any one political party. Board members are nominated by the President and confirmed by the Senate to serve staggered, five-year terms. To further ensure that the NTSB could perform that function without undue influence from the President, the President can remove Board members only for "inefficiency, neglect of duty, or malfeasance in office." 49 U.S.C. § 1111(c). At the same time, however, the NTSB's structure and functions ensure that there is no intrusion on the President's ability to enforce

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<sup>1</sup> See NTSB, *Midair Collision PSA Airlines Bombardier CRJ700 Airplane and Sikorsky UH-60 Military Helicopter*, <https://perma.cc/YQ42-GPY7> (last updated Mar. 11, 2025); NTSB, *Learjet 55 Medevac Crash*, <https://perma.cc/E6UL-ETUS> (last updated Mar. 6, 2025); NTSB, *Contact of Containership Dali with Francis Scott Key Bridge and Subsequent Bridge Collapse*, <https://perma.cc/8K35-58JU> (last updated Mar. 20, 2025). Courts may take judicial notice of "publicly available materials and information, such as . . . information available on government websites." *Pub. Emps. for Env't Resp. v. Nat'l Park Serv.*, No. 19-cv-3629, 2021 WL 1198047, at \*2 n.2 (D.D.C. Mar. 30, 2021).



laws. Because one member's term ends each year, every President can appoint at least four Board members and can fill a three-member majority of the Board with members of his own party. And the NTSB does not exercise substantial executive power. Unlike the Department of Transportation, it does not have authority to promulgate or enforce any safety regulations. Under Supreme Court precedent, members of agencies like NTSB—multimember, bipartisan boards with staggered terms that do not exercise substantial executive power—have long been permitted to have removal protections as a constitutional matter. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935); *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020).

On May 5, 2025, Defendant Donald Trump violated 49 U.S.C. § 1111(c) and Supreme Court precedent when he suddenly fired Board member Plaintiff Alvin Brown over 18 months before his term was to expire on December 31, 2026. The one-sentence termination email provided no reason for his termination. Within less than 24 hours, Mr. Brown was forced to return his government equipment and ID. He is no longer able to access his office or to perform the duties that he was Presidentially appointed and Senate confirmed to do.

Because it is clear that his removal without cause violates § 1111(c) and that § 1111(c) is constitutional, Mr. Brown is entitled to summary judgment. As a remedy, the Court should declare that his removal was unlawful. The Court should also enjoin Defendants NTSB and Jennifer Homendy, Chair of the NTSB, from giving effect to his unlawful firing, a remedy that the D.C. Circuit has recognized is available in such cases. *Severino v. Biden*, 71 F.4th 1038, 1042–43 (D.C. Cir. 2023); *Swan v. Clinton*, 100 F.3d 973, 980 (D.C. Cir. 1996). Mr. Brown respectfully requests that this Court consider this motion without delay so that this case and any appeals may be resolved and he may resume work before his term ends on December 31, 2026.

## BACKGROUND

### I. Statutory background

#### A. History of the NTSB as an independent agency

“The NTSB is a uniquely independent federal agency responsible for investigating airplane accidents, determining the probable cause of accidents, and making recommendations to help protect against future accidents.” *Chiron Corp. & PerSeptive Biosystems v. NTSB*, 198 F.3d 935, 937 (D.C. Cir. 1999).

The early origins of the NTSB can be traced to the Air Commerce Act of 1926, when Congress vested the Department of Commerce with the responsibility to investigate aircraft accidents. Air Commerce Act of 1926, Pub. L. No. 69-254, ch. 344, § 2(e), 44 Stat. 568, 569.

Congress recognized the importance of having an independent agency investigate aircraft accidents early on. In 1938, Congress created a new multimember Civil Aeronautics Authority outside of the Department of Commerce, whose members were removable by the President only for “inefficiency, neglect of duty, or malfeasance.” Civil Aeronautics Act of 1938, Pub. L. No. 75-706, § 201(a), 52 Stat. 973, 981. Within the Authority was an Air Safety Board whose role was to investigate accidents and make safety recommendations to the Authority. *Id.* §§ 701, 702, 52 Stat. at 1012-13. Congress directed the Board to “exercise and perform its powers and duties independently of the Authority.” *Id.* § 702(b), 52 Stat. at 1014.

In 1940, President Roosevelt consolidated the Air Safety Board into the Civil Aeronautics Authority; changed the Authority’s name to the Civil Aeronautics Board; and moved the Civil Aeronautics Board into the Department of Commerce. Reorganization Plan No. IV, § 7 (a)-(b), 54 Stat. 1234, 1235 (1940). Although the new Civil Aeronautics Board sat within the Department of Commerce, it “exercise[d] its functions . . . independently of the Secretary of Commerce.” *Id.* § 7(c), 54 Stat. at 1236. The new Board’s members retained their previous removal protections. *See Wiener v. United States*, 142 F. Supp. 910, 914 (Ct. Cl. 1956) (noting the 1938 act included removal protections for the Civil Aeronautics Board), *rev’d on other grounds*, 357 U.S. 349 (1958);

*see also* Federal Aviation Act of 1958, Pub. L. No. 85-726, § 201(a), 72 Stat. 731, 741 (providing that the Board would continue and that “[t]he members of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office”).

In 1966, Congress consolidated various transportation agencies into a new Department of Transportation (DOT) and established within it the National Transportation Safety Board, which, similar to its predecessors, was to operate “independent of the Secretary of Transportation and the other offices and officers of the Department.” Department of Transportation Act, Pub. L. No. 89-670, § 5(f), 80 Stat. 931, 936 (1966). To make the NTSB “truly independent,” the Board members were “removable only for cause.” H.R. Rep. No. 89-1701 (1966), *as reprinted in* 1966 U.S.C.C.A.N. 3362, 3370. Specifically, the President could remove Board members only “for inefficiency, neglect of duty, or malfeasance in office.” Pub. L. No. 89-670, § 5(h), 80 Stat. at 936.

In 1974, Congress enacted the Independent Safety Board Act of 1974 and moved the NTSB out of DOT altogether. Congress found that the NTSB needed to be independent of DOT and all other agencies in order to conduct independent accident investigations and formulate safety improvement recommendations that at times may be critical of agencies and their officials:

(1) The National Transportation Safety Board was established by statute in 1966 (Public Law 89-670; 80 Stat. 935) as an independent Government agency, located within the Department of Transportation, to promote transportation safety by conducting independent accident investigations and by formulating safety improvement recommendations.

(2) Proper conduct of the responsibilities assigned to this Board requires vigorous investigation of accidents involving transportation modes regulated by other agencies of Government; demands continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. *No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.*

Independent Safety Board of Act of 1974, Pub. L. No. 93-633, § 302, 88 Stat. 2156, 2166-67 (1975) (emphasis added). Consistent with its findings, Congress explicitly recognized the NTSB as “an independent establishment of the United States Government.” 49 U.S.C. § 1111(a). Notably,

although Congress intended for NTSB to independently assess other agencies' safety-related practices and regulations and to make recommendations for improvement, Congress did not give NTSB power to compel other agencies to make changes. *See* Pub. L. No. 93-633, § 304, 88 Stat. at 2168-71 (listing NTSB's duties). Congress ensured that the authority to adopt and implement safety policies—or not—remained with the DOT, a traditional Executive Branch agency whose head is removable at will by the President. *See id.* § 307, 88 Stat. at 2172.

### **B. NTSB's structure**

Today, the NTSB is led by five Board members “appointed by the President, by and with the advice of the Senate.” 49 U.S.C. § 1111(b). “Not more than 3 members may be appointed from the same political party.” *Id.* At least three of the members must be “appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.” *Id.*

The members serve five-year terms. *Id.* § 1111(c). The terms are staggered so that each year the term of one member ends. Pub. L. No. 89-670, § 5(i), 80 Stat. at 936. When a term ends, the member may continue to serve until a successor is appointed and qualified. 49 U.S.C. § 1111(c). The President may only “remove a member for inefficiency, neglect of duty, or malfeasance in office.” *Id.*

The President designates a Chairman to the Board with the advice and consent of the Senate. *Id.* § 1111(d). The Chairman serves as the chief executive and administrative officer of the Board. *Id.* § 1111(e). The President also designates a Vice Chairman. *Id.* § 1111(d). Both the Chairman and Vice Chairman serve three-year terms in those positions. *Id.*

### **C. NTSB's functions**

The NTSB's primary function is limited to “conducting independent accident investigations” and to “formulating safety improvement recommendations.” Pub. L. No. 93-633, § 302(1), 88 Stat. at 2166. Its investigations “are not conducted for the purpose of determining the

rights or liabilities of any person.” *Joshi v. NTSB*, 791 F.3d 8, 11 (D.C. Cir. 2015) (quoting 49 C.F.R. § 831.4). And the NTSB has no mechanism for requiring private parties or other agencies to follow its recommendations. It “neither promulgates nor enforces any . . . safety regulations.” *Chiron Corp.*, 198 F.3d at 937.

The NTSB investigates major transportation accidents including aircraft accidents, highway accidents, railroad accidents, pipeline accidents, major marine casualties; or any other accidents where the accident is catastrophic or involves a problem of a recurrent nature. 49 U.S.C. § 1131(a). In aircraft and rail accidents involving fatalities, the NTSB helps to recover and identify the bodies of fatally injured passengers and serves as a point of contact for their families, helping them connect to a designated non-profit with experience in disaster assistance, and to the airline or rail carrier. *Id.* §§ 1136, 1139.

Of course, to investigate the cause of an accident, the NTSB must first know that an accident has occurred and must be able to examine the wreckage, cockpit voice recordings, and other information relevant to the accident. Accordingly, Congress allowed NTSB to prescribe regulations to carry out its duties, such as “regulations governing the notification and reporting of accidents” and regulations to preserve the wreckage and accident site. *Id.* §§ 1113(a), (f); 1132(b); 1134(b); *see, e.g.*, 49 C.F.R. §§ 830.5, 830.10. The NTSB may also issue subpoenas under the signature of the Chair or the Chair’s delegate. 49 U.S.C. § 1113(a)(1), (3). The Attorney General may bring civil actions in district court to enforce subpoenas or the other statutory provisions that prohibit interference with the Board’s ability to provide assistance to accident victims. *See id.* §§ 1113(a)(4), 1151, 1155.<sup>2</sup>

Following an accident, the NTSB issues a public report that outlines the NTSB’s findings regarding the facts and circumstances of the accident, as well as the probable cause of the accident

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<sup>2</sup> These cases appear to be very rare. For instance, a Westlaw search for 49 C.F.R. §§ 1113(a)(4), 1151, and 1155 cases revealed two civil actions brought under those statutes in 2009 and 1989. *See* Compl., *United States v. Collins*, No. 09-cv-6473, 2009 WL 5058813 (W.D.N.Y. Sept. 17, 2009) (concerning unsolicited communications to air accident victims); *NTSB v. Carnival Cruise Lines, Inc.*, 723 F. Supp. 1488 (S.D. Fla. 1989) (subpoena to crew members in a maritime accident).

and safety recommendations for preventing similar accidents in the future. *Id.* § 1131(a)(1), (e); 49 C.F.R. § 831.4(a)-(b).<sup>3</sup> The NTSB may also issue safety improvement recommendations in annual and periodic reports to Congress or other special reports. 49 U.S.C. § 1116. “[N]o part of an NTSB accident report that relates to an accident investigation may be admitted as evidence or for any other use in civil litigation.” *Joshi*, 791 F.3d at 11; 49 U.S.C. § 1154(b); 49 C.F.R. § 835.3. “Thus, no legal consequences of any kind result from the NTSB’s factual report or probable cause determinations.” *Joshi*, 791 F.3d at 11.

Aside from investigating accidents and recommending improvements, another discrete duty of the NTSB is to review on appeal the denial, amendment, modification, suspension, or revocation of certificates issued by the Federal Aviation Administration (FAA) or Coast Guard, and certain civil penalties issued by the FAA. 49 U.S.C. § 1133. The NTSB acts as an “impartial adjudicator” in these appeals, similar to a court. *Garvey v. NTSB*, 190 F.3d 571, 573-74 (D.C. Cir. 1999) (“The Federal Aviation Act, 49 U.S.C. §§ 40101 *et seq.*, establishes a ‘split-enforcement’ regime in which the FAA has regulatory and enforcement authority, while the NTSB acts as an impartial adjudicator.”); *see also United States v. Kirst*, 54 F.4th 610, 614 (9th Cir. 2022) (“The NTSB has no regulatory or enforcement authority. The FAA has enforcement authority to revoke a pilot’s airman certificate.”). This discrete appellate function represents approximately 2% of the NTSB’s budget and personnel.<sup>4</sup>

## **II. Factual background**

Alvin Brown was nominated by President Biden to serve as a member of the NTSB on August 3, 2022. After the Senate adjourned without taking action on the nomination, Mr. Brown

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<sup>3</sup> The NTSB’s investigation reports are available on its website. *Investigation Report*, NTSB, <https://perma.cc/ZX7D-EN5B>.

<sup>4</sup> According to NTSB’s latest annual budget submission, in FY 2025, the Office of Administrative Law Judges, which issues initial decisions that are then sent to the Board for final decision, had only 7 of the agency’s 445 full-time equivalent employees (1.5%). The Office’s budget was \$3.2 million out of the agency’s total budget of \$145 million (2.2%). NTSB, *Fiscal Year 2026 Budget Request* 12-13, 117-18 (2025), <https://perma.cc/HTP5-F65F>.

was renominated on January 23, 2023, and was unanimously confirmed by voice vote by the Senate on March 8, 2024, to a term expiring December 31, 2026. Brown Decl. ¶¶ 1-3.<sup>5</sup> He was sworn in on March 13, 2024. *Id.* ¶ 4.

Before serving on the NTSB, Mr. Brown had served as mayor of Jacksonville, Florida from 2011 to 2015. He was the first African American elected to that position. *Id.* ¶ 9. As mayor, he worked with federal, state, and local governments on initiatives to reduce bicycle and pedestrian fatalities and won federal grants to modernize and improve safety in Jacksonville's ports. *Id.* ¶ 10. He had also worked as a senior adviser in the U.S. Department of Transportation for community infrastructure opportunities and had previously worked in the White House and in the U.S. Departments of Commerce, Agriculture, Housing and Urban Development. *Id.* ¶ 8. As a young man, he worked full-time as a meat-cutter at Winn-Dixie and he eventually became the first in his family to graduate from college. Later in life, he became a reverend and returned to school at Duke University Divinity School. *Id.* ¶¶ 7, 15.

Mr. Brown's past experiences helped him better serve the public from the NTSB. Within two weeks of his swearing in, the Francis Scott Key Bridge collapsed in Baltimore's port, killing 6 people. Mr. Brown immediately went to the site with Chairman Homendy and other NTSB employees to begin the investigation, assist victims' families, and coordinate responses to the disaster with other federal agencies and state and local governments. *Id.* ¶ 12. He also led responses to a massive highway pileup in Austin, Texas involving a semi-truck and 16 other cars, which killed 5 and injured 11 people, and to a car crash in Belle Glade, Florida that killed 6 children and 3 adults. *Id.* ¶ 13.

After business hours on May 5, 2025—over 18 months before his term was to expire—Mr. Brown suddenly learned that he had been terminated by President Trump. He had no advance warning. The one-sentence email from the White House did not state any reason for terminating

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<sup>5</sup> See also Nominations, Congress.gov, PN114—Alvin Brown—National Transportation Safety Board, <https://perma.cc/7TKD-EBNT>; Nominations, Congress.gov, PN2448—Alvin Brown—National Transportation Safety Board, <https://perma.cc/7KWT-TN8L>.

him. Sent from Trent M. Morse, Deputy Director, Presidential Personnel, the email stated: “On behalf of President Donald J. Trump, I am writing to inform you that your position on the National Transportation Safety Board is terminated effective immediately.” *Id.* ¶¶ 16-18. The next day, Mr. Brown was required to turn in his government ID, phone, and laptop. His assistant was also terminated. Mr. Brown has not been able to perform his duties as an NTSB member since being terminated. *Id.* ¶ 19.

Mr. Brown filed suit in this Court on June 4, 2025. ECF No. 1. The Court recently granted the parties’ joint motion to proceed directly to cross-motions for summary judgment, as this case involves pure legal questions and Mr. Brown’s term expires on December 31, 2026. Minute Order (July 26, 2025).

### **LEGAL STANDARD**

Under Rule 56 of the Federal Rules of Civil Procedure, a party is entitled to summary judgment if there is no genuine issue of material fact and the party is entitled to judgment as of matter of law. *Vasquez v. District of Columbia*, 110 F.4th 282, 287 (D.C. Cir. 2024).

### **ARGUMENT**

Mr. Brown is entitled to summary judgment as a matter of law because his removal without cause violated 49 U.S.C. § 1111(c) and that statute is constitutional. Regarding the statutory violation, the material facts are indisputable. Mr. Brown was a sitting member of the NTSB; President Trump removed him from that position on May 5, 2025, without cause; and he has not been able to fulfill his duties since. That Mr. Brown’s removal violated § 1111(c) also cannot be disputed. The statute permits the President to remove NTSB members only “for inefficiency, neglect of duty, or malfeasance in office” and Mr. Brown was not removed for any of those reasons. The President has given no reason at all for firing Mr. Brown.

The government will likely contend that § 1111(c) is unconstitutional, on the theory that the Constitution gives the President unlimited power to fire NTSB members. But under the Constitution and governing Supreme Court precedent, Congress is authorized to provide the removal protection in § 1111(c). Congress has carefully designed the NTSB as a multimember



expert agency that does not exercise substantial executive power. The NTSB is structured as a multimember, bipartisan board of experts whose terms are staggered so that every President has the opportunity to appoint at least four of five Board members and to have a majority of the Board come from his own political party, if he wishes. The NTSB also does not wield substantial executive power. Its primary function is to investigate transportation accidents and to recommend safety improvements. Unlike many other independent agencies, the NTSB has no power to order or require other agencies or private parties to follow its recommendations.

Courts have repeatedly upheld the constitutionality of statutory removal protections for independent, multimember agencies under binding Supreme Court precedent.<sup>6</sup> This Court should as well, particularly given the nature of the NTSB's functions. Because the President's removal of Mr. Brown violates § 1111(c) and is inconsistent with the Constitution and Supreme Court precedent, the Court declare the removal null and void. The Court should also enjoin Defendants NTSB and Jennifer Homendy, the Chair of the NTSB, from preventing Mr. Brown from performing the duties of his office, or in the alternative, issue a writ of mandamus for the same. Such relief is the only way to provide adequate relief to Mr. Brown and to restore the separation of powers after President Trump's overreach.

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<sup>6</sup> See, e.g., *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748, 763 (10th Cir. 2024), *cert. denied*, 145 S. Ct. 1047 (2025); *Consumers' Rsch. v. Consumer Prod. Safety Comm'n*, 91 F.4th 342, 346 (5th Cir.), *cert. denied*, 145 S. Ct. 414 (2024); *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1047 (5th Cir. 2023); *Meta Platforms, Inc. v. FTC*, 723 F. Supp. 3d 64, 87 (D.D.C. 2024); *Wilcox v. Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025) (National Labor Relations Board); *Harris v. Bessent*, 775 F. Supp. 3d 164 (D.D.C. 2025) (Merit Systems Protection Board); *Grundmann v. Trump*, 770 F. Supp. 3d 166 (D.D.C. 2025) (Federal Labor Relations Authority); *Boyle v. Trump*, No. 8:25-cv-1628, 2025 WL 1677099 (D. Md. June 13, 2025) (Consumer Product Safety Commission); *Slaughter v. Trump*, No. 25-cv-909, 2025 WL 1984396 (D.D.C. July 17, 2025) (Federal Trade Commission). The Supreme Court and D.C. Circuit have temporarily stayed some of the recent orders pending appeal. *Trump v. Wilcox*, 145 S. Ct. 1415 (2025); *Trump v. Boyle*, No. 25A11, 2025 WL 2056889 (U.S. July 23, 2025); *Grundmann v. Trump*, No. 25-5165, 2025 WL 1840641, at \*1 (D.C. Cir. July 3, 2025). However, as of this filing, no appellate court has reached the merits or ruled on final relief in these cases yet.

**I. Mr. Brown’s removal violates 49 U.S.C. § 1111(c).**

The unambiguous language of the Independent Safety Board Act and the undisputed facts clearly demonstrate that Mr. Brown’s removal violates 49 U.S.C. § 1111. Under § 1111(c), “the term of office of each member is 5 years” and the President may remove a member only “for inefficiency, neglect of duty, or malfeasance in office.” *See Humphrey’s Executor*, 295 U.S. at 626 (reading similar language in the FTC Act “to limit the executive power of removal to the causes enumerated”). Mr. Brown was removed on May 5, 2025, over a year and a half before his term was to end on December 31, 2026. The President has offered no reason for removing Mr. Brown, let alone a reason that satisfies the statutory standard. Thus, Mr. Brown’s removal violated the statute.

**II. NTSB members’ removal protections are constitutional.**

The removal protection provision in 49 U.S.C. § 1111(c) is constitutional because the NTSB is a multimember, bipartisan board whose members serve staggered terms and because the NTSB does not exercise substantial executive power.

**A. Under the Constitution and governing Supreme Court precedent, Congress may give for-cause removal protections to multimember expert agencies that do not wield substantial executive power.**

Since at least 1887, when it created the Interstate Commerce Commission, *see* Interstate Commerce Act, Pub. L. No. 49-41, ch. 104, § 11, 24 Stat. 379, 383 (1887), Congress has established dozens of independent agencies with removal protections for the agency heads.<sup>7</sup> Although the Supreme Court has held that the President has an implied power to remove officers

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<sup>7</sup> *See also, e.g.*, 42 U.S.C. § 7412(r)(6)(B) (Chemical Safety and Hazard Investigation Board); 42 U.S.C. § 1975(e) (Commission on Civil Rights); 42 U.S.C. § 7171(b)(1) (Federal Energy Regulatory Commission); 5 U.S.C. § 7104(b) (Federal Labor Relations Authority); 46 U.S.C. § 46101(b)(5) (Federal Maritime Commission); 5 U.S.C. § 1202(d) (Merit Systems Protection Board); 30 U.S.C. § 823(b)(1) (Mine Safety and Health Review Commission); 29 U.S.C. § 153(a) (National Labor Relations Board); 45 U.S.C. § 154 (National Mediation Board); 49 U.S.C. § 1111(c) (National Transportation Safety Board); 42 U.S.C. § 5841(e) (Nuclear Regulatory Commission); 29 U.S.C. § 661(b) (Occupational Safety and Health Review Commission); 39 U.S.C. § 502(a) (Postal Regulatory Commission); 49 U.S.C. § 1301(b)(3) (Surface Transportation Board); 39 U.S.C. § 202(a)(1) (United States Postal Service Board of Governors).

of the United States, that power is not absolute. The Supreme Court has held that there are circumstances where Congress can limit that removal power, including the *Humphrey's Executor* exception. Under this exception, Congress may limit the President's ability to remove heads of "multimember independent expert agencies that do not wield substantial executive power." *Seila Law*, 591 U.S. at 218;<sup>8</sup> *Humphrey's Executor*, 295 U.S. at 629-30. The NTSB is such an agency.

In 1935, in *Humphrey's Executor*, the Supreme Court unanimously upheld the constitutionality of such statutory protections, holding that Congress could limit the President's ability to remove Commissioners of the Federal Trade Commission (FTC) except in cases of "inefficiency, neglect of duty, or malfeasance in office." 295 U.S. at 629. William Humphrey was a member of the FTC nominated by President Hoover and confirmed by the Senate for a term ending in 1938. When Franklin Roosevelt became president, he decided to remove Humphrey because of their differing views. *Id.* at 618-19. When Humphrey refused to resign, President Roosevelt wrote him, "Effective as of [October 7, 1933,] you are hereby removed from the office of Commissioner of the Federal Trade Commission." *Id.* at 619. Humphrey filed suit. The government contended that Congress's limitations on removal interfered with the executive power of the President. *Id.* at 626.

The Supreme Court "found it 'plain' that the Constitution did not give the President 'illimitable power of removal' over the officers of independent agencies," and held that the "'coercive influence' of the removal power would 'threaten the independence of the commission.'" *Morrison v. Olson*, 487 U.S. 654, 687-88 (1988) (quoting *Humphrey's Executor*, 295 U.S. at 630) (alterations omitted) The *Humphrey's Executor* Court observed that Congress constructed the FTC such that the Commissioners were a non-partisan group of experts who served staggered, fixed,

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<sup>8</sup> *Seila Law* at various places refers to "any" executive power, "significant" executive power, and "substantial" executive power. 591 U.S. at 204, 216, 218; *Consumers' Rsch.*, 91 F.4th at 353. The better reading of precedent is that removal protections are permissible for agency heads that do not exercise "substantial" or "significant" executive power. This reading is consistent with the Court's suggestion in *Seila Law* that Congress could fix the CFPB, which the Court described as having "significant executive power," by making it a multimember agency. 591 U.S. at 237-38.

terms and whose “duties [were] neither political nor executive, but predominantly quasi judicial and quasi legislative.” 295 U.S. at 624. The Court found that the limitation on removal was constitutional given that the FTC was “created by Congress as a means of carrying into operation legislative and judicial powers.” *Id.* at 626.

In 1958, the Court similarly concluded that the Constitution did not give the President the power to remove a member of the War Claims Commission—“a three-member ‘adjudicatory body’ tasked with resolving claims for compensation arising from World War II”—“merely because he wanted his own appointees on such a Commission.” *Wiener v. United States*, 357 U.S. 349, 356 (1958); *see also Seila Law*, 591 U.S. at 216.

Congress has relied on this longstanding precedent in structuring additional independent agencies, including the NTSB. And, despite the position taken by the current Administration as to many of these independent agencies, statutory removal protections “were not restrictions imposed upon an unwilling Executive Branch. Rather, the Executive Branch affirmatively chose to accept some insulation for its agencies and commissions from short term political control to ensure the good and faithful execution of its executive duties.” *Leachco, Inc. v. Consumer Prod. Safety Comm’n*, 103 F.4th 748, 760 n.11 (10th Cir. 2024) (rejecting challenge to Consumer Product Safety Commissioners’ removal protections), *cert. denied*, 145 S. Ct. 1047 (2025).

In more recent cases addressing the President’s removal power, the Supreme Court has repeatedly declined to overrule *Humphrey’s Executor*. *Seila Law*, 591 U.S. at 204 (“we . . . do not revisit our prior decisions allowing certain limitations on the President’s removal power”); *see also Collins v. Yellen*, 594 U.S. 220, 251 (2021); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 483 (2010) (declining to “reexamine” *Humphrey’s Executor*); *Morrison*, 487 U.S. at 654, 688 & n.25 (recognizing that *Humphrey’s Executor* is still good law). In *Seila Law*, for instance, the Court interpreted and reaffirmed the holding of *Humphrey’s Executor*. *Seila Law* invalidated a statutory for-cause removal clause concerning the Director of the Consumer Financial Protection Bureau (CFPB). The heart of the Court’s concern in *Seila Law* was that the CFPB statute placed too little accountability and too much authority in a single person. The Court described the CFPB’s

single-Director structure as a “historical anomaly,” which it found was “incompatible with our constitutional structure,” and contrasted it with the “traditional independent agency headed by a multimember board or commission,” like in *Humphrey’s Executor*. *Seila Law*, 591 U.S. at 207, 223. In choosing to remedy the CFPB Director’s unconstitutional removal protections by severing them, the Court noted that Congress was not foreclosed “from pursuing alternative responses to the problem—for example, converting the CFPB into a multimember agency.” *Id.* at 237.

The Supreme Court’s recent stay orders in *Trump v. Wilcox*, 145 S. Ct. 1415 (2025), and *Trump v. Boyle*, No. 25A11, 2025 WL 2056889 (U.S. July 23, 2025), similarly did not purport to overrule *Humphrey’s Executor*. Indeed, the Court expressly stated in the *Wilcox* stay order that it did not “ultimately decide in [the stay] posture whether the NLRB or MSPB falls within such a recognized exception.” 145 S. Ct. at 1415. The *Boyle* stay order, concerning the Consumer Product Safety Commission, also emphasized that the Court’s interim orders “are not conclusive as to the merits.” 2025 WL 2056889. Thus, *Humphrey’s Executor* (and *Wiener*) remain binding on the merits on the lower courts. *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (“If a precedent of [the Supreme] Court has direct application in a case, . . . a lower court should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.”) (cleaned up); *see also In re Aiken Cnty.*, 645 F.3d 428, 446 (D.C. Cir. 2011) (Kavanaugh, J., concurring) (“*Humphrey’s Executor* is an entrenched Supreme Court precedent, protected by stare decisis.”); *Ticor Title Ins. Co. v. FTC*, 814 F.2d 731, 741 (D.C. Cir. 1987) (applying *Humphrey’s Executor* even though it was “at least arguable that the Supreme Court might be persuaded to alter its current position”); *Consumers’ Rsch.*, 91 F.4th at 356 (“*Humphrey’s* does settle the question. Only the Supreme Court has power to reconsider that New Deal-era precedent—perhaps reaffirming it, overruling it, or narrowing it—and at least so far, it hasn’t.”); *Meta*, 723 F. Supp. 3d at 87 (“It is certainly not this Court’s place to deem a long-standing Supreme Court precedent ‘obsolete’ . . . and thus no longer binding.”).

**B. The NTSB is a multimember expert agency that does not wield substantial executive power.**

Under governing Supreme Court precedent, Congress may give for-cause removal protections to “multimember expert agencies that do not wield substantial executive power.” *Seila Law*, 591 U.S. at 218 (describing *Humphrey’s Executor* exception). To determine whether removal protections are permissible under the *Humphrey’s Executor* exception, courts first “must ask whether an agency’s structure resembles that of the ‘New Deal-era FTC’ described in *Humphrey’s Executor*. Second, courts must ensure that the agency does not exercise substantial executive power. If both conditions are met, then Congress has the authority to provide removal restrictions.” *Grundmann v. Trump*, 770 F. Supp. 3d 166, 175 (D.D.C. 2025) (quoting *Seila Law*, 591 U.S. at 218-19); *see also Consumers’ Rsch.*, 91 F.4th at 352. Both criteria are met here.

**NTSB’s structure.** The NTSB is structured in a way that preserves the President’s ability to exert control over the agency while at the same time allowing for expert, unbiased accident investigations and safety recommendations. *Seila Law* described the *Humphrey’s Executor* exception as applying to bodies that are (1) multimember; (2) balanced along partisan lines; and (3) has staggered terms. 591 U.S. at 216. The NTSB has all these characteristics. *See supra* at 5. The NTSB members’ staggered, five-year terms also “enable[] the agency to accumulate technical expertise and avoid a ‘complete change’ in leadership ‘at any one time,’” which helps to maintain stability as NTSB investigations can take 12 to 24 months or longer.<sup>9</sup> *Seila Law*, 591 U.S. at 216 (quoting *Humphrey’s Executor*, 295 U.S. at 624); *see also id.* § 1111(c); Pub. L. No. 89-670 § 5(i), 80 Stat. at 936. Additionally, the NTSB’s organic statute additionally requires that at least three of the NTSB’s five members be “appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.” 49 U.S.C. § 1111(b).

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<sup>9</sup> *See* NTSB, *The Investigative Process*, <https://perma.cc/BJ3D-HXES> (Aug. 6, 2025).

At the same time, unlike the CFPB, where a President might never have the chance to appoint the single Director, who has a five-year term, the term of one NTSB member ends each year. Thus, every President has the opportunity to fill four of the five Board seats and to fill the majority of the seats with individuals from his own political party.<sup>10</sup> Every President also has the opportunity to designate the Chair and Vice Chair, who serve three-year terms, at least once in each Presidential term. 49 U.S.C. § 1111(d). In summary, every President can exercise control over the NTSB even without at-will removal while the public benefits from having a steady, expert agency that can investigate accidents and make safety recommendations and adjudicate appeals impartially.

***NTSB's functions.*** The NTSB also does not exercise substantial executive power. Rather, it primarily performs quasi-legislative and quasi-judicial functions, such that at-will removal is not “essential to the President’s proper execution of his Article II powers.” *Morrison*, 487 U.S. at 691. The NTSB’s primary responsibility is to investigate accidents and make safety improvement recommendations in reports to the public and to Congress. Other agencies or private parties can choose to follow the NTSB’s recommendations or not. The NTSB cannot compel them to do so, as it “neither promulgates nor enforces any . . . safety regulations.” *Chiron Corp.*, 198 F.3d at 937. The NTSB’s “investigative and informative” powers are quasi-legislative, as they “fall[] in the same general category as those powers which Congress might delegate to one of its own committees.” *Buckley v. Valeo*, 424 U.S. 1, 137 (1976) (per curiam). They are similar to the FTC’s “legislative” function of “making investigations and reports” to Congress. *Humphrey’s Executor*, 295 U.S. at 628.

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<sup>10</sup> For example, aside from Mr. Brown, there are currently two other Democrats (Jennifer Homendy and Thomas Chapman) and two Republicans (Michael Graham and J. Todd Inman) on the Board. Mr. Chapman, who was appointed during President Trump’s first term, is a “holdover” as his term expired on December 31, 2023. See 49 U.S.C. § 1111(c) (“When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified.”); Nominations, Congress.gov, PN 1228—Thomas B. Chapman—National Transportation Safety Board, <https://perma.cc/34DA-AGQ5>. President Trump is free to nominate a Republican to replace Mr. Chapman and form a Republican majority on the Board at any time.



Another small, discrete function of the NTSB is to adjudicate appeals from the FAA's airmen certificate denials and the like. 49 U.S.C. § 1133. This function is quasi-judicial. Unlike other regulatory schemes in which "rulemaking, enforcement, and adjudicative powers are combined in a single administrative authority," in relation to these appeals, the NTSB has adjudicatory powers only, as "Congress separated enforcement and rulemaking powers from adjudicative powers, assigning these respective functions to two *different* administrative authorities." *Martin v. Occupational Safety & Health Rev. Comm'n*, 499 U.S. 144, 151 (1991). As the D.C. Circuit has recognized, in this "split-enforcement" scheme, the FAA has "regulatory and enforcement authority," while the NTSB is an "impartial adjudicator." *Garvey*, 190 F.3d at 573-74; *Hinson v. NTSB*, 57 F.3d 1144, 1147 n.1 (D.C. Cir. 1995) (holding that NTSB, like a district court, was not a proper party on an appeal of its decision and granting FAA's motion to strike NTSB's brief). Adjudications of this type do not involve the exercise of "substantial executive power" such that the President must have unfettered removal power over its members. *See Wiener*, 357 U.S. at 356 (holding that President lacked authority to remove members of an adjudicatory commission, even in the absence of explicit removal protections); *Collins*, 594 U.S. at 250 n.18 (recognizing that an adjudicatory body has "a unique need for 'absolute freedom from Executive interference'").<sup>11</sup> The NTSB's removal protections are important to ensuring that the individuals before them receive due process, which, of course, "demands impartiality on the part of those who function in judicial or quasi-judicial capacities," as the NTSB does in these cases. *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); *Morrison*, 487 U.S. at 691 n.30 ("It is not difficult to imagine situations in which Congress might desire that an official performing 'quasi-judicial' functions, for example, would be free of executive or political control.").

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<sup>11</sup> To hold otherwise would call into question Congress's ability to provide for removal protections for judges on Article I courts such as the Tax Court or Court of Federal Claims. *See Humphrey's Executor*, 295 U.S. at 629 ("If Congress is without authority to prescribe causes for removal of members of the trade commission and limit executive power of removal accordingly, that power at once becomes practically all-inclusive in respect of civil officers with the exception of the judiciary provided for by the Constitution," including "the judges of the legislative Court of Claims.").



While the NTSB can promulgate regulations to carry out its duties under chapter 49 of the U.S. Code, 49 U.S.C. § 1113(d), that function is ancillary to NTSB’s primary safety recommendation function and its discrete adjudication function, which as discussed above are quasi-legislative and quasi-judicial. *Cf. Harris v. Bessent*, 775 F. Supp. 3d 164, 176 (D.D.C. 2025) (Merit Systems Protection Board did not exercise substantial executive power where it did not “possess its own rulemaking authority except in furtherance of its judicial functions”). The little-used ability to bring civil actions to prevent interference with the NTSB’s duties is similarly ancillary to the NTSB’s quasi-legislative role, as is the ability to issue subpoenas. *See* 49 U.S.C. §§ 1113(d), 1151; *see also Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 (1975) (“Issuance of subpoenas . . . has long been held to be a legitimate use by Congress of its power to investigate.”).<sup>12</sup> More importantly, since the NTSB does not have independent litigation authority, the NTSB’s role is limited to asking the Attorney General to act on its behalf, meaning the exercise of executive power is under the Attorney General’s control, not the NTSB’s. *See* 28 U.S.C. §§ 516, 519; *cf. Buckley*, 424 U.S. at 137 (contrasting “investigative and informative” powers possessed by Congress, such as the power to issue subpoenas, with the executive power of bringing a lawsuit to seek judicial relief). Thus, because the NTSB is a multimember, bipartisan, expert agency that does not exercise substantial executive power, removal protections for NTSB members are constitutional under *Humphrey’s Executor* and *Wiener*.

### **III. Mr. Brown is entitled to declaratory and injunctive relief.**

Given that Mr. Brown’s removal violated 49 U.S.C. § 1111(c) and the statute is constitutional under governing Supreme Court precedent, this Court should grant Mr. Brown declaratory relief and injunctive relief, or alternatively, a writ of mandamus, as other district courts have uniformly done in other recent removal cases.

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<sup>12</sup> The FTC at the time of *Humphrey’s Executor* had subpoena powers as well. *Slaughter*, 2025 WL 1984396, at \*11.

**A. Recent stay orders do not preclude final relief.**

As a preliminary matter, the Supreme Court’s and D.C. Circuit’s recent stay orders in some of the other removal cases do not foreclose relief in this case.<sup>13</sup> Those orders concerned the appropriateness of a stay pending appeal, which is a distinct matter from the appropriateness of final relief, at issue here. In the context of a motion for stay pending appeal, for instance, courts balance competing harms that may occur during the pendency of the appeal. *See Wilcox*, 145 S. Ct. at 1415 (“A stay is appropriate to avoid the disruptive effect of the repeated removal and reinstatement of officers *during the pendency of this litigation.*”) (emphasis added). In contrast, the issue before this Court now is what final relief to award. Neither the Supreme Court nor the D.C. Circuit have ruled yet on the availability or appropriateness of final relief.

For the reasons below, this Court should issue final, summary judgment awarding declaratory and injunctive relief.<sup>14</sup>

**B. The Court should declare Mr. Brown’s removal unlawful.**

Under the Declaratory Judgment Act, “any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). The Court’s “duty . . . to say what the law is,” *Marbury v. Madison*, 5 U.S. 137, 177 (1803), applies even when the person violating the law is the President. *See, e.g., Clinton v. New York*, 524 U.S. 417, 421 (1998) (affirming declaratory judgment against the President).

In determining whether to exercise their discretion to grant declaratory relief, courts may consider various, non-dispositive factors, including “the public importance of the question to be decided.” *Hanes Corp. v. Millard*, 531 F.2d 585, 592 n.4 (D.C. Cir. 1976). In the D.C. Circuit, “declaratory judgment will ordinarily be granted only when it will either ‘serve a useful purpose in clarifying the legal relations in issue’ or ‘terminate and afford relief from the uncertainty,

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<sup>13</sup> *See Boyle*, 2025 WL 2056889; *Wilcox*, 145 S. Ct. 1415; *Grundmann*, 2025 WL 1840641, at \*1.

<sup>14</sup> Whether any final relief awarded in this case should be stayed pending appeal is a question for a later stage in this case.

insecurity, and controversy giving rise to the proceeding.’” *President v. Vance*, 627 F.2d 353, 364 n.76 (D.C. Cir. 1980) (quoting Edwin Borchard, *Declaratory Judgments* 299 (2d ed. 1941)); see also *New York v. Biden*, 636 F. Supp. 3d 1, 31 (D.D.C. 2022).

A declaration that Mr. Brown’s termination violated 49 U.S.C. § 1111(c) would serve these ends here. The legal question before the Court is also “one of significant ‘public importance,’ given that it concerns the structure and independence of a federal agency.” *Harris*, 775 F. Supp. 3d at 179 (quoting *Hanes*, 351 F.2d at 592 n.4). Numerous courts have granted declaratory relief in similar cases and this Court should do the same. *Id.* at 180; *Wilcox*, 775 F. Supp. 3d at 240; *Grundmann*, 770 F. Supp. 3d at 181; *LeBlanc v. U.S. Privacy & Civil Liberties Oversight Bd.*, No. 25-cv-542, 2025 WL 1454010, at \*25 (D.D.C. May 21, 2025); *Boyle v. Trump*, No. 25-cv-1628, 2025 WL 1677099, at \*13 (D. Md. June 13, 2025); *Slaughter v. Trump*, No. 25-cv-909, 2025 WL 1984396, at \*16 (D.D.C. July 17, 2025); *Harper v. Bessent*, No. 25-cv-1294, 2025 WL 2049207, at \*11 (D.D.C. July 22, 2025).

### **C. The Court should grant a permanent injunction.**

The Court should also enjoin Defendants Homendy and NTSB from treating Mr. Brown as having been removed and from impeding his ability to continue serving as a member of the NTSB.

A plaintiff seeking a permanent injunction must demonstrate that: (1) he has suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction. See *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010). The first two factors “are often considered together,” *Grundmann*, 770 F. Supp. 3d at 187, and the latter two merge when the defendant is the government, see *Singh v. Berger*, 56 F.4th 88, 107 (D.C. Cir. 2023). The D.C. Circuit has recognized that injunctive relief is available in cases involving removal of federal officials. See *Severino*, 71 F.4th at 1042-43; *Swan*, 100 F.3d at 980;

*cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584, 589 (1952) (affirming a judgment enjoining a subordinate officer from implementing a Presidential directive that exceeded his constitutional authority).

**1. Plaintiff meets all four factors for injunctive relief. Mr. Brown is suffering irreparable harm and there is no adequate remedy available at law.**

Mr. Brown is suffering irreparable injury from Defendants’ unlawful conduct and money damages are not an adequate remedy for that harm. Mr. Brown is being prevented from carrying out the statutorily mandated duties he is supposed to perform until December 31, 2026. Depriving a principal officer of “[his] statutory right to function in [his] office” constitutes an irreparable harm. *Berry v. Reagan*, No. 83-cv-3182, 1983 WL 538, at \*5 (D.D.C. Nov. 14, 1983), *vacated as moot*, 732 F.2d 949 (per curiam) (D.C. Cir. 1983); *Grundmann*, 770 F. Supp. 3d at 187; *Wilcox*, 775 F. Supp. 3d at 236; *Harris*, 775 F. Supp. 3d at 185.

Defendants’ conduct also “inflicts an exceptionally unique harm” to Mr. Brown and the NTSB “due to the loss of the office’s independence.” *Slaughter*, 2025 WL 1984396, at \*18; *Wilcox*, 775 F. Supp. 3d at 236. The NTSB has no authority to compel other agencies or private persons to adopt its safety recommendations. They do so because the NTSB has a “reputation for objectivity and thoroughness.” *See* NTSB, Fiscal Year 2026 Budget Request 7, <https://perma.cc/HTP5-F65F>. The NTSB’s “character and perception as neutral and expert-driven is damaged by [Mr. Brown’s] unlawful removal” and money “cannot make up for that kind of intangible and reputational harm.” *Wilcox*, 775 F. Supp. 3d at 236; *Grundmann*, 770 F. Supp. 3d at 188 (“A check in the mail does not address the gravamen of this lawsuit.”); *Slaughter*, 2025 WL 1984396, at \*18 (“A remedial paycheck is cold comfort if the FTC’s very independence can be tossed aside at the relatively low cost of providing backpay.”). And, in any event, Mr. Brown is not seeking monetary relief here.

**2. The balance of the equities and public interest favor an injunction.**

The balance of the equities and the public interest factors also weigh in favor of a permanent injunction.

First, “there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Second, the independence of this agency from political interference is important to its mission, as Congress found when it enacted the Independent Safety Board Act. When planes fall out of the sky or bridges collapse, the public relies on the multimember, bipartisan NTSB to conduct “vigorous investigation of accidents,” write reports, and make safety recommendations to protect the public without fear or favor to the President or other agencies. Pub. L. No. 93-633, § 302, 88 Stat. at 2166-67. The recent January 29, 2025 collision between a U.S. Army helicopter and commercial passenger plane over the Potomac River that killed 67 people illustrates the importance of the NTSB’s independence. The day after the crash, President Trump rushed to blame the crash on diversity, equity, and inclusion initiatives for air traffic controllers.<sup>15</sup> But the NTSB has heard from witnesses that a problem with the Army helicopter’s altimeter caused the pilot to be flying higher than she should have and that the air traffic controller that night was handling both airplane and helicopter traffic, tasks usually performed by two people.<sup>16</sup> As the NTSB works toward its final report and recommendations, the public’s confidence in the NTSB members’ ability to neutrally investigate the Army’s and the FAA’s potential roles in the accident, to deliberate, and to put forth unbiased safety recommendations would be undermined if the President is able to manipulate the Board by arbitrarily firing members without cause at any time.

The injunction that Plaintiff seeks would not work significant hardship on Defendants. The Constitution does not give the President an absolute right to remove Mr. Brown from office. Nor

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<sup>15</sup> Glenn Kessler, *Trump Launched Air Controller Diversity Program That He Now Decries*, Wash. Post (Jan. 30, 2025), <https://perma.cc/693L-JZ5R>.

<sup>16</sup> NTSB, DCA25MA108: Aviation Investigation Preliminary Report 8, 10-12 (2025), <https://perma.cc/2UF5-YX72>; Karoun Demirjian, et al., *Investigators Home In on Altitude Discrepancy in Army Helicopter Before Potomac Crash*, N.Y. Times (July 30, 2025), <https://perma.cc/7M6D-6R84>.

do Defendants Homendy and NTSB have the legal right to treat Mr. Brown as if he were removed. And every President, including President Trump in his first term, has co-existed with the removal protections for decades. In any event, an injunction would not prevent the President from “shap[ing] [NTSB’s] leadership and thereby influenc[ing] its activities.” *Seila Law*, 591 U.S. at 225. As discussed, NTSB member Thomas Chapman is a holdover whose term expired at the end of 2023. The President could nominate a Republican to replace Mr. Chapman at any time and, if confirmed, there would then be a Republican majority on the Board. *See supra* at 16 n.10; *Wilcox*, 775 F. Supp. 3d at 239 (rejecting government’s argument that an injunction would cause control of the executive branch to slip from the President’s control, where the President could fill vacant seats).

In the *Boyle* and *Wilcox* stay orders, the Supreme Court determined that the agencies in those cases wielded “considerable” executive power and that the government “face[d] greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.” *Boyle*, 2025 WL 2056889 (quoting *Wilcox*, 145 S. Ct. at 1415); *see also Grundmann*, 2025 WL 1840641, at \*1 (finding that FLRA “possesses powers substantially similar to those of the NLRB”). Here, however, the NTSB does not wield “considerable” executive power. The NTSB’s primary function is to investigate accidents and recommend safety improvements. Its recommendations are not binding on the President, other agencies, or private persons. Thus, in this case, any harm to the President is slight in comparison to the harm to Mr. Brown and to the public.

**D. In the alternative, the Court should issue a writ of mandamus.**

In the alternative, if this Court were to conclude that injunctive relief is not available, this Court should issue a writ of mandamus prohibiting Defendants Homendy and NTSB from treating Mr. Brown as having been removed from office.

A district court has “original jurisdiction of any action in the nature of mandamus” where “(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there

is no other adequate remedy available to [the] plaintiff.” *In re Nat’l Nurses United*, 47 F.4th 746, 752 n.4 (D.C. Cir. 2022) (quoting *Muthana v. Pompeo*, 985 F.3d 893, 910 (D.C. Cir. 2021)). A court “can analyze the clear right to relief and clear duty to act requirements for mandamus ‘concurrently.’” *Illinois v. Ferriero*, 60 F.4th 704, 715 (D.C. Cir. 2023) (quoting *Lovitky v. Trump*, 949 F.3d 753, 760 (D.C. Cir. 2020)). Those first two requirements are satisfied here because the statute leaves no “room for executive discretion—the President has no menu of options to pick from when he categorically may not remove [Mr. Brown] without cause.” *Harris*, 775 F. Supp. 3d at 188; *see also Swan*, 100 F.3d at 977 (“a duty to comply with [statutory] removal restrictions . . . if it exists, is ministerial and not discretionary”).

As for the third requirement, while Plaintiff believes that this Court can issue an injunction instead, should the Court determine otherwise, the Court should “vigilantly enforce federal law” and “award[] necessary relief” through a writ of mandamus as an alternative remedy, *DL v. District of Columbia*, 860 F.3d 713, 726 (D.C. Cir. 2017), as other courts in this district have indicated they would do if other relief were not available. *Slaughter*, 2025 WL 1984396, at \*20 n.12; *LeBlanc*, 2025 WL 1454010, at \*34; *Wilcox*, 775 F. Supp. 3d at 237 n.22; *Harris*, 775 F. Supp. 3d at 188.

### CONCLUSION

For the foregoing reasons, Mr. Brown respectfully requests that the Court grant his Motion for Summary Judgment.

Dated: August 8, 2025

Respectfully submitted,

/s/ Cynthia Liao

Cynthia Liao (CA Bar No. 301818)\*

Elena Goldstein (D.C. Bar No. 90034087)

Victoria S. Nugent (D.C. Bar No. 470800)

**DEMOCRACY FORWARD FOUNDATION**

P.O. Box 34553

Washington, DC 20043

(202) 808-1982 (Liao)

[cliao@democracyforward.org](mailto:cliao@democracyforward.org)

Jon M. Greenbaum (D.C. Bar No. 489887)  
**JUSTICE LEGAL STRATEGIES PLLC**  
P.O. Box 27015  
Washington, D.C. 20038  
(202) 601-8678  
[jgreenbaum@justicels.com](mailto:jgreenbaum@justicels.com)

*Counsel for Plaintiff*

*\* Admitted pro hac vice. Not admitted to practice law in the District of Columbia; practicing under the supervision of attorneys who are members of the DC Bar.*