

with the power to make the appointment. The Supreme Court squarely answered that question in *United States v. Nixon*, 418 U.S. 683, 694 (1974), holding that the Attorney General has statutory authority under 28 U.S.C. §§ 509, 510, 515, and 533 to appoint a special prosecutor comparable to the Special Counsel. *Id.* at 694-95. Statutory text, context, and history confirm that *Nixon* was correct.

A. The Supreme Court’s Decision in *United States v. Nixon* Establishes the Attorney General’s Appointment Authority

“Vertical stare decisis—both in letter and in spirit—is a critical aspect of our hierarchical Judiciary headed by ‘one supreme Court.’” *Winslow v. F.E.R.C.*, 587 F.3d 1133, 1135 (D.C. Cir. 2009) (quoting U.S. Const. art. III, § 1); *see Schwab v. Crosby*, 451 F.3d 1308, 1325-26 (11th Cir. 2006). Where, as here, the Supreme Court has expressly addressed an issue, lower courts are bound to follow it. The district court’s treatment of *Nixon* departed from that foundational principle.

In *Nixon*, the Attorney General appointed a Special Prosecutor to investigate and prosecute offenses arising from the 1972 presidential election, empowering the prosecutor through a regulation. 418 U.S. at 694 & n.8. Acting under that regulation, the Special Prosecutor obtained a subpoena issued to the President for the production of evidence, and the district court denied a motion to quash. *Id.* at 687-88. In the Supreme Court, President Nixon contended that