

Why Hasn't Biden Fired These Three Terrible Trump Holdovers?

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Last summer, the Supreme Court's conservatives handed down a 5–4 decision against the Consumer Financial Protection Bureau that was hailed as a conservative victory. In retrospect, it was also a huge gift to Joe Biden. The court's decision gave Biden unquestioned authority to oust Trump's corrupt CFPB director, which he did on Day One. It also pretty clearly gives him the power to fire three other Trump holdovers leading federal agencies—Mark Calabria, Andrew Saul, and David Black—who will continue to pursue the former president's policies if allowed to remain in office. Curiously, Biden has not yet sacked these officials. His restraint will allow these men to undermine his agenda from within the executive branch—exactly what the Supreme Court gave him the tools to prevent. Biden should remove these three officials immediately.

In *Seila Law v. CFPB*, the conservative majority by a 5–4 vote struck down a federal law that barred the president from firing the CFPB director, the head of a purportedly independent agency, over political disagreements. Unlike the CFPB, most independent agencies are run by a multimember board, which gives the president greater control over their leadership. Indeed, there are only two other regulatory agencies led by a single director who was previously shielded from termination by the president: The Social Security Administration, which runs the biggest government program in the country, and the Federal Housing Finance Agency, which regulates the mortgage market.

These job protections, though, are no longer enforceable. In his opinion for the court in *Seila Law*, Chief Justice John Roberts indicated that his reasoning doomed the independence of these agencies' directors. Roberts described the SSA's single-director structure as “comparatively recent and controversial,” noting that it was established in 1994 and that President Bill Clinton “questioned [its] constitutionality,” even inviting Congress to issue a “corrective amendment.” The chief justice also cast side-eye on the FHFA, describing it as “essentially a companion of the CFPB,” whose “single-Director structure is a source of ongoing controversy.” He pointed out that the agency's structure “was recently held unconstitutional” by the U.S. Court of Appeals for the 5th Circuit.

That precedent plainly gives Biden the ability to terminate Calabria, the FHFA director, and Saul, the SSA commissioner, on Jan. 20—just as he ousted Kathleen Kraninger, Trump's CFPB director.

Start with Calabria, who was confirmed in 2019 to a term set to end in 2024. His agency, the FHFA, regulates the mortgage giants Fannie Mae and Freddie Mac, as well as 11 government-sponsored banks. He formerly served as chief economist for former Vice President Mike Pence and worked at the libertarian Cato Institute. Calabria's chief goal has been to end the government's conservatorship of Fannie Mae and Freddie Mac, which allows his agency to manage both companies. By privatizing them, he would disrupt the housing-finance system, substantially raise the cost of mortgages, and cut off a massive source of revenue for the government. Pursuing that project is a largely ideological effort that threatens affordable housing, provides no benefit to homebuyers, and undercuts the very mission of the agency.

If Biden refuses to fire Trump holdovers, he will bear the blame for the policies they implement.

Turn next to Andrew Saul, commissioner of the Social Security Administration, as well as his deputy commissioner, David Black. Trump appointed both men in 2019 to terms that won't end until 2025. Their reign over the agency has been nothing short of catastrophic. Saul previously served on the board of the Manhattan Institute, a conservative group that advocates for severe cuts to Social Security. Together, Saul and Black have launched an all-out war against the agency's nearly 60,000 employees, attempting to sabotage its union, hobble collective bargaining, and strip workers of the right to union representation. They abolished the agency's innovative telework program, which had dramatically increased efficiency, and forced employees to work in-person even as the pandemic surged last spring. At the end of 2020, the SSA's staff overwhelmingly voted no confidence in Saul or Black.

Trump's men at the SSA haven't just targeted their own employees; they've also made it more difficult for qualified Americans to receive Social Security benefits. Currently, Americans who wish to claim disability benefits are guaranteed a hearing before an administrative law judge—an independent arbiter who cannot be pressured by the government to rule against claimants. Saul and Black want to let “attorney advisors,” who answer to the agency's political appointees, hear disability cases instead. These “attorney advisors” have no guaranteed independence and, unlike administrative law judges, receive annual bonuses—which their bosses can use to incentivize decisions against disability benefits. This unprecedented move, which may well be illegal, would effectively deny due process to people who have a right to these benefits by allowing political appointees to manipulate the adjudication of claims. It is past time for Biden to fire both of these officials.

There are a few reasons why Biden might be keeping Calabria, Saul, and Black around despite these atrocious track records. (The White House did not return my request for comment on their positions.) While *Seila Law* obviously spelled doom for each man's job protections, SCOTUS has not yet applied its decision to their agencies. The justices recently heard a case challenging the FHFA's independence—though the Trump administration conceded that its structure is unconstitutional. There is no real question that SCOTUS will soon say the president can fire Calabria at any time for any reason. Still, a Bloomberg report released shortly before Biden's inauguration suggested that Biden may still wait for the Supreme Court to confirm that he can terminate Calabria before pulling the trigger. The court's ruling will come down by June at the latest.

That leaves Saul and Black. On his second day in office, Biden put Saul on a list of “acting” agency officials who will soon be replaced by Senate-confirmed appointees. This designation is

puzzling, because Saul is not “acting” as SSA commissioner but serving a term that expires in 2025. The decision suggests that Biden *views* Saul as “acting” because he intends to replace him with a progressive in the near future. It’s safe to assume that Biden would simultaneously replace Black, who has consistently supported Saul’s destructive policies.

Progressives in the new administration may hesitate to wield *Seila Law* against Trump holdovers. It was, after all, a conservative decision that spurred all four liberal justices to vigorously dissent. But Roberts’ opinion in *Seila Law* transformed the very nature of the presidency, whether Biden likes it or not. The chief justice’s watchword was “accountability”: Executive officials must be accountable to the president, he wrote, for the president, in turn, is accountable to the people. The people elected Biden on a liberal platform that leaves no room for reckless deregulation, devastating assaults on unions, or cuts to crucial government benefits. If he refuses to fire officials implementing these policies, he will bear the blame in the public eye. And in light of *Seila Law*, he will deserve it.