UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

THE DISTRICT OF COLUMBIA and
THE STATEMENT OF MARYLAND,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States,

Defendant.

Civil Action No. 8:17-cv-01596-PJM

PLAINTIFFS' BRIEF IN OPPOSITION TO THE PRESIDENT'S MOTION TO STAY PROCEEDINGS

In requesting that this Court exercise its inherent authority to stay all proceedings in this case—pending the resolution of his forthcoming petition for Supreme Court review—the President requests extraordinary relief but fails to demonstrate any "pressing need" for it. *Mullins v. Suburban Hosp. Healthcare Sys., Inc.*, No. 16-1113, 2017 WL 3023282, at *1 (D. Md. July 17, 2017) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936)).[1] That is true for two independently sufficient reasons.

First, the President has failed to show that "the interests of judicial economy" support such a stay. *Mullins*, 2017 WL 3023282, at *1. There is no "reasonable probability that four Justices will consider" the questions identified by the President as "sufficiently meritorious to grant certiorari," nor is there "a fair prospect that a majority of the [Supreme] Court will vote to reverse" the Fourth Circuit's en banc judgment. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). Whether the District of Columbia and Maryland lack a cause of action or an equitable remedy are neither indisputable, nor were they squarely addressed by the Fourth Circuit. This makes the prospect of Supreme Court review—let alone a reversal—particularly remote. There is also no circuit split on the en banc court's decision not to certify an interlocutory appeal in the absence of a district court certification. Indeed, the President seeks a writ that no federal court of appeals has granted and that most have determined to be strictly forbidden. Even a superficial examination of the questions the President has identified thus reveals that Supreme Court review is highly improbable.

[1] The President has also moved for effectively the same relief in the U.S. Court of Appeals for the Fourth Circuit. Mot. to Stay, *In re Trump*, No. 18-2486 (June 12, 2020). That motion was fully briefed on June 22, 2020. In neither motion has the President acknowledged seeking relief in two fora simultaneously.

Second, the President has failed to show "hardship and equity to [himself] if the action is not stayed," whereas the District and Maryland will suffer prejudice if a stay is entered. *Mullins*, 2017 WL 3023282, at *1. With respect to the President's alleged harm, the District and Maryland have not even served the President with discovery. And the requests for non-party discovery from certain government agencies generate *no* injury to the President or the Executive Branch. By contrast, as this Court has already concluded, the District and Maryland are suffering concrete, here-and-now injury as a result of the President's illegal conduct, and they have been unable to achieve even limited, non-party discovery in a suit filed over three years ago. This harm outweighs any alleged need for a stay.

The President's request for a stay is unjustified. His motion should be denied.

ARGUMENT

"A party seeking a stay must demonstrate a pressing need for one . . . and that the need for a stay outweighs any possible harm to the nonmovant." *Mullins*, 2017 WL 3023282, at *1 (D. Md. July 17, 2017) (first citing *Landis*, 299 U.S. at 255; then citing *Mike's Train House v. Broadway Ltd.*, No. 09-2657, 2011 WL 836673, at * 1 (D. Md. Mar. 3, 2011)); *see Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983) (movant must "justify [the stay] by clear and convincing circumstances outweighing potential harm to the party against whom it is operative"). Typically, the court considers three factors in weighing a motion to stay: "(1) the interests of judicial economy; (2) hardship and equity to the moving party if the action is not stayed; and (3) potential prejudice to the non-moving party." *Mullins*, 2017 WL 3023282, at *1 (quoting *Davis v. Biomet Orthopedics, LLC*, No. 12-3738, 2013 WL 682906 (D. Md. Feb. 22, 2013)). None of these factors favors the President.

I. Interests Of Judicial Economy Do Not Favor A Stay Because The President Has Failed To Show A Reasonable Likelihood That The Supreme Court Will Review And Reverse The Fourth Circuit's En Banc Decision Denying His Petition For Mandamus.

To support his claim that judicial economy would be served by the entry of a stay, the President identifies two questions that may be the subject of a forthcoming petition for certiorari: (1) whether the Fourth Circuit erred in declining to issue a writ of mandamus requiring immediate dismissal of the entire suit, Mot. 5-9; and (2) whether the Fourth Circuit erred in declining to issue a writ of mandamus directing this Court to certify its interlocutory decisions denying the President's motion to dismiss for review under 28 U.S.C. § 1292(b), Mot. 9-16. Neither satisfies the Supreme Court's criteria for granting certiorari, *see* S. Ct. Rule 10, nor is there a fair prospect of reversal on either issue. Interests of judicial economy therefore cut strongly against a stay.

A. The Supreme Court is unlikely to review—let alone reverse—the Fourth Circuit's denial of mandamus relief dismissing the suit outright.

The President first asserts that the Supreme Court will likely review and reverse the Fourth Circuit's denial of mandamus relief to dismiss the entire lawsuit. This claim is centered on a contention that it is "'clear and indisputable[]' that the *entire action* cannot lie," contrary to this Court's and the Fourth Circuit's reasoned conclusion otherwise. En Banc Slip Op. 15. The President is mistaken respecting the likelihood of Supreme Court review and reversal on this score, for three reasons: first, the President has not shown that it is "clear and indisputable" that the District and Maryland lack a cause of action to enjoin the President; next, any petition would be an exceedingly irregular vehicle for resolving such a question; and, finally, the President has never tried to satisfy the other criteria for mandamus relief, including, most importantly, that "there are no other adequate means of obtaining the relief sought." En Banc Slip Op. 7 (citing *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004)).

1. It is far from "clear and indisputable" that the District of Columbia and Maryland lack a cause of action or an equitable remedy.

The Supreme Court is unlikely to review and reverse the Fourth Circuit's en banc decision because the President has failed to show any clear and indisputable error concerning whether the District and Maryland have a cause of action to seek equitable relief against the President for violating the Constitution. After thorough briefing and oral argument, this Court disagreed with the President's arguments in considered written opinions, and nine judges of the Fourth Circuit recognized that these issues are at least subject to reasonable disagreement—and thus outside the boundaries of mandamus. En Banc Slip. Op. 15, 19-21; *cf. In re Trump*, 781 F. App'x 1, 2 (D.C. Cir. 2019) (per curiam) (describing the cause-of-action question as "unsettled").

There is a good reason why the President's arguments have failed to clear the hurdle of mandamus relief: they are, at most, debatable, not conclusive. First, the President's position depends on an untenable overreading of *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475 (1866). *Johnson* cannot support the President's contention that it is clear and indisputable that the President's alleged violations of the Emoluments Clauses are judicially unreviewable. That is particularly true here, where a prohibition on accepting unlawful payments from foreign powers and domestic officials does not—unlike in *Johnson*—"constitute[] an official executive prerogative nor impede[] any official executive function." En Banc Slip Op. 20; *see Johnson*, 71 U.S. at 499-501. At most, refusing emoluments involves only ministerial—and not discretionary—action. Second, and critically, the President's assertion that equitable causes of action are limited to the preemptive assertion of a defense has been expressly disclaimed by the Supreme Court. *See Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 491

n.2 (2010); *see also* Fourth Circuit Mandamus Opp'n Br. 22 (citing cases). The President's arguments thus provide no foundation for mandamus relief.[2]

2. A petition raising the cause-of-action issue would be a poor vehicle because the Fourth Circuit did not decide it, there is no circuit split on the issue, and the Supreme Court is unlikely to decide it in a mandamus posture.

Any petition for certiorari raising the cause-of-action issue would also fail to satisfy the Supreme Court's ordinary criteria for review. First, the en banc Fourth Circuit did not even resolve the issue in its decision; rather, consistent with the case's posture, it concluded only that "reasonable jurists can disagree in good faith on the merits of these claims." En Banc Slip Op. 15. Given that no other federal appellate court has even *answered* the cause-of-action question raised by the President, and given that the Fourth Circuit did not resolve it either, it would be exceedingly irregular for the Supreme Court to grant review of this splitless, novel issue and decide it in the first instance. *See, e.g., Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1784 (2019) (Thomas, J., concurring) (agreeing with the Court's refusal to review a question "because further percolation may assist our review of this issue of first impression"). Nor would the Supreme Court be likely to take on such a review within the stringent constraints of a mandamus proceeding.[3] The Supreme Court is accordingly unlikely to review and reverse the Fourth Circuit's

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[2] Nor does *Franklin v. Massachusetts*, 505 U.S. 788 (1992), aid the President. Mot. 7. There, the Court instructed that it "would require an express statement by Congress before assuming [Congress] intended the President's performance of his *statutory* duties to be reviewed for abuse of discretion" under the Administrative Procedure Act, but that "the President's actions may still be reviewed for constitutionality." 505 U.S. at 801 (emphasis added).

[3] The President suggests—in passing and for the first time despite several rounds of briefing and four oral arguments in this matter—that the en banc Court's decision conflicts with *Newdow v. Roberts*, 603 F.3d 1002 (D.C. Cir. 2010). *See* Mot. 5. Not so. *Newdow* involved a challenge to religious aspects of the presidential inauguration ceremony. While explaining why the plaintiffs lacked standing to obtain prospective declaratory relief, the court reasoned that they challenged "a decision committed to the executive discretion of the President or the personal discretion of the

decision denying a petition for a writ of mandamus that sought to override this Court's opinions and direct dismissal of the entire suit.

3. The President's mandamus petition fails for the independent reason that he has not established the other criteria for mandamus relief.

In his stay motion, the President confines his focus to the second element of mandamus relief: that his right to dismissal is "clear and indisputable." *Cheney*, 542 U.S. at 381. But the mandamus standard is comprised of three discrete elements, and the President has not offered "any independent argument that he meets the other two." En Banc Slip Op. 15 n.5.[4] Any entitlement to mandamus relief is therefore squarely foreclosed. In particular, the President has made no attempt to establish the first element: that he has "no other adequate means to attain the relief he desires." *Cheney*, 542 U.S. at 380 (quoting *Kerr v. U.S. Dist. Ct.*, 426 U.S. 394, 403 (1976)); *see In re United States*, 139 S. Ct. 452, 453 (2018) (in a mandamus case, denying the United States' request for a stay where it had other adequate means to obtain relief). As a result, his petition for certiorari will not be a proper vehicle for the question he describes and offers no basis for staying proceedings in this Court.

The "no other adequate means" requirement is "designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Cheney*, 542 U.S. at 380-81. That is, it

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President-elect," and that "[a] court—whether via injunctive or declaratory relief—does not sit in judgment of a President's executive decisions." *Newdow*, 603 F.3d at 1012. This part of *Newdow* addressed only declaratory relief, not the existence of a cause of action. Moreover, the court was considering challenges to actions "committed to the executive discretion of the President," *id.*, whereas the premise of the District and Maryland's case is that the President lacks discretion to accept unlawful emoluments, *cf.* En Banc Slip Op. 20 ("[E]ven if obeying the law were somehow an official executive duty, such a duty would not be 'discretionary,' but rather a 'ministerial' act within the meaning of *Johnson*.").

[4] Although the Fourth Circuit made this comment in reference to the President's separate request to mandate certification under Section 1292(b), it applies with equal force to his request to dismiss the case outright.

ensures that mandamus does not become "a substitute for appeal, even though hardship may result from delay and perhaps unnecessary trial." *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964) (citations omitted). Consistent with equitable principles, an "[a]ppeal, when available, is an adequate remedy to be preferred to a writ." Charles Alan Wright & Arthur R. Miller, 16 *Federal Practice & Procedure* § 3932.1 (3d ed. 2020).

Here, the availability of other adequate relief is plain: the President may seek review of this Court's decision concerning the availability of an equitable cause of action on direct appeal after a final judgment is entered. The mere fact that he disagrees with the denial of his motion to dismiss does not suspend operation of the final-judgment rule. Even as the President, he may not skip the regular appeals process because, as the Supreme Court has explained, there is no "[p]residential privilege of immunity from judicial process under all circumstances." *Clinton v. Jones*, 520 U.S. 681, 704 (1997) (quoting *United States v. Nixon*, 418 U.S. 683, 706 (1974)).

Accordingly, the Supreme Court is unlikely to grant the President's petition for certiorari seeking dismissal of the entire case. The President has thus failed to show that interests of judicial economy justify a stay of proceedings in this Court while any such petition for certiorari is pending.

B. The Supreme Court is unlikely to review and reverse the Fourth Circuit's denial of mandamus relief directing certification.

1. There is no clear and indisputable right to relief on the Section 1292(b) issue.

No appellate court appears to have *ever* issued a writ of mandamus to command Section 1292(b) certification after the district court has declined to certify. In fact, appellate courts have routinely held that they cannot or will not review a Section 1292(b) certification decision through mandamus. *See* Note, *Interlocutory Appeals in the Federal Courts Under 28 U.S.C. § 1292(b)*, 88 Harv. L. Rev. 607, 616-17 (1975) ("The courts of appeals have so far been unanimous in refusing

to grant mandamus either to reverse the trial court's decision on certification or to review the underlying order on its merits. The statutory history of section 1292(b) plainly indicates that this is the correct result . . . ." (footnote omitted)). Because the President seeks relief that has never been granted—and that most courts have said is strictly forbidden—he cannot show a clear and indisputable right to relief. For that reason, the Supreme Court is unlikely to review and reverse the Fourth Circuit's holding that the President is not entitled to mandamus relief directing Section 1292(b) certification, and interests of judicial economy, once again, cut against a stay here.

2. There is no circuit split on the Section 1292(b) issue.

The President is mistaken in his assertion that the federal appellate courts are divided on the Section 1292(b) issue in any way that matters. As noted above, most federal appellate courts have recognized that the statutory structure of Section 1292(b), as well as traditional principles of mandamus review, categorically prohibit writs of mandamus directing a district court to certify an issue for review. *See, e.g.*, *In re District of Columbia*, No. 99-5273, 1999 WL 825415, at *1 (D.C. Cir. Sept. 1, 1999) (per curiam); *In re Phillips Petroleum Co.*, 943 F.2d 63, 67 (Temp. Emer. Ct. App. 1991); *Green v. Occidental Petroleum Corp.*, 541 F.2d 1335, 1338 (9th Cir. 1976) (per curiam); *Pfizer, Inc. v. Lord*, 522 F.2d 612, 614 n.4 (8th Cir. 1975); *Plum Tree, Inc. v. Stockment*, 488 F.2d 754, 755 n.1 (3d Cir. 1973); *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326, 1344 (2d Cir. 1972), *abrogated on other grounds by Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 256-57 (2010). Other courts of appeals have issued decisions that treat such relief as overwhelmingly disfavored and all but forbidden in the absence of clear evidence that the district court acted in bad faith. *See, e.g.*, *In re Ford Motor Co.*, 344 F.3d 648, 654-55 (7th Cir. 2003); *In re Maritime Serv. Corp.*, 515 F.2d 91, 92-93 (1st Cir. 1975) (per curiam).

In its decision here, the Fourth Circuit expressly declined to "foreclose the possibility" that "a writ of mandamus may issue . . . [i]f the district court ignored a request for certification, denied such a request based on nothing more than caprice, or made its decision in manifest bad faith." En Banc Slip Op. 14. This is easily the most forgiving standard that *any* appellate court has articulated. Yet, even under this standard, the President's petition fell short. That is because this Court "promptly recognized and ruled on the request for certification in a detailed written opinion that applied the correct legal standards. [Its] action was not arbitrary or based on passion or prejudice; to the contrary, it was in its nature a judicial act." En Banc Slip Op. 14 (internal quotation marks omitted). The President is thus unlikely to obtain review or reversal of the Fourth Circuit's decision on the basis of any alleged division in the federal appellate courts.

In a bid to escape that conclusion, the President principally relies on *Fernandez-Roque v. Smith*, 671 F.2d 426 (11th Cir. 1982), an opinion that did not even involve a district court's Section 1292(b) certification decision. There, the district court had granted a temporary restraining order without deciding a threshold jurisdictional defense the government had tried to assert. *Id.* at 428-31. To ensure that a hearing on the court's subject-matter jurisdiction was "promptly conducted," the Eleventh Circuit invoked its mandamus authority to order the district court to conduct such a hearing and to certify its ruling to facilitate review. *Id.* at 431-32. Notably, in *Fernandez-Roque*, the district court had never ruled on the government's arguments, nor had it ruled on—or even been presented with—a request for certification under Section 1292(b). Here, in contrast, this Court issued two thoughtful and detailed opinions addressing the President's motion to dismiss, and then issued *another* detailed opinion denying Section 1292(b) certification. In this way, *Fernandez-Roque* is fully consistent with the Fourth Circuit's en banc opinion. The President's reliance on *Fernandez-Roque*—and on a D.C. Circuit decision that the President acknowledges

"technically did not grant mandamus," Mot. 12 (citing *In re Trump*, 781 F. App'x at 2)—only confirms the absence of a genuine split among the federal appellate courts, and the improbability that he will obtain Supreme Court review or reversal.

3. Supreme Court review of the Section 1292(b) issue is independently foreclosed.

There are three additional reasons why the President is unlikely to obtain Supreme Court review and reversal on the Section 1292(b) issue. First, even under the generic abuse-of-discretion standard that the President describes (which no appellate court has ever accepted), this Court did not commit clear and indisputable error in declining certification. *See* Fourth Circuit Mandamus Opp'n Br. 19-32. Next, the President is not entitled to a writ of mandamus because he has other adequate means of obtaining relief; as described *supra* pp. 7-8, he may seek review of this Court's decisions "on direct appeal after a final judgment has been entered." *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980) (per curiam); *see* En Banc Slip Op. 15 n.5 ("The President has not offered any independent argument that he meets the other two criteria for mandamus relief."). Finally, this Court's denial of certification is not the sort of "really extraordinary" circumstance warranting mandamus relief. *Cheney*, 542 U.S. at 380. The President has chosen to maintain ownership of his business empire while holding the Nation's highest public office. Proceeding to discovery in service of assessing whether that choice violates the Constitution does not constitute an emergency requiring drastic intervention, especially given that nearly all discovery will simply trace payments from third parties to the President's ownership stake in the Trump International Hotel. Although such litigation may be inconvenient—as all lawsuits are—it adheres to the separation of powers. *See Clinton*, 520 U.S. at 705 n.40.

For all these reasons, the President has demonstrated neither a "reasonable probability that four Justices will . . . grant certiorari" nor "a fair prospect that a majority of the Court will vote to

reverse the [en banc Court's] judgment." *Hollingsworth*, 558 U.S. at 190. His motion for a stay of proceedings pending a potential petition for certiorari will not serve judicial economy and should be denied.

II. The Court Should Deny A Stay Because The President Will Not Suffer Hardship In Its Absence And The Plaintiffs Would Suffer Potential Prejudice.

The President is unable to make a credible showing that he would suffer hardship without a stay. In contrast, the District and Maryland *would* face prejudice from a stay, tipping the balance firmly against the President.

A. The President faces no risk of hardship justifying a stay.

The President asserts that denial of a stay will cause him irreparable harm "because this unprecedented and potentially sprawling suit would be allowed to continue and Plaintiffs would be able to probe into his personal finances solely because of the office he holds." Mot. 16. That argument—based on vague claims of "potential[]" burden—fails on its own terms.

At the outset, the District and Maryland have not served the President with any discovery requests. "[T]he discovery here—business records as to hotel stays and restaurant expenses, sought from private third parties and low-level government employees—implicates no Executive power" or "Executive Branch prerogative." En Banc Slip Op. 19. Indeed, the President points to no actual discovery request in this litigation to substantiate his supposed fear of a free-wheeling probe into his finances. His claim of irreparable harm is thus conjectural and cannot justify a stay pending potential further review. That is especially true given the availability of procedures in this Court—including protective orders—designed to ensure the confidentiality of any sensitive information and the appropriate scope of discovery requests. *See In re United States*, 884 F.3d

830, 835 (9th Cir. 2018) ("The defendants will have ample remedies if they believe a specific discovery request from the plaintiffs is too broad or burdensome.").

In any event, the common burdens of litigation—such as responding to discovery requests—do not automatically inflict irreparable harm, even on the President. The Supreme Court has rejected the notion that deference to the President entitles him to an "immunity from judicial process under all circumstances." *Clinton*, 520 U.S. at 704. Indeed, the judicial branch may "direct appropriate process to the President himself." *Id.* at 705.

Consistent with this principle, this Court has already noted the availability of procedures to minimize any discovery burdens on the President, were that need ever to arise in the future. ECF No. 135 at 29 ("[T]he Court is always available to limit given discovery to minimize an unusual impact."); *see Nixon*, 418 U.S. at 714 ("The guard, furnished to the President to protect him from being harassed by vexatious and unnecessary subpoenas, is to be looked for in the conduct of a district court after those subpoenas have issued; not in any circumstance which is to precede their being issued." (alterations and citation omitted)). Of course, *if* the President is served with discovery, and *if* that discovery imposes an undue burden, and *if* the President asks the district court to intervene, and *if* the district court fails properly to address that burden, then "the President can always seek relief from intrusive or overbroad discovery orders . . . through a petition for a writ of mandamus." En Banc Slip Op. 19 n.8. But that chain of conjecture does not demonstrate hardship *now* warranting a stay.

B. The Executive Branch faces no risk of hardship justifying a stay.

The President separately asserts that "the Executive Branch" would be injured by the denial of a stay "because five federal agencies would be required to comply with intrusive and

burdensome subpoenas, including into sensitive matters about government decisionmaking." Mot. 16. That contention lacks merit.

It is commonplace in litigation to serve non-parties with discovery, and for the district court to evaluate whether any particular subpoena is unduly burdensome. *See* Fed. R. Civ. P. 45(d). And to the extent that responding to a subpoena requires effort or imposes some cost, *see* Mot. 1-2, 16, such circumstances are common in litigation generally, and do not qualify as irreparable injury. *See, e.g.*, *In re United States*, 884 F.3d at 836 ("To the extent that the defendants are arguing that executive branch officials and agencies in general should not be burdened by this lawsuit, Congress has not exempted the government from the normal rules of appellate procedure, which anticipate that sometimes defendants will incur burdens of litigating cases that lack merit but still must wait for the normal appeals process to contest rulings against them."); *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." (internal quotation marks omitted)).

Citing *Cheney*, the President suggests that the burdens at issue in this case are different because they are fraught with constitutional concerns. But, as the Fourth Circuit has already concluded, the President is mistaken. *See* En Banc Slip Op. 18 ("*Cheney* offers no assistance to the President here."). The discovery in *Cheney* involved "everything under the sky," including requests for communications among the Vice President and senior officials about advice to the President on energy policy. 542 U.S. at 387. Those requests risked jeopardizing the "autonomy" and "confidentiality" of "[t]he Executive Branch, at its highest level" by exposing the internal processes through which officials "give advice and make recommendations to the President." *Id.* at 385.

Here, in stark contrast, no significant constitutional or other protected interests are implicated by targeted requests to the General Services Administration for communications about its leases or requests to the Department of Defense about where it booked event spaces. Nor are they implicated by requesting business records of hotel stays or restaurant dining from private companies, which clearly have no bearing on "the Executive Branch's interests in maintaining the autonomy of its office." *Id.* Contrary to the President's assertions, such records do not involve "sensitive matters about government decisionmaking." Mot. 16-17.[5] The absence of any credible constitutional concerns distinguishes this case from *Cheney* and requires rejection of the President's conclusory claim that further progress in this litigation would inflict cognizable hardship on the Executive Branch.

C. The District and Maryland would face potential prejudice from a stay.

Not only has the President failed to show his own harm, but the District and Maryland would suffer prejudice from entry of a stay, tipping the balance of equities sharply in their favor.

The President claims that no harm will ensue if this case is stayed pending any potential Supreme Court review. *See* Mot. 17. That is not so. As this Court has already recognized in a well-reasoned opinion, residents of the District and Maryland have been suffering—and continue to suffer—concrete, here-and-now injury as a result of the President's illegal conduct. That injury will persist until the President stops violating the Emoluments Clauses.[6]

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[5] The only other request the President identifies as objectionable involves the request made to the General Services Administration for communications regarding the location of the headquarters of the Federal Bureau of Investigation. Mot. 16. The District and Maryland represent to the Court that they will not pursue that request—or related Request No. 11 in the same subpoena—once discovery resumes.

[6] In support of his contention that any further delay will not harm the District and Maryland, the President notes that they did not seek preliminary injunctive relief. *See* Mot. 17. But that consideration "is not dispositive" of harm in this context, as a "variety of reasons" might influence

A stay would also harm the public interest. That is true, first and foremost, because upholding the Constitution's protections is *always* in the interest of the public. *See Legend Night Club v. Miller*, 637 F.3d 291, 303 (4th Cir. 2011). More broadly, the American people—embodied here by the interests of the residents of the District and Maryland—have a strong interest in the integrity of the political process and elected officials. As the Framers recognized in drafting the Emoluments Clauses, that interest is directly undermined, and the people of the United States suffer, when the President is financially entangled with foreign powers and domestic officials. Because the President's unconstitutional conduct threatens "public confidence" in the integrity of democratic institutions, staying this case and allowing him to continue accepting foreign and domestic emoluments would undermine the public interest and the Framers' design. *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019) (denying stay to "protect[] public confidence in elections" which is "deeply important—indeed, critical—to democracy").

CONCLUSION

This Court should deny the President's motion to stay proceedings pending the resolution of his forthcoming petition for a writ of certiorari and any further proceedings in the Supreme Court.

a decision whether to seek preliminary relief. *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1319 (Fed. Cir. 2014).

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