United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 16, 2025 Decided August 15, 2025

No. 25-5091

NATIONAL TREASURY EMPLOYEES UNION, ET AL.,
APPELLEES

v.

RUSSELL T. VOUGHT, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF THE CONSUMER FINANCIAL PROTECTION BUREAU AND CONSUMER FINANCIAL PROTECTION BUREAU,
APPELLANTS

Appeal from the United States District Court
for the District of Columbia
(No. 1:25-cv-00381)

Eric D. McArthur, Deputy Assistant Attorney General, U.S. Department of Justice, argued the cause for appellants. With him on the briefs were *Mark R. Freeman*, *Melissa N. Patterson*, *Catherine Padhi*, and *Kevin J. Kennedy*, Attorneys.

Jennifer D. Bennett argued the cause for appellees. With her on the brief were *Julie Wilson*, *Paras N. Shah*, *Allison C. Giles*, *Deepak Gupta*, *Robert Friedman*, *Michael Skocpol*, *Gabriel Chess*, *Wendy Liu*, *Adina H. Rosenbaum*, *Julie Wilson*, *Paras N. Shah*, and *Allison C. Giles*.

Ariel Levinson-Waldman was on the brief for *amici curiae* 42 Nonprofit Veterans, et al. in support of appellees.

Elizabeth B. Wydra and *Brianne J. Gorod* were on the brief for *amici curiae* Current and Former Members of Congress in support of appellees.

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Nevada, *Jeff Jackson*, Attorney General, Office of the Attorney General for the State of North Carolina, *Peter F. Neronha*, Attorney General, Office of the Attorney General for the State of Rhode Island, *Nicholas W. Brown*, Attorney General, Office of the Attorney General for the State of Washington, *Raul Torrez*, Attorney General, Office of the Attorney General for the State of New Mexico, *Dan Reyfield*, Attorney General, Office of the Attorney General for the State of Oregon, *Charity R. Clark*, Attorney General, Office of the Attorney General for the State of Vermont, and *Joshua L. Kaul*, Attorney General, Office of the Attorney General for the State of Wisconsin, were on the brief for *amici curiae* State of New York, et al. in support of appellees.

Harold Hongju Koh and *Jed W. Clickstein* were on the brief for *amici curiae* Former Consumer Financial Protection Bureau Officials in support of appellees.

Before: PILLARD, KATSAS, and RAO, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* KATSAS.

Dissenting opinion filed by *Circuit Judge* PILLARD.

KATSAS, *Circuit Judge*: To promote the President's deregulatory agenda, the Consumer Financial Protection Bureau undertook a series of actions to substantially downsize the agency. These actions included terminating employees, cancelling contracts, declining additional funding, moving to smaller headquarters, and requiring advance approval for agency work. The plaintiffs in this case either represent CFPB employees or use services provided by the agency. They sued to stop what they describe as a decision to "shut down" the Bureau. The district court found that agency leadership had made such a decision and then entered a preliminary injunction severely restricting agency actions regarding employment,

contracting, and facilities, among other things. We hold that the district court lacked jurisdiction to consider the claims predicated on loss of employment, which must proceed through the specialized-review scheme established in the Civil Service Reform Act. And the other plaintiffs' claims target neither final agency action reviewable under the Administrative Procedure Act nor unconstitutional action reviewable in equity. Accordingly, we vacate the preliminary injunction.

I

A

In 2010, Congress established the Consumer Financial Protection Bureau to enforce federal laws that protect consumers of financial products. 12 U.S.C. § 5511(a). Congress transferred to the CFPB "the authority to administer 18 existing consumer protection statutes," and it "vested the Bureau with rulemaking, enforcement, and adjudicatory authority" over those statutes. *CFPB v. Cmty. Fin. Servs. Ass'n of Am.*, 601 U.S. 416, 421–22 (2024). Congress authorized the CFPB to pursue five general objectives: provide timely and understandable information to consumers, protect consumers from unfair practices, reduce regulatory burdens, enforce consumer financial laws consistently, and encourage the relevant markets to operate transparently and efficiently. 12 U.S.C. § 5511(b).

Congress gave the CFPB broad discretion regarding how to pursue these goals. For example, the Bureau's general grant of rulemaking power is expressly permissive; it states that the agency "may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof." 12 U.S.C. § 5512(b)(1); *see also id.* § 5531(b) (CFPB

"may prescribe rules" regarding certain "unfair, deceptive, or abusive acts or practices"). The Bureau's enforcement authority is also discretionary. *See id.* § 5562 (CFPB "may" conduct investigations, subpoena witnesses, or demand documents). So is its adjudicatory authority. *Id.* § 5563(a) (CFPB "is authorized to conduct hearings and adjudication proceedings").

The CFPB is mostly free to organize its internal affairs as it wishes. For example, it may establish "general policies … with respect to all executive and administrative functions," 12 U.S.C. § 5492(a), including personnel and contracting matters, *id.* § 5492(a)(2), (3), (7). The Director also may "fix the number of, and appoint and direct, all employees of the Bureau." *Id.* § 5493(a)(1)(A). And the Director has unreviewable discretion to determine how much funding the Bureau needs to carry out its objectives, subject only to a statutory cap. *Id.* § 5497(a)(1)–(2); *see id.* § 5497(a)(2)(C) (barring congressional committees from reviewing the Director's determination).

Congress did require the CFPB to provide some specific services to the public. For example, the Bureau must establish "reasonable procedures to provide a timely response to consumers" for inquiries or complaints. 12 U.S.C. § 5534(a); *see id.* § 5493(b)(3)(A) (requiring toll-free telephone number, website, and database for consumer complaints). The agency must prepare reports about interest rates, credit cards, and other matters. *See id.* § 5493(b)(1); 15 U.S.C. §§ 1646(a)–(b), 1632(d)(3). It must help compile information about depository institutions. 12 U.S.C. § 2809(b). And it must have a "Private Education Loan Ombudsman" to "provide timely assistance to borrowers of private education loans." *Id.* § 5535(a).

B

In early 2025, the President took several steps to implement a new deregulatory agenda. On January 20, he imposed a cross-agency freeze on new regulatory actions. *See* Regulatory Freeze Pending Review, 90 Fed. Reg. 8249 (Jan. 20, 2025). On February 26, he imposed a cost-cutting initiative that required agency heads to scale back contracts, grants, real estate, and other expenses. *See* Exec. Order No. 14,222, 90 Fed. Reg. 11095 (Feb. 26, 2025).

These initiatives brought changes to the Bureau. On Friday, January 31, the President removed the incumbent CFPB Director and designated Scott Bessent as the agency's Acting Director. On Monday, February 3, Bessent instructed agency employees and contractors to pause most activities while he evaluated them for "consistency with the goals of the Administration." J.A. 110. Bessent made clear, however, that the pause did not apply to work "expressly approved by the Acting Director or required by law." *Id.* On February 7, the President designated Russell Vought to replace Bessent as Acting Director. On February 8, Vought reiterated the pause on CFPB work, with the same exception for activities "expressly approved by the Acting Director or required by law." *Id.* at 117. The same day, Vought concluded that existing funds—which exceeded $700 million—were "sufficient" for the Bureau to meet its statutory mandates for the next fiscal quarter. *Id.* at 123. On February 9, CFPB leadership decided to close the Bureau's headquarters for a week because of protests outside the building. *Id.* at 105–06, 119. Around the same time, they also decided to cancel the lease of agency headquarters, which had remained largely vacant since the COVID pandemic, and to move the Bureau to smaller headquarters. *Id.* at 104, 106.

On February 10, Vought issued a new directive reminding employees of the office closure and instructing them to "not perform any work tasks" without prior approval from Chief Legal Officer Mark Paoletta. J.A. 101. The parties dispute whether this directive required approval for legally mandated activities or whether it carried forward the exception from the February 3 and February 8 emails. In any event, Paoletta did approve some legally required work, starting on February 10. *See id.* at 286–87 (exempting "work to publish the Average Prime Offer Rate"—a legally required task—"from the stop work order").[1] And on March 2, Paoletta clarified that "[e]mployees should be performing work that is required by law and do not need to seek prior approval to do so." *Id.* at 387. In the interim, though, some required work was neglected, such as maintenance of the consumer-complaint database.

Over the same timeframe, the Bureau also addressed contract and personnel matters. On February 11, its Chief Financial Officer instructed component heads to identify which contracts directly supported statutory obligations. J.A. 416–17. Agency leadership decided to cancel all contracts in five components and all but two contracts in a sixth, *id.* at 288, 407, though it is unclear how many of those contracts actually were

[1] *See also*, *e.g.*, J.A. 298–300 (approving work related to the call center, online complaint form, and a required report for Congress); *id.* at 306 (approving the Office of Fair Lending's request to perform statutory functions); *id.* at 308 (directing an employee to attend meetings and perform trainings); *id.* at 284 (Bureau COO confirming that work related to the consumer complaint database and home mortgage disclosure application should continue); *id.* at 285 (confirming that the COO stated the work stoppage "does not apply to the … Consumer Resource Center"); *id.* at 313 (COO approving the processing of FOIA requests); *id.* at 326 (COO confirming that employees "can resume all regular work related to fulfilling statutory obligations").

cancelled, *see id.* at 131 (plaintiffs' declaration explaining that contract cancellations would not take effect for at least thirty days). On February 19, Paoletta forbade employees from cancelling any contract "without specific authorization" from himself or the Acting Director, *id.* at 654, and at least some contracts were then reactivated, *see id.* at 378. As for personnel, the Bureau terminated 85 probationary employees and 130 term employees, including the "Student Loan Ombudsman." *Id.* at 421, 648, 650, 950–51. It planned to implement two Reductions in Force (RIFs), which would have terminated at least eighty percent of the Bureau's remaining workforce. *See id.* at 649, 953, 1052. It considered placing the remainder of its employees on administrative leave, unless they were authorized to perform a work task. *See*, *e.g.*, *id.* at 465. And it decided to eliminate software enabling employees to work remotely. *Id.* at 239.

C

Six plaintiffs claim various harms from these actions, which they characterize as a coordinated effort "to eliminate the CFPB." J.A. 44. Two plaintiff organizations—the National Treasury Employees Union (NTEU) and the CFPB Employee Association—represent Bureau employees. They allege that the wholesale termination of their members will harm the members and cause the organizations to lose revenue. Three plaintiff organizations—the National Association for the Advancement of Colored People (NAACP), the National Consumer Law Center (NCLC), and the Virginia Poverty Law Center (VPLC)—claim harm from the loss of services provided by the Bureau. NCLC also alleges that the Bureau cancelled subscriptions to several of its publications. The final plaintiff, Ted Steege, alleges that his late wife could not meet with the Student Loan Ombudsman after that official was fired.

The plaintiffs brought two claims. First, the government's "actions to eliminate" the Bureau "usurp legislative authority conferred upon Congress by the Constitution." J.A. 44. Second, the "actions to suspend or terminate CFPB's statutorily mandated activities—including by issuing stop-work instructions, cancelling contracts, declining and returning funding, firing employees, and terminating the lease for its headquarters—constitute final agency action" that is reviewable under the APA, unlawful, arbitrary, and in excess of the agency's authority. *Id.* at 46–47.[2] The plaintiffs asked the district court to set aside "actions and intended further actions to dismantle the CFPB, including issuance of stop-work instructions, cancellation of contracts, declining and returning funding, reductions in force, firing of employees, and termination of the lease for its headquarters." *Id.* at 47. The plaintiffs further sought to enjoin the CFPB from issuing stop-work instructions and to require the agency "to resume immediately all activities that CFPB is required by statute to perform." *Id.* at 48.

After a two-day evidentiary hearing, the district court granted a preliminary injunction on March 28. The court found that the government was "engaged in a concerted, expedited effort to shut the agency down" and that it had "no intention of operating the CFPB at all." *See NTEU v. Vought*, 774 F. Supp. 3d 1, 58 (D.D.C. 2025). From that premise, the court concluded that the plaintiffs were likely to prevail on their separation-of-powers claim, *id.* at 55–77, and their APA claims, *id.* at 77–78. The court identified only two putative final agency actions undergirding the APA claims: the February 10 email sent by Vought, *id.* at 77, and the "wholesale

[2] The plaintiffs also challenge the President's designation of Vought as the CFPB's Acting Director. J.A. 45. The district court did not pass on this claim, so neither do we.

cessation of activities—the decision to shut down the agency completely," *id.* at 46. Among other things, the preliminary injunction required the government to reinstate all probationary and term employees who had been fired after February 10; to refrain from firing any employee except for cause; to refrain from instituting any work stoppage; to rescind all contract terminations issued after February 10; to provide Bureau employees with "either fully-equipped office space" or the means to work remotely; and to maintain a toll-free telephone number, website, and database in order to respond to consumer complaints. *Id.* at 85–86.

The government appealed and moved for an emergency stay. For purposes of the stay motion, it challenged only the scope of the preliminary injunction. We issued a partial stay that allowed the CFPB to terminate employees or stop work if the agency determined, after a particularized assessment, that the employees or work at issue were unnecessary to the performance of the Bureau's statutory duties. *NTEU v. Vought*, No. 25-5091, 2025 WL 1721068 (D.C. Cir. Apr. 11, 2025).

Days later, the agency issued a RIF notice to more than eighty percent of its workforce. J.A. 894. The Bureau represented that it had made the individualized assessment required by our partial stay order. Rather than attempt to police compliance with that requirement, we lifted the partial stay insofar as it allowed the government to conduct RIFs. *NTEU v. Vought*, No. 25-5091, 2025 WL 1721136 (D.C. Cir. Apr. 28, 2025).

II

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. NRDC*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the plaintiff "must establish

that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20. We have reserved the question whether a strong showing on one of the *Winter* factors may compensate for a weaker showing on another, despite expressing some skepticism on that point. *Sherley v. Sebelius*, 644 F.3d 388, 392–93 (D.C. Cir. 2011). Regardless of that possibility, if a court concludes that a claim fails as a matter of law—on a point of jurisdiction or merits—then a preliminary injunction is inappropriate. *See United States Ass'n of Reptile Keepers, Inc. v. Zinke*, 852 F.3d 1131, 1135 (D.C. Cir. 2017) ("When, as here, the ruling under review rests solely on a premise as to the applicable rule of law, and the facts are established or of no controlling relevance, we may resolve the merits even though the appeal is from the entry of a preliminary injunction." (cleaned up)); *see also*, *e.g.*, *Munaf v. Geren*, 553 U.S. 674, 691–92 (2008); *Wrenn v. D.C.*, 864 F.3d 650, 667 (D.C. Cir. 2017); *Arkansas Dairy Co-op Ass'n, Inc. v. USDA*, 573 F.3d 815, 832–33 (D.C. Cir. 2009).

Although we review the grant of a preliminary injunction for abuse of discretion, we review *de novo* any "underlying legal conclusions." *CityFed Fin. Corp. v. OTS*, 58 F.3d 738, 746 (D.C. Cir. 1995).

III

As always, we start with jurisdiction. Because the district court granted a preliminary injunction, our appellate jurisdiction is secure. *See* 28 U.S.C. § 1292(a)(1). The CFPB contends that the district court lacked statutory jurisdiction over the claims of organizations representing its employees and that none of the other plaintiffs has Article III standing. We agree with the first contention but disagree with the second.

A

District courts usually have jurisdiction over claims arising under federal law, 28 U.S.C. § 1331, but a special statutory review scheme may displace that jurisdiction. *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023). To decide whether such a scheme displaces section 1331, we consider two questions. First, we ask whether a preclusive intent is "fairly discernible in the statutory scheme." *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207 (1994) (cleaned up). Second, we ask whether the claims at issue "are of the type Congress intended to be reviewed within" the special scheme. *Id.* at 212.

The injuries alleged by NTEU and the CFPB Employee Association flow from their members' loss of employment. NTEU represents agency employees who have already been fired or may soon be fired, which will harm the employees and decrease NTEU's revenue. The Employee Association likewise represents such employees. These plaintiffs thus seek to redress injuries from agency decisions to fire employees. But a specialized-review scheme governs such claims and ousts the district courts of their arising-under jurisdiction.

The Civil Service Reform Act, 5 U.S.C. § 1101 *et seq.*, which includes the Federal Service Labor-Management Relations Statute, comprehensively "regulates virtually every aspect of federal employment." *Nyunt v. Chairman, Broad. Bd. of Governors*, 589 F.3d 445, 448 (D.C. Cir. 2009). Through it, Congress "carefully constructed a system for review and resolution of federal employment disputes, intentionally providing—and intentionally not providing—particular forums and procedures for particular kinds of claims." *Filebark v. Dep't of Transp.*, 555 F.3d 1009, 1010 (D.C. Cir. 2009). The CSRA permits federal employees to seek review of adverse personnel actions in the Merit Systems Protection Board

(MSPB), which may grant relief including reinstatement, backpay, and attorney's fees. *See* 5 U.S.C. §§ 7701(a), 1204(a)(2), 7701(g); 5 C.F.R. § 351.901. MSPB decisions in turn are reviewable in the Federal Circuit. *See* 5 U.S.C. § 7703(a)(1), (b)(1). Similarly, the FSLMRS provides for the adjudication of federal labor disputes before the Federal Labor Relations Authority, which also may order reinstatement with backpay. *See id.* §§ 7105(a)(2)(G), 7116(a), 7118. Its decisions are reviewable in the courts of appeals. *Id.* § 7123(a), (c). For covered claims, this scheme is "exclusive." *Elgin v. Dep't of Treasury*, 567 U.S. 1, 5 (2012); *see AFGE v. Trump*, 929 F.3d 748, 755 (D.C. Cir. 2019).

The organizations contend that their claims, though keyed to adverse employment actions taken against CFPB employees, fall outside the CSRA. "Claims will be found to fall outside of the scope of a special statutory scheme in only limited circumstances, when (1) a finding of preclusion might foreclose all meaningful judicial review; (2) the claims are wholly collateral to the statutory review provisions; and (3) the claims are beyond the expertise of the agency." *AFGE*, 929 F.3d at 755 (cleaned up). Here, none of these considerations applies.

First, a finding of preclusion would not foreclose meaningful judicial review. The organizations' injuries arise from the termination of their members, which the MSPB and FLRA may remedy by ordering reinstatement with backpay. *See* 5 U.S.C. §§ 1204(a)(2), 7118(a)(7)(C). The organizations object that the MSPB or FLRA might not reinstate employees to positions that have been abolished. But they cite only one decision indicating that, as a matter of discretion, the MSPB does not typically reinstate employees to abolished positions when other comparable jobs are available. *See Bullock v. Dep't of Air Force*, 80 M.S.P.R. 361 (M.S.P.B. 1998). In any event,

the Supreme Court has held that the CSRA provides the exclusive means for federal employees to obtain judicial review of adverse personnel actions even in circumstances where, unlike here, the CSRA itself forecloses review. *See United States v. Fausto*, 484 U.S. 439, 447 (1988).

Second, the organizations' claims are not wholly collateral to the CSRA scheme. Claims that "seek to reverse the removal decisions" at issue are not wholly collateral to the CSRA, as the Supreme Court held in *Elgin*. *See* 567 U.S. at 22 ("A challenge to removal is precisely the type of personnel action regularly adjudicated by the MSPB and the Federal Circuit within the CSRA scheme."). The organizations seek to obtain reinstatement for members already terminated and to prevent the CFPB from terminating other members in the future, which is precisely the relief afforded through the CSRA.

Third, the organizations' claims are not beyond the expertise of the MSPB and the FLRA. As explained above, the claims seek redress for allegedly unlawful terminations—the heartland of CSRA coverage. The organizations object that these agencies have no expertise regarding broad disputes about agency shutdowns. In *Elgin*, however, the Supreme Court held that the CSRA review scheme is exclusive even where the harmed employee contends that a governing "federal statute is unconstitutional." 567 U.S. at 5. The same rationale controls here, where the claim is that an agency has violated the Constitution by disregarding federal statutes.[3]

[3] It is unclear whether the CFPB Employees Association, which is neither a federal employee nor a labor union, could itself invoke the CSRA to obtain reinstatement for its members. But assuming it cannot, its "exclusion … from the provisions establishing administrative and judicial review for personnel action" is no reason to permit it to seek judicial review of personnel actions under other

In sum, the CSRA precludes district-court jurisdiction over the claims of the NTEU and CFPB Employee Association.

B

The remaining four plaintiffs do not seek redress for employment-related injuries, but the government contends that they lack constitutional standing under Article III. In assessing the sufficiency of standing allegations, we take the plaintiffs' merits theory as a given. *Tanner-Brown v. Haaland*, 105 F.4th 437, 444 (D.C. Cir. 2024). Here, that means we assume that CFPB leadership was unlawfully attempting to dismantle the Bureau. For standing purposes, the question is whether these plaintiffs have shown that dismantling the Bureau would cause them to suffer a concrete, particularized injury that a favorable decision would likely redress. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021).

An organization can establish standing based on an injury to one or more of its members. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) (*SFFA*). We call this kind of standing associational standing. *See*, *e.g.*, *Sierra Club v. FERC*, 827 F.3d 59, 65 (D.C. Cir. 2016). "To invoke it, an organization must demonstrate that (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted

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provisions. *Fausto*, 484 U.S. at 455. In *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), the Supreme Court held that a statute creating a special statutory review scheme for challenges to regulatory action brought by dairy producers and handlers—but not consumers—foreclosed judicial review for claims by consumers. *Id.* at 347. The same reasoning applies here; if employees cannot end-run the CSRA's reticulated scheme of administrative and judicial review, then neither can organizations representing employees.

nor the relief requested requires the participation of individual members in the lawsuit." *SFFA*, 600 U.S. at 199 (cleaned up).

The NAACP meets these requirements. It is a membership organization that works to "accelerate the well-being, education, and economic security of Black people and all persons of color." J.A. 57. In furtherance of that mission, it was "actively working" with the CFPB "to address predatory practices for NAACP members who were victims of the Los Angeles wildfires." *Id.* On the NAACP's telling, the CFPB promised to send it educational materials for NAACP members but "did not do so because of the shutdown." *Id.* at 58. As a result, at least one NAACP member, Juanita West-Tillman, was denied access to these materials, which have at least some monetary value. *See id.* at 217–18. She therefore suffered a concrete injury. And her injury would likely be redressed by an injunction, which would enable CFPB staff to proceed with its plans to assist wildfire victims. Her injury also relates to the financial education of NAACP members, which is germane to the NAACP's purpose, and there is no reason this suit requires her individual participation. The NAACP thus has associational standing.

Because the NAACP's claims suffice to tee up the dispositive questions that we address below, we need not consider whether the other plaintiffs have Article III standing. *Biden v. Nebraska*, 600 U.S. 477, 489 (2023).

IV

This case arises from several actions taken by CFPB leadership to downsize the agency. They laid off employees, cancelled contracts, decided to move to smaller headquarters, declined additional funding, and subjected work to an advance-approval requirement. In the ordinary course, the plaintiffs here could challenge many of these actions in court. As

explained above, aggrieved employees (like members of NTEU and the CFPB Employee Association) could challenge their terminations before the MSPB or the FLRA. Aggrieved service providers (like the NCLC) could claim breaches of contract in the Court of Federal Claims. *See* 28 U.S.C. § 1491. And aggrieved consumers of services that the CFPB must provide to the public (like the NAACP, NCLC, and VPLC) could file APA actions alleging that the service has been unlawfully withheld or unreasonably delayed. *See* 5 U.S.C. § 706(1). Such challenges would target specific agency action or inaction that is alleged to be unlawful and to harm specific individual plaintiffs. And the courts, if they set aside the specific action alleged to be unlawful, or compelled the specific action alleged to be unlawfully withheld, could redress the specific injuries of individual plaintiffs.

This case is not constructed like that. Instead, the plaintiffs seek to challenge what they describe as a single, overarching decision to shut down the CFPB, which they infer from the various discrete actions noted above. To remedy that asserted decision, they seek pervasive judicial control over the day-to-day management of the agency, including decisions about how many employees the agency may terminate, how many contracts it may cancel, how it may approve work, which buildings it must occupy, and how employees will complete remote work. Furthermore, the plaintiffs urge all this despite the lack of any causal connection between many of the specific agency actions alleged to comprise the shutdown (for example, not providing reports regarding credit cards) and the specific injuries alleged by these plaintiffs (for example, Mr. Steege's ongoing difficulty in addressing his late wife's student loans).

As we now explain, this challenge is not viable. It cannot be brought under the APA because that statute provides a cause of action to challenge discrete, final agency action, which the

claims here do not target. And it cannot be brought in equity because the claims here neither raise constitutional questions nor satisfy the stringent prerequisites for *ultra vires* review.

V

The Administrative Procedure Act provides the standard means for obtaining judicial review of federal agency action. Yet the plaintiffs and the district court downplay it. The district court treated the APA claims as an afterthought, warranting two short paragraphs of analysis after an exhaustive, 23-page discussion of what it described as non-APA "*ultra vires* and constitutional claims." *NTEU*, 774 F. Supp. 3d at 55–78. Likewise, the plaintiffs lead with a contention that the Constitution itself confers an implied right of action to challenge what they describe as separation-of-powers violations. The court and the plaintiffs have good reason to be skittish about the APA claims here.

A

The APA cabins the timing, focus, and intensiveness of judicial review of federal agency action. It requires the plaintiff to target specific agency action that has caused him an injury. It requires that action to be final, ripe for review, and discrete. And it does not permit the courts to superintend how an agency carries out its broad statutory responsibilities.

1

By its terms, the APA structures judicial review around "agency action" that harms the plaintiff and, unless another statute provides otherwise, around such "final" agency action. It provides that a person "suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to

judicial review." 5 U.S.C. § 702. It permits judicial review of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." *Id.* § 704. And it instructs reviewing courts to "compel agency action unlawfully withheld or unreasonably delayed" or to "set aside agency action" that is arbitrary or otherwise unlawful. *Id.* § 706(1), (2). The APA defines "agency action" to include "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." *Id.* § 551(13); *see also id.* § 701(b)(2) (same definition).

To be reviewable through the APA, agency action must be final and ripe for review. *See* 5 U.S.C. § 704 (finality); *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967) (ripeness). To be final, agency action must "mark the consummation of the agency's decisionmaking process," *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (cleaned up), and must impose "direct and appreciable legal consequences" on the plaintiff, *Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 598 (2016) (quoting *Bennett*, 520 U.S. at 178). If an action affects the challenger's rights only "on the contingency of future administrative action," it is not final. *DRG Funding Corp. v. Sec'y of Hous. & Urb. Dev.*, 76 F.3d 1212, 1214 (D.C. Cir. 1996) (quoting *Rochester Tel. Corp. v. United States*, 307 U.S. 125, 130 (1939)); *see also Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992) (action must "directly affect the parties"). In assessing finality, we evaluate agency action relative to the "decisionmaking processes set out in [the] agency's governing statutes and regulations." *Soundboard Ass'n v. FTC*, 888 F.3d 1261, 1267 (D.C. Cir. 2018). And we may consider "post-guidance events to determine whether the agency has applied the guidance as if it were binding on regulated parties." *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 253 (D.C. Cir. 2014) (Kavanaugh, J.). The ripeness inquiry is similar: "[It] requires us to consider 'the fitness of the issues for judicial review and

the hardship to the parties of withholding court consideration.'" *Village of Bensenville v. FAA*, 376 F.3d 1114, 1119 (D.C. Cir. 2004) (quoting *Abbott Laboratories*, 387 U.S. at 149). An action is ripe for review only if it has caused, or threatens, direct and immediate harm to the plaintiff. *Nat'l Ass'n of Home Builders v. Army Corps of Eng'rs*, 417 F.3d 1272, 1281, 1283 (D.C. Cir. 2005).

To illustrate these principles, consider the difference between a legislative rule and an agency plan. A legislative rule is typically reviewable. It is formally promulgated at the end of a defined process for the adoption of specific legal text. 5 U.S.C. § 553. And it binds both the agency and regulated parties, who must conform their behavior to the rule or else face legal penalties. *See Abbott Laboratories*, 387 U.S. at 151 (regulated parties); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954) (agency). These characteristics often make legislative rules an appropriate target for APA review, *Abbott Laboratories*, 387 U.S. at 150, unless the rule is unclear in its application or its immediate effects are modest, *see Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 164–65 (1967). In contrast, an agency plan is unreviewable insofar as it reflects only a nonbinding statement of something the agency intends to do in the future. *See Fund for Animals, Inc. v. Bureau of Land Mgmt.*, 460 F.3d 13, 18–22 (D.C. Cir. 2006). Because such a plan has no immediate effect, a plaintiff cannot challenge the plan itself but instead must await further agency actions implementing it. *See id.* at 22. Finality and ripeness standards are flexible, so informal guidance documents sometimes are reviewable. *See Cal. Cmtys. Against Toxics v. EPA*, 934 F.3d 627, 634–36 (D.C. Cir. 2019). But to be reviewable, such items must impose standards that the agency treats as binding. *See*, *e.g.*, *id.* at 638–40; *Nat'l Mining Ass'n*, 758 F.3d at 252 ("The most important factor concerns the actual legal effect (or lack thereof) of the agency

action in question on regulated entities."); *Nat'l Env't Dev. Ass'n's Clean Air Project v. EPA*, 752 F.3d 999, 1007 (D.C. Cir. 2014) (internal directive "provide[d] firm guidance" that enforcement officials "relied on").

2

In *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990), the Supreme Court held that "agency action" under the APA must also be "specific." *See id.* at 894. The plaintiffs there alleged that the Bureau of Land Management (BLM) made various land-use decisions that violated the governing statutes. *See id.* at 879. Rather than challenge any of these actions individually, the plaintiffs sought to challenge all of them together, grouped under what they described as a "land withdrawal review program." *Id.* at 890. Rejecting the challenge, the Supreme Court held that the APA requires a plaintiff to "direct its attack against some *particular* 'agency action' that causes it harm." *Id.* at 891 (emphasis added). The Court reasoned that the "land withdrawal review program" was not "derived from any authoritative text" in the governing statutes or regulations and did not "refer to a single BLM order or regulation, or even to a completed universe of particular BLM orders and regulations." *Id.* at 890. Instead, it was simply shorthand for the "continuing (and thus constantly changing) operations of the BLM" in administering public lands, and was no more a "final agency action" than "a 'weapons procurement program' of the Department of Defense or a 'drug interdiction program' of the Drug Enforcement Administration," neither of which would themselves be reviewable. *Id.* The Court stressed that any "flaws in the entire 'program'—consisting principally of the many individual actions referenced in the complaint, and presumably action yet to be taken as well—cannot be laid before the courts for wholesale correction under the APA, simply because one of

them that is ripe for review adversely affects" one of the plaintiffs. *Id.* at 893. To the contrary, the APA requires a "case-by-case approach" targeting "specific 'final agency action,'" rather than "more sweeping actions" seeking "systemic improvement" at a "higher level of generality." *Id.* at 894; *see also id.* at 891 (APA does not authorize courts to consider "*wholesale* improvement" or "programmatic improvements" in agency administration).

Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55 (2004) (*SUWA*), elaborated on these principles in the context of APA actions under 5 U.S.C. § 706(1) to "compel agency action unlawfully withheld." The Court made clear that the withheld action must be a "circumscribed, discrete agency action[]," 542 U.S. at 62, which "precludes the kind of broad programmatic attack" rejected in *National Wildlife*, *id.* at 64. And consistent with traditional mandamus standards, the compelled action must also be one that the agency is "legally *required*" to take, *id.* at 63, which "rules out judicial direction of even discrete agency action that is not demanded by law," *id.* at 65. Combining both principles, "a claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*." *Id.* at 64. *SUWA* involved a statute requiring the BLM to manage certain lands "in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c). The Court described this statute as "mandatory as to the object to be achieved," but still leaving the agency "a great deal of discretion in deciding how to achieve it." 542 U.S. at 66. The plaintiffs contended that BLM was violating the statute. *Id.* at 65. But instead of identifying any discrete action that BLM allegedly was taking or withholding unlawfully, they sought an order simply compelling BLM to comply with the non-impairment mandate. *See id.* at 66. Rejecting that claim, the Court explained that the APA does not

authorize general orders compelling compliance with such "broad statutory mandates." *Id.* Orders like that would require the courts, in determining whether "compliance was achieved," to become enmeshed in "day-to-day agency management." *Id.* at 66–67. And the APA does not permit "pervasive oversight by federal courts over the manner and pace of agency compliance with such congressional directives." *Id.* at 67.

In *Fund for Animals*, this Court held that *National Wildlife* and *SUWA* barred APA review of a BLM "plan" to achieve a mandatory statutory goal of protecting wild horses. *See* 460 F.3d at 15, 20–22. The "plan" consisted of "many individual actions," some of which were not themselves legally required. *See id.* at 20–21 (cleaned up). For such general plans, we concluded, "it is only specific actions implementing the plans that are subject to judicial scrutiny." *Id.* at 21; *see also City of New York v. DoD*, 913 F.3d 423, 432 (4th Cir. 2019) (*National Wildlife* and *SUWA* limit review to "only those acts that are specific enough to avoid entangling the judiciary in programmatic oversight, clear enough to avoid substituting judicial judgments for those of the executive branch, and substantial enough to prevent an incursion into internal agency management").

* * * *

These requirements—agency action, finality, ripeness, and discreteness—reflect that the APA does not make federal courts "roving commissions" assigned to pass on how well federal agencies are satisfying their statutory obligations. *Broadrick v. Oklahoma*, 413 U.S. 601, 610–11 (1973). Rather, a court may intervene only when a specific unlawful action harms the plaintiff, and only to the extent necessary to set aside that action. By avoiding premature adjudication and narrowing the scope of judicial review, these requirements "protect

agencies from undue judicial interference with their lawful discretion[] and … avoid judicial entanglement in abstract policy disagreements which courts lack both expertise and information to resolve." *SUWA*, 542 U.S. at 66.[4]

B

The plaintiffs here complain about a slew of different CFPB "actions" that include "issuing stop-work instructions, cancelling contracts, declining and returning funding, firing employees, and terminating the lease for its headquarters." J.A. 46–47. But they point to only two actions that allegedly satisfy the finality, ripeness, and discreteness requirements summarized above. One of them is an email asking employees to obtain approval before performing work. Another is an

[4] Two other APA limitations reinforce these points. First, APA review normally is based on an administrative record, obviating the need for intrusive discovery into internal agency processes. *See*, *e.g.*, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 549 (1978); *Camp v. Pitts*, 411 U.S. 138, 142–43 (1973) (per curiam). That limit is inconsistent with a focus on putative agency action that requires a multi-day evidentiary hearing just to identify. Second, once the reviewing court corrects a discrete legal error, it normally must remand rather than retain jurisdiction to implement a complex remedial decree. *See*, *e.g.*, *Calcutt v. FDIC*, 598 U.S. 623, 629 (2023) ("the function of the reviewing court ends when an error of law is laid bare" (quoting *FPC v. Idaho Power Co.*, 344 U.S. 17, 20 (1952))). That limit is inconsistent with programmatic review of broad agency management.

asserted decision, inferred from the various discrete actions mentioned, to shut down the Bureau.

1

On February 10, the Acting Director of the CFPB emailed agency staff. In its entirety, the email stated:

> As you have been informed by the Chief Operating Officer in an email yesterday, the Bureau's DC headquarters building is closed this week. Employees should not come into the office. Please do not perform any work tasks. If there are any urgent matters, please alert me through Mark Paoletta, Chief Legal Officer, to get approval in writing before performing any work task. His email is [redacted]. Otherwise, employees should stand down from performing any work task. Thank you for your attention on this matter.

J.A. 101.

This email does not qualify as final agency action. To begin with, it did not mark the consummation of any agency decision-making process, much less a defined process for rulemaking, adjudication, or anything equivalent. The email was not formally promulgated, much less published in the Code of Federal Regulations, the Federal Register, or any official agency records. In context, it reflected a new presidential Administration and a new Acting Director trying to assess all agency activities. And it linked the prior-approval requirement to a short-term exigency requiring the temporary closure of agency headquarters. Most importantly, the email did not definitively decide anything. Instead, it merely directed employees to obtain advance approval before performing work, while remaining silent on legally mandated work and leaving the Chief Legal Officer with discretion to approve it.

Likewise, the email triggered no appreciable legal consequences for employees, contractors, regulated parties, or members of the public. It neither terminated any employees nor cancelled any contracts. It did not purport to prohibit any statutorily required tasks. Because the Chief Legal Officer did approve many tasks upon request, it is difficult to see how the email affected the plaintiffs even practically, much less how it directly changed their legal rights. *See* note 1, *supra*. Finally, less than three weeks after that email, the Chief Legal Officer sent another email clarifying that "[e]mployees should be performing work that is required by law and do not need to seek prior approval to do so." J.A. 387. So the February 10 email by its terms did not require legally mandatory work to be abandoned, and the CFPB did not apply the email "as if it were binding" on that question. *See Nat'l Mining Ass'n*, 758 F.3d at 253.

The plaintiffs note that staff directives and other informal kinds of agency action are sometimes reviewable under the APA. That is true, but only if the agency treats the action as binding, and only if the action has appreciable legal consequences for the plaintiff. *See Cal. Cmtys. Against Toxics*, 934 F.3d at 638–40; *Nat'l Mining Ass'n*, 758 F.3d at 252. The authorities cited by the plaintiffs confirm as much. The internal directive in *National Environmental Development Association* "provide[d] firm guidance to enforcement officials," who "relied on" it in making permitting decisions throughout the country. *See* 752 F.3d at 1007. Likewise, the letter in *Ciba-Geigy Corp. v. EPA*, 801 F.2d 430 (D.C. Cir. 1986), informed a regulated party of the agency's considered view that the party had no right to a hearing it desired. *See id.* at 436–38. The February 10 email, in requiring advance approval to perform work, does nothing so firm or consequential.

2

We turn next to the putative shutdown decision. The plaintiffs point to no regulation, order, document, email, or other statement, written or oral, purporting to shut down the CFPB. Instead, they infer such an overarching decision from various discrete "actions" taken by agency leadership to downsize the Bureau, "including by issuing stop-work instructions, cancelling contracts, declining and returning funding, firing employees, and terminating the lease for its headquarters." J.A. 46–47. The district court found a "decision to shut down the agency completely" and equated it to a "wholesale cessation" of CFPB activities. *NTEU*, 774 F. Supp. 3d at 46.

For its part, the government does not claim the power to "shut down" the CFPB. Nor could it. Congressional statutes create the Bureau and define its powers and duties. Agency officials cannot wipe those provisions off the books. Moreover, as explained above, many CFPB functions are mandatory; for example, the Bureau must respond to consumer complaints, disseminate various reports, and assist individuals with student loans. The agency does not suggest that it could lawfully abandon these various responsibilities. Finally, while the Bureau's rulemaking, enforcement, and adjudicatory powers are discretionary, we assume that it must engage in *some* regulation of, say, the Nation's largest banks. *See Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985).

Instead, the government disputes that it undertook to shut down the CFPB. First, it contends that agency leadership at all times intended for the Bureau to remain open and to perform all of its statutorily required functions. Second, it contends that no decision to shut down the Bureau was ever reduced to final, reviewable agency action. Questions of what CFPB leadership

wanted or intended to do at any particular point in time are factual, and we are reluctant to conclude that the district court's factual assessments were clearly erroneous. But the question of what counts as final agency action reviewable under the APA is a legal one, which we decide without deference to the district court. *See*, *e.g.*, *Soundboard Ass'n*, 888 F.3d at 1267–74; *Nat'l Mining*, 758 F.3d at 250–53. On that question, we agree with the government that there was no reviewable decision to shut down the CFPB.

First, the APA does not authorize review of "abstract decision[s] apart from specific agency action, as defined in the APA." *Biden v. Texas*, 597 U.S. 785, 809 (2022). In *Biden v. Texas*, the Secretary of Homeland Security issued a June 1, 2021 memorandum "officially terminating" a discretionary immigration program known as the Migrant Protection Protocols. *See id.* at 793. After a court set aside that termination and remanded for further consideration, the Secretary again formally terminated the program on October 29, 2021, this time with some forty pages of reasoning. *See id.* at 795–96. The court of appeals treated the second termination not as a separately reviewable agency action, but as a mere "*post hoc* rationalization[]" for what it described as a "Termination Decision" independent of the June 1 and October 29 memoranda. *See id.* at 796–97, 809–10. The Supreme Court reversed. Quoting from the APA's definition of a "rule," it held that the court of appeals had erred "by postulating the existence of an agency decision wholly apart from any 'agency statement of general or particular applicability … designed to implement' that decision." *Id.* at 809 (quoting 5 U.S.C. § 551(4)).

Here, too, there is no such "action" as defined in the APA—*i.e.*, no such "rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act," 5 U.S.C.

§ 551(13). The plaintiffs suggest that the putative shutdown decision qualifies as a rule, which would require some "agency *statement*" designed "to implement, interpret, or prescribe law or policy." *Id.* § 551(4) (emphasis added). The plaintiffs point to no such statement, formal or informal, written or oral. Nor do they suggest that the putative shutdown decision is anything like an "order, license, sanction, [or] relief." These too are defined terms, *see id.* § 551(6), (8), (10), (11), and a decision to shut down an agency would not satisfy any of the definitions. In sum, the shutdown decision posited here, like the Termination Decision posited in *Biden v. Texas*, is an abstract decision "wholly apart from" any "specific agency action, as defined in the APA." 597 U.S. at 809.[5]

[5] The dissent responds that section 551(13)'s definition of "agency action" encompasses "comprehensively every manner in which an agency may exercise its power." *Post* at 22, 45 (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 478 (2001)). But *American Trucking* involved only a question about finality, not whether there was "agency action" to begin with. *See* 531 U.S. at 478–79. Moreover, in *SUWA*, the Court looked to the specific defined terms embedded in section 551(13)—"rule, order, license, sanction, relief, or the equivalent or denial thereof"—to limit the scope of what counts as "agency action" under the APA. *See* 542 U.S. at 62–63. Likewise, in *Biden v. Texas*, the Court looked to the specific definition of an APA "rule"—an "agency statement of general or particular applicability … designed to implement" a decision—to hold that an alleged abstract decision to terminate an agency program, distinct from the one announced by memorandum, was not "agency action" under the APA. *See* 597 U.S. at 809–10. We too "have long recognized that the term [agency action] is not so all-encompassing as to authorize us to exercise judicial review over everything done by an administrative agency." *Indep. Equip. Dealers Ass'n v. EPA*, 372 F.3d 420, 427 (D.C. Cir. 2004) (cleaned up). For example, agencies do many things "in anticipation of" taking "agency action," such as making budget requests. *Fund for*

Second, the putative shutdown decision was not *final* agency action. No such decision by itself effected the termination of any employees or the cancellation of any contracts. To the contrary, as the CFPB attempted to downsize, it had to undertake separate, discrete actions to lay off workers and cancel contracts—actions that, had they not been preliminarily enjoined, would have been reviewable in the MSPB or the Court of Federal Claims. Nor did the posited shutdown prohibit any legally required work. As explained above, CFPB transitional leadership made a handful of statements addressing what work employees could do during the initial days of the new presidential Administration. While these statements all required prior approval to perform work, three of them expressly excepted legally required work, J.A. 110 (Bessent on Feb. 3); *id.* at 117 (Vought on Feb. 8); *id.* at 387 (Paoletta on Mar. 2), while one of them expressly empowered the Chief Legal Officer to approve work, *id.* at 101 (Vought on Feb. 10). And the Chief Legal Officer did, in fact,

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Animals, Inc., 460 F.3d at 19–20. A budget request "may serve as a useful planning document, but it is not a 'rule,'" *id.* at 20, because it is not a "statement … designed to implement, interpret, or prescribe law or policy," 5 U.S.C. § 551(4). Neither are an agency director's non-public, unrecorded decisions.

The dissent further contends that the Acting Director's alleged unrecorded decision to shut down the Bureau was "the equivalent" of a rule. *Post* at 43–44 (quoting 5 U.S.C. § 551(13)). But again, a "rule" is an "agency *statement*." 5 U.S.C. § 551(4) (emphasis added). A "statement" is something that one says or writes, usually to make something known to others. *See Statement*, Webster's New International Dictionary of the English Language (2d ed. 1945) ("Act of stating, reciting, or presenting, orally or on paper"); *Present*, Webster's New International Dictionary of the English Language (2d ed. 1945) ("to bring to anyone's attention or cognizance … to show; display; set forth; describe"). Unexpressed decisions are the opposite of, not something "equivalent" to, such a "statement."

approve much legally required work. So there was neither a definitive agency decision to stop mandatory work nor a direct and appreciable impact on the rights of the plaintiffs.

Third, the posited shutdown decision is insufficiently discrete to qualify as "agency action." To begin with, no statute or regulation authorizes the CFPB to shut itself down, so the posited decision is not "derived from any authoritative text" that might help structure judicial review. *See Nat'l Wildlife Fed'n*, 497 U.S. at 890. Nor does the posited shutdown decision "refer to a single [CFPB] order or regulation, or even to a completed universe of particular [CFPB] orders and regulations." *See id.* Instead, it is the plaintiffs' way of referring to a constellation of then-ongoing actions—the February 10 email, firing employees, cancelling contracts, declining additional funding, and terminating the lease for the Bureau's current headquarters. Rather than seeking to challenge any of these discrete decisions that may have caused them harm, the plaintiffs seek to dress up these "many individual actions" as a single decision in order to challenge all of them at once, which is exactly what *National Wildlife* prevents. *See id.* at 893.

Fourth, the discreteness problem is made worse by the open-ended nature of the legal duties that the plaintiffs seek to enforce. Essentially, they seek an order compelling the CFPB to keep providing its mandatory services. *See* Oral Arg. Tr. 48–50 (proposing injunction barring the government from "try[ing] to shut down the agency"). But while the statute specifies various services that the Bureau *must* provide, it gives the agency "a great deal of discretion in deciding *how*" to provide them. *SUWA*, 542 U.S. at 66 (emphasis added). For example, how many employees must the Bureau have to ensure adequately functioning offices to process consumer complaints, disseminate reports, and afford student-loan

assistance? Which contracts are essential for achieving those objectives? How much funding is necessary for doing so? Congress gave the Bureau discretion to make decisions like these. *See* 12 U.S.C. § 5493(a)(1)(A) ("The Director may fix the number of … employees of the Bureau."); *id.* § 5497(a)(1) (Director shall determine the funding "reasonably necessary to carry out the authorities of the Bureau"). An order requiring the Bureau to retain specified levels of employment, contracting, funding, and the like would run afoul of *SUWA*'s prohibition of "judicial direction of even discrete agency action that is not demanded by law." 542 U.S. at 65. And any "general" order merely "compelling compliance with broad statutory mandates" would present essentially the same problem: The courts "would necessarily be empowered" to "determine whether compliance was achieved—which would mean that it would ultimately become the task of the supervising court, rather than the agency, to work out compliance with the broad statutory mandate, injecting the judge into day-to-day agency management." *Id.* at 66–67.

We faced exactly this problem in considering the government's motion for a stay pending appeal. Because the government then challenged only the scope of the preliminary injunction, we were presented with a dilemma that proved insoluble: Enjoin specific activity like the termination of agency employees, as the preliminary injunction had done, which would restrict a wide range of activity that the agency may lawfully undertake. Or, alternatively, craft a follow-the-law injunction requiring the Bureau to retain enough employees to meet its statutory obligations. Our partial stay order tried the latter course, and it immediately embroiled the courts in compliance issues about how many employees were

necessary—a determination that the Judicial Branch is neither authorized nor competent to make.[6]

Finally, the challenge to the posited shutdown decision is unripe. For starters, the issues are not fit for review. As explained above, the plaintiffs point to no definitive statement regarding an agency shutdown but seek to infer one from various specific acts to downsize. Because the exact scope of the putative shutdown is thus unclear, judicial review "is likely to stand on a much surer footing in the context of a specific application." *Toilet Goods Ass'n*, 387 U.S. at 164. Moreover, agency consideration remained ongoing, which means that "judicial intervention would inappropriately interfere with further administrative action." *Ohio Forestry Ass'n. v. Sierra Club*, 523 U.S. 726, 733 (1998); *see also Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (cleaned up)). Even if we assume, as the district court found, that interim CFPB leadership at one point made an abstract

[6] The dissent contends that *SUWA* has "little to say regarding the merits of Plaintiffs' section 706(2) challenge" to set aside agency action because *SUWA* "is a section 706(1) case" to compel agency action. *Post* at 35. But *SUWA*'s analysis turned on the fact that section 706(1) "insist[s] upon an 'agency action,'" 542 U.S. at 62, as does section 706(2). Moreover, *SUWA* expressly built on *National Wildlife*, which construed the phrase "agency action" in a section 706(2) case. *See id.* at 64–65. And *SUWA*'s concerns about overly intrusive APA remedies do not fall away merely because a plaintiff sues under section 706(2). *See id.* at 67 ("The prospect of pervasive oversight by federal courts over the manner and pace of agency compliance with such congressional directives is not contemplated *by the APA*." (emphasis added)). The concerns apply equally here, where the plaintiffs ask us to enjoin the Bureau's putative decision not to meet its statutory responsibilities by issuing what is, in effect, a general order compelling the agency to meet them.

decision to shut down the Bureau, *see NTEU*, 774 F. Supp. 3d at 58–69, this decision was not final. Instead, the leadership had an opportunity to change course before the decision resulted in the denial of any service. And the Bureau did change course—it has reactivated certain contracts, J.A. 663; refined its RIF plans, *id.* at 758; and issued a directive to "ensure that everyone is carrying out any statutorily required work," *id.* at 387. Under these circumstances, immediate judicial review would deny the Bureau "an opportunity to correct its own mistakes." *FTC v. Standard Oil Co.*, 449 U.S. 232, 242 (1980). In sum, regularly moving targets do not raise issues fit for review. [7]

Moreover, the plaintiffs will suffer no unusual hardship from postponing review. Unlike in cases allowing pre-enforcement review, the actions challenged here do not require them "to engage in, or to refrain from, any conduct." *Texas v. United States*, 523 U.S. at 301. And if their fears come to pass, they may "protect all of their rights and claims by returning to court when the controversy ripens." *Atl. States Legal Found. v. EPA*, 325 F.3d 281, 285 (D.C. Cir. 2003). Specifically, they

[7] The dissent dismisses the change in course as "whitewashing" and asserts that it goes only to mootness. *Post* at 31–32. But the Acting Director's speedy renunciation of any intent to shut down the Bureau, backed with concrete action, bears directly on whether there was a *final* shutdown decision to begin with. As explained above, we routinely consider shifting "post-guidance events" to determine whether an agency treats any informal guidance "as if it were binding." *Nat'l Mining Ass'n*, 758 F.3d at 253. Moreover, a central purpose of prudential ripeness doctrine is to allow an agency space to "alter a tentative position." *Pub. Citizen Health Rsch. Grp. v. FDA*, 740 F.2d 21, 31 (D.C. Cir. 1984); *see also Ohio Forestry Ass'n*, 523 U.S. at 735. If the Bureau's change in course here—before any plaintiff was denied any statutorily required service—went only to mootness, then the ripeness doctrine would be futile.

may seek judicial review to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). In such suits, they would have to wait until the Bureau actually denied them a discrete service—and show either an immediate entitlement to it or an unreasonable delay in providing it. *See Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984). This is not a hardship; it is par for the course, even in cases where plaintiffs' lives and livelihoods depend on the prompt receipt of agency services. *See*, *e.g.*, *Afghan & Iraqi Allies v. Blinken*, 103 F.4th 807, 810 (D.C. Cir. 2024) (delay in the provision of "special-immigrant visas to certain Iraqi and Afghan nationals who face serious threats because of their faithful service to the United States").

The plaintiffs respond by citing cases where unwritten action, agency plans, and decisions to terminate agency programs were held reviewable under the APA. They also seek to distinguish *National Wildlife* and *SUWA*. But the cited cases are inapposite, and the asserted distinctions fail.

Unwritten action. Cases involving final agency action not committed to writing are few and far between. The plaintiffs cite two. The first, *Brotherhood of Locomotive Engineers and Trainmen v. FRA*, 972 F.3d 83 (D.C. Cir. 2020), is entirely inapposite. It involved a regulatory scheme in which an agency's failure to act on a license application within a certain number of days constituted an approval by operation of law. *Id.* at 89–90. Approval of a license is final agency action, whether committed to writing or not. *Id.* at 90; *see* 5 U.S.C. § 551(8), (13). Even so, we pointed to the application itself as a "relevant written document" that would make clear exactly what the agency had approved. *See* 972 F.3d at 100–01.

The second case, *Venetian Casino Resort, LLC v. EEOC*, 530 F.3d 925 (D.C. Cir. 2008), involved an EEOC policy allowing the agency to disclose confidential information without prior notice to the submitter. *Id.* at 929–30. The parties disputed which version of a written compliance manual setting forth the policy was operative, but the district court found the versions to be "identical in all material aspects," and neither party contested that finding on appeal. *See id.* at 928–30. Moreover, each version left "no doubt" that EEOC permitted disclosure without prior notice, and the agency conceded as much. *See id.* An employer who had submitted confidential information sued to enjoin EEOC from relying on the policy to disclose its information. EEOC objected that promulgating the manual was not final agency action because the manual was "merely a guidance document that d[id] not affect its own or the public's legal obligations." *Id.* at 931. This Court responded that "the agency took final action by adopting the policy, not by including it in the Manual." *Id.* We further noted that the policy was ripe for review because EEOC was on the cusp of applying it to harm the plaintiff. *See id.* at 927–28.

On the plaintiffs' telling, *Venetian Casino* stands for the proposition that the APA permits review of agencies' unrecorded abstract decisions. But the policy at issue there *was* recorded repeatedly, in different versions of an agency compliance manual. Its terms were clear from the manual and materially identical in both versions. *See* 530 F.3d at 929. Moreover, the manual was disseminated to agency employees precisely to guide their decisions. *See id.* at 928–29. So, statements in the manual qualified as a rule, *see* 5 U.S.C. § 551(13), which was final because the agency treated them as binding. *See*, *e.g.*, *Nat'l Mining Ass'n*, 758 F.3d at 253; *Nat'l Env't Dev. Ass'n's Clean Air Project*, 752 F.3d at 1007. None of this suggests that the unrecorded shutdown decision at issue here, which was expressed in no agency statement, qualifies as

a rule. To the contrary, courts cannot "postulat[e] the existence" of a rule "wholly apart from" any agency statement or its equivalent. *See Biden v. Texas*, 597 U.S. at 809. And especially so, as the dissent acknowledges, *post* at 41, when the agency *has* reduced the policy to writing, as it did in *Venetian Casino*. In any event, we reviewed the policy at issue there only because the agency was about to apply it to harm the plaintiff, so the policy implicated none of the finality or ripeness concerns associated with the shutdown decision here.

Agency plans. As explained above, agency plans generally are not final because they contemplate "specific actions implementing the plans." *Fund for Animals*, 460 F.3d at 21. But there are exceptions—some plans are made reviewable by statute, *see* 5 U.S.C. § 704, and others are final because a statute gives them some binding effect. The plaintiffs cite cases involving such plans. *See Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 906 (D.C. Cir. 2024) (plan made reviewable by statute); *Defs. of Wildlife v. Salazar*, 651 F.3d 112, 113 (D.C. Cir. 2011) (plan made binding by statute); *Senior Res. v. Jackson*, 412 F.3d 112, 115 (D.C. Cir. 2005) (same). These cases are inapposite, for no statute made the CFPB's putative shutdown decision binding or otherwise reviewable.

Program terminations. Finally, the plaintiffs point to cases reviewing decisions to terminate agency programs—most notably *DHS v. Regents of the University of California*, 591 U.S. 1 (2020), and *Biden v. Texas*. These cases prove that such decisions can be final agency action. But neither one suggests that the CFPB took final agency action here.

Regents involved Deferred Action for Childhood Arrivals (DACA), "a program for conferring affirmative immigration relief" on certain aliens unlawfully present in the United States. 591 U.S. at 18. DACA entitled qualifying aliens to apply for

deferred action—a status enabling the alien to remain in the United States, to work here, and to receive government benefits such as Social Security and Medicare. *See id.* at 10. Following a change in presidential administrations, the Acting Secretary of Homeland Security issued a written memorandum rescinding DACA. *See id.* at 12–13. The government argued that the memorandum was unreviewable because it was committed to agency discretion by law; the government never suggested that the memorandum, self-executing on its face and formally published by an acting Cabinet Secretary, was not final agency action. *See id.* at 17–19. Still, the Supreme Court stressed that the memorandum "provide[d] a focus for judicial review." *Id.* at 18 (cleaned up).

Biden v. Texas involved the Migrant Protection Protocols, which required certain aliens entering the country from Mexico to be returned to Mexico pending resolution of their removal proceedings. 597 U.S. at 791. Following a change in presidential administrations, the Acting Secretary of Homeland Security issued a self-executing, written memorandum formally ending the program. *See id.* at 808 ("I am hereby terminating MPP."). The Supreme Court held that the memorandum was final agency action because it "marked the consummation of the agency's decisionmaking process and resulted in rights or obligations being determined." *Id.* (cleaned up). Specifically, the memorandum "bound DHS staff by forbidding them to continue the program in any way from that moment on." *Id.* at 808–09 (cleaned up).

In short, reviewability in these cases did not turn on the fact that program terminations were at issue; it turned on the fact that the plaintiffs challenged final, written memoranda with formal legal consequence. Moreover, the Court in *Biden v. Texas* made clear that it was reviewing the formal memo itself, not any "abstract" termination decision "wholly apart

from" that final rule. 597 U.S. at 809. Here, in contrast, the plaintiffs seek to challenge an unrecorded decision that neither binds agency staff nor restricts access to agency benefits.[8]

Discreteness precedents. The plaintiffs' attempts to distinguish *National Wildlife* and *SUWA* also fall flat. The plaintiffs contend that the challengers in *National Wildlife* sought to contest "thousands" of decisions, whereas they seek to challenge only "a single plan to shut down the agency." Red Br. 35. But on the plaintiffs' own account, that asserted plan implicates hundreds of distinct contract and personnel decisions. *See*, *e.g.*, J.A. 648–49. And in any event, *National Wildlife* held that an APA challenge may not bundle together discrete actions in order to challenge them all together. *See* 497 U.S. at 890–94. Here, the plaintiffs equate all of the individual "actions to suspend or terminate CFPB's statutorily mandated activities—including by issuing stop-work instructions, cancelling contracts, declining and returning funding, firing employees, and terminating the lease" with the "final agency action"—in the singular—reviewable under the APA. J.A. 46–47. As for *SUWA*, the plaintiffs contend it is inapplicable because they seek to set aside an unlawful shutdown decision,

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[8] The dissent suggests that our analysis would permit the government to terminate programs by "conceal[ing] … what it is doing." *Post* at 43; *see also id.* at 51 (positing action that "agencies manage to obfuscate"). But programs afford benefits, which the government could not rescind without *some* kind of public statement. If the denial of some benefit were judicially reviewable while the relevant program remained in effect, it would also be reviewable—and would surely be set aside—if the government invoked a secret termination decision as the basis for the denial. Moreover, if the government sought to implement a secret termination by simply refusing to provide benefits, or to act on applications for benefits, courts could compel those actions under section 706(1), as we have explained.

not to compel mandatory agency operations. But the same analysis of "agency action" governs both suits to set aside unlawful action under section 706(2) and suits to compel action unlawfully withheld under section 706(1). *See SUWA*, 542 U.S. at 64–65. And despite the plaintiffs' disclaimer, they sought and obtained a preliminary injunction ordering all kinds of agency actions that were not themselves legally required, such as a prohibition on conducting any RIFs.

4

The dissent asks us to imagine that the Acting Director had issued a "formal written memorandum" announcing the termination of the CFPB. *Post* at 23. The dissent argues that, because such a hypothetical memorandum would be reviewable, the shutdown decision inferred here must also be reviewable. *See id.* at 39–42.

One can easily imagine a shutdown memorandum that would be reviewable. Suppose the Acting Director had issued this edict: "The Bureau is shut down. Effective immediately, Bureau employees may not perform any work." This memo would be a *rule*—that is, "an agency statement … designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4). And it would be *final*, reflecting the Bureau's firm decision to take an action with tangible legal consequences, namely refusing to provide services as required by Congress. *See Biden v. Texas*, 597 U.S. at 808–09. In effect, the memo would operate like a legislative rule eliminating services that the agency was required to provide. And because the memo would have tangible legal consequences, a court could meaningfully set it aside, restoring the Bureau's ability to perform mandatory services and, in so doing, redressing the injuries of individuals who use the agency services. In other

words, the reviewing court could undo the legal consequence imposed by the memo.

But it hardly follows that the APA permits review of an unrecorded rule—the existence of which the agency denies—inferred from a collection of disparate agency actions. The dissent cites no case in which any court reviewed a putative rule that the agency denied having promulgated. And the very notion of an unrecorded rule is almost oxymoronic. Agencies promulgate rules to alter legal relationships, which is why rules are often subject to pre-enforcement review. *See*, *e.g.*, *Abbott Laboratories*, 387 U.S. at 152. It is difficult to see how an agency could accomplish that through a secret decision not memorialized in any public statement, written or oral.

In any event, our analysis does not hinge on the absence of a memorandum alone. Even if there were a memo, it would not be reviewable unless it bound the agency. Suppose the Acting Director wrote this: "I intend to shut down the Bureau. Once the Bureau is shut down, it will have no employees and will perform no tasks. Employees should begin preparing to wind up the Bureau's operations." Suppose further that the Acting Director, immediately after issuing the memo, instructed employees to perform at least some of the Bureau's required work indefinitely. This memo would be a nonbinding statement of something the agency intends to do in the future. *See Fund for Animals*, 460 F.3d at 22. A court could not review it, but only specific actions taken to implement it. *See id.*

The dissent posits that the Acting Director decided to shut down the Bureau, and we do not contest this. But the dissent does not explain how that decision bound the agency. It acknowledges that the agency's Chief Legal Officer, just three weeks after the posited shutdown decision, instructed employees to perform all legally required work. *Post* at 30–31.

Moreover, the Acting Director took action inconsistent with a final shutdown decision just one day after the decision is alleged to have occurred. *See* J.A. 286 (February 11 email to an employee: "I am specifically directing you … to continue indefinitely to perform all tasks necessary to publish the APOR on weekly basis."). So even if an inferred shutdown decision could be equivalent to a rule, the decision here was not *final*—in other words, conclusive and binding.

The dissent's analysis also reflects a mismatch between the final agency action inferred and the remedy provided. If the Acting Director had promulgated a formal memorandum instructing Bureau employees not to perform any work, the memo would be final agency action, and the reviewing court could set it aside and thereby nullify its legal consequences. But the court could not, in reviewing such a memo, enjoin or set aside *other* agency actions—such as a RIF announced around the same time. Yet the dissent advocates just that approach. Like the plaintiffs, the dissent contends that we should set aside not only the putative shutdown decision, which has no legal consequence except as implemented through other decisions, but that we should enjoin the constellation of discrete actions from which it infers the shutdown decision. *See post* at 56–59. As we have shown, the APA does not allow us to leverage our review from one discrete action to another.

* * * *

The plaintiffs seek to set aside an abstract decision, inferred from a constellation of discrete actions, to prophylactically ensure that the Bureau can fulfill its statutory mandate. This theory contravenes all the APA limits discussed above—agency action, finality, ripeness, and discreteness alike. If the plaintiffs' theory were viable, it would become the task of the judiciary, rather than the Executive Branch, to

determine what resources an agency needs to perform its broad statutory functions. Such pervasive judicial control of agency administration falls well beyond limited APA review.

VI

With no express cause of action under the APA, the plaintiffs must resort to equity.

A

To seek judicial review, a party ordinarily needs a statutory cause of action expressly provided by Congress. But sometimes, the Supreme Court has held, parties aggrieved by federal agency action may seek equitable relief even without an express statutory cause of action. *See*, *e.g.*, *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010); *Trudeau v. FTC*, 456 F.3d 178, 190 (D.C. Cir. 2006). The availability of such implied equitable relief substantially depends on whether the plaintiff claims a statutory or constitutional violation.

Implied equitable claims that a federal agency has violated a federal statute, which we refer to as *ultra vires* claims, are "extremely limited" in scope. *Griffith v. FLRA*, 842 F.2d 487, 493 (D.C. Cir. 1988). Confirming this point, the Supreme Court recently described *ultra vires* challenges as "essentially a Hail Mary pass—and in court as in football, the attempt rarely succeeds." *NRC v. Texas*, 145 S. Ct. 1762, 1776 (2025) (quoting *Nyunt*, 589 F.3d at 449). To succeed on an *ultra vires* claim, the plaintiff must show that (1) judicial review is not expressly foreclosed; (2) the agency made an extreme legal error; and (3) there is no alternative means for the plaintiff to seek judicial review. *See*, *e.g.*, *Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 721–22 (D.C. Cir. 2022); *DCH Reg'l Med. Ctr. v. Azar*, 925 F.3d 503, 509 (D.C. Cir. 2019). The

plaintiffs expressly disavow any such *ultra vires* claim. For good reason: As explained above, aggrieved CFPB employees may seek judicial review through the CSRA scheme, and aggrieved consumers of CFPB services may seek review through the APA cause of action for unreasonable delay.

Courts also have long recognized implied equitable claims arising under the Constitution. *See Trudeau*, 456 F.3d at 190. And although the Supreme Court has all but eliminated implied damages actions for constitutional claims, *see*, *e.g.*, *Egbert v. Boule*, 596 U.S. 482 (2022), it has continued to recognize implied equitable actions "directly under the Constitution," *Free Enter. Fund*, 561 U.S. at 491 n.2. For implied equitable claims under the Constitution, we have imposed neither the requirements for *ultra vires* review nor those for APA review.[9]

B

To avoid the requirements for an *ultra vires* claim, the plaintiffs seek to describe their equitable claim here as a constitutional one. The claim targets the defendants' putative decision to shut down the CFPB. As explained above, the plaintiffs contend that a shutdown would violate statutes that establish the Bureau and require it to perform various tasks.

[9] We have described such implied claims as involving "a direct cause of action under" the Constitution. *Trudeau*, 456 F.3d at 190; *see also Free Enter. Fund*, 561 U.S. at 491 n.2 ("an implied private right of action directly under the Constitution"). This terminology is perhaps imperfect insofar as equity courts did not speak of "causes of action" as such. *See* Bray & Miller, *Getting into Equity*, 97 Notre Dame L. Rev. 1763, 1772–76 (2022). Regardless of historical labels, the "cause of action" or "private right of action" terminology does help distinguish between two critically different questions—whether the defendant has violated some provision of substantive law and whether an injured plaintiff may seek redress in court.

And because the Executive Branch cannot "amend statutes unilaterally" or "usurp legislative authority conferred upon Congress," the plaintiffs say that a shutdown would also violate the separation of powers. J.A. 44. Invoking *Free Enterprise Fund*, the plaintiffs thus assert what they describe as a "cause of action under the Constitution for the violation of the separation of powers." Red Br. 25.

In *Dalton v. Specter*, 511 U.S. 462 (1994), the Supreme Court rejected a similar attempt to transform statutory claims into constitutional ones. *Dalton* involved a presidential decision to close the Philadelphia Naval Shipyard. *Id.* at 464. Review through the APA was unavailable because the President is not an "agency" for APA purposes. *See id.* at 469–70. Nonetheless, following its decision in *Franklin v. Massachusetts*, 505 U.S. 788 (1992), the Court assumed an implied equitable action to review presidential decisions "for constitutionality." *Dalton*, 511 U.S. at 471–72. The plaintiffs argued that the President's decision to close the shipyard violated various provisions in the governing statute. *See id.* They further argued that these statutory violations had a "constitutional aspect" because "whenever the President acts in excess of his statutory authority, he also violates the constitutional separation-of-powers doctrine." *Id.* at 471. Accordingly, they concluded, "judicial review must be available to determine whether the President has statutory authority for whatever action he takes." *Id.* (cleaned up).

The Supreme Court rejected this argument. The Court explained that it had "often distinguished between claims of constitutional violations and claims that an official has acted in excess of his statutory authority." 511 U.S. at 472. And if "all executive actions in excess of statutory authority were *ipso facto* unconstitutional," then these precedents would have had "little need" for "specifying unconstitutional and ultra vires

conduct as separate categories." *Id.* Moreover, "if every claim alleging that the President exceeded his statutory authority were considered a constitutional claim, the exception identified in *Franklin* would be broadened beyond recognition." *Id.* at 474. Yet the "distinction between claims that an official exceeded his statutory authority, on the one hand, and claims that he acted in violation of the Constitution, on the other, is too well established to permit this sort of evisceration." *Id.* For these reasons, the Court held that "claims simply alleging that the President has exceeded his statutory authority are not 'constitutional' claims" freely reviewable in equity. *Id.* at 473.

Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320 (2015), reinforces this analysis. That case presented the question whether healthcare providers have an implied equitable action for statutory violations in state Medicaid plans. *Id.* at 324. The providers argued that their claims were constitutional because any state violation of a federal statute would also violate the Supremacy Clause of the Constitution, which makes federal law supreme over state law. *See* U.S. Const. Art. VI, cl. 2; 575 U.S. at 324. The Supreme Court refused to treat the claim as a constitutional one giving rise to an unrestricted equitable action. *See id.* at 324–27. Instead, it treated the claim as statutory—and applied ordinary canons of construction to conclude that Congress had foreclosed equitable relief. *See id.* at 327–29. In other words, statutory claims do not become constitutional ones by operation of the separation-of-powers principles that prevent the States and the Executive Branch from disregarding federal statutes.

Those principles control this case. The assertedly constitutional claim here begins with the premise that shutting down the CFPB would violate the statutes that create the agency and require it to perform various mandatory tasks. Because CFPB leadership decided to violate these statutes, the

argument goes, it "also violate[d] the constitutional separation-of-powers doctrine." *Dalton*, 511 U.S. at 471. This supposed separation-of-powers violation turns entirely on whether CFPB officials violated the governing statutes, so *Dalton* requires us to analyze the claim as an *ultra vires* one. *See id.* at 472–74.[10]

C

The plaintiffs offer three responses to this straightforward conclusion, but none is persuasive.

First, they contend that *Dalton* rested on a conclusion that the statute at issue there committed base-closure decisions to the discretion of the President, whereas no statute here authorizes executive officials to shut down the CFPB. That argument confuses two distinct rulings in *Dalton*. After holding that constitutional review was unavailable because the claims at issue were not constitutional, the Court then separately considered whether *ultra vires* review was available. As it did for the alleged constitutional claims, the Court "assume[d] for the sake of argument that some claims that the President has violated a statutory mandate are judicially reviewable outside the framework of the APA." 511 U.S. at 474. But, the Court explained, such *ultra vires* review "is not available when the statute in question commits the decision to the discretion of the President." *Id.* Then, the Court concluded that the statute at issue did not "limit the President's discretion," which foreclosed *ultra vires* review. *See id.* at 476. None of this reasoning narrowed the Court's prior conclusion that implied equitable review for constitutional claims is

[10] In *Global Health Council v. Trump*, --- F.4th ---, No. 25-5097 (D.C. Cir. Aug. 13, 2025), this Court applied *Dalton* to hold that an asserted separation-of-powers claim is statutory rather than constitutional for reviewability purposes. *See id.* at __ (slip op. at 16–24). Our analysis is fully consistent with *Global Health Council*.

unavailable where the plaintiff argues that statutory violations by executive officials implicate the separation of powers. *See id.* at 472–74.

Second, the plaintiffs invoke the Supreme Court's statement in *Free Enterprise Fund* that the Constitution creates an "implied private right of action" for "separation-of-powers claim[s]" as well as for individual-rights claims. *See* 561 U.S. at 491 n.2. But the separation-of-powers claim vindicated in *Free Enterprise Fund* was that Article II of the Constitution prohibits Congress from insulating executive officers from presidential control through two levels of for-cause removal protection. *See id.* at 514. And since *Free Enterprise Fund*, cases engaging in implied equitable review for separation-of-powers claims have likewise involved claims that statutes themselves violate Article II or other structural constitutional provisions. *See*, *e.g.*, *Axon*, 598 U.S. at 180; *Collins v. Yellen*, 594 U.S. 220, 227–28 (2021). None of these cases casts doubt on *Dalton*'s holding that claims alleging nothing more than executive actions in contravention of statutes give rise to *ultra vires* claims but not implied constitutional claims.

Finally, the plaintiffs invoke *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), which held that neither the Vesting Clause nor the Commander-in-Chief Clause of Article II authorized the President to seize the nation's steel mills. *See id.* at 585–89; U.S. Const. Art. II, § 1, cl. 1 & § 2, cl. 1. The dispute in *Youngstown* was entirely constitutional. As the Supreme Court explained in *Dalton*, the government had "disclaimed any statutory authority for the President's seizure of steel mills" in *Youngstown*, so the case "necessarily turned on whether the Constitution authorized the President's actions" through a freestanding Article II power. 511 U.S. at 473 (citing *Youngstown*, 343 U.S. at 585–87). This case is the opposite: The Executive has invoked no such freestanding Article II

power. Instead, the only constitutional source of executive authority in this case is the President's obligation to take care that the *statutes* governing the CFPB are faithfully executed. *See* U.S. Const. Art. II, § 3. And as *Dalton* made clear, a claim that executive officials have not discharged such a responsibility under the Take Care Clause gives rise at most to an *ultra vires* claim. *See* 511 U.S. at 472–74.[11]

VII

Some of the plaintiffs cannot establish jurisdiction, and the others have no viable cause of action. The plaintiffs' claims therefore fail as a matter of law. We vacate the preliminary injunction and remand the case for further proceedings consistent with this opinion.

So ordered.

[11] The dissent worries that a test characterizing claims according to the authority invoked by the government would empower it to avoid judicial review. *Post* at 54–55. But the question is not whether the government may avoid judicial review; it is rather whether plaintiffs must comply with statutory limits on APA review or judge-made limits on *ultra vires* review. As we have shown, *Dalton* holds that plaintiffs may not plead around those limits simply by contending that the Executive Branch violates the Constitution by acting in violation of a statute. *See* 511 U.S. at 472–74. As for the dissent's further hypothetical about a President nationalizing steel mills yet denying it in litigation, *post* at 54, we repeat a point made earlier: It is difficult to imagine a form of executive action sufficiently public and conclusive to inflict immediate injuries but not sufficiently public and conclusive to support judicial review, through the APA or otherwise.