

3. The district court's reasoning also needlessly casts doubt on longstanding practices in the Department of Justice and across the Executive Branch. It suggests that every special counsel throughout history who was appointed from outside the Department of Justice and who did not assist a U.S. Attorney was invalidly appointed; that every Attorney General who made such appointments acted *ultra vires*; that Congress repeatedly overlooked the persistent pattern of errors; and that the Supreme Court itself failed to spot that flaw in *Nixon*. But it also goes much further. If the Attorney General lacks the power to appoint inferior officers, that conclusion would invalidate the appointment of every member of the Department who exercises significant authority and occupies a continuing office, other than the few that are specifically identified by statute. *See supra* at 38-39. At a minimum, that list includes high-ranking Department positions such as the Deputy Solicitors General and the Deputy Assistant Attorneys General. The district court's rationale would likewise raise questions about hundreds of appointments throughout the Executive Branch, including in the Departments of Defense, State, Treasury, and Labor, which all rely on statutes resembling Sections 509 and 510 to support their Secretary's authority to appoint inferior officers. *See supra* at 39-40. The implausibility of that outcome underscores why the district court's novel conclusions lack merit.