No. 20-138

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

Petitioners,

v.

SIERRA CLUB, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* FEDERAL COURTS SCHOLARS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are leading scholars with expertise in the jurisdiction of the federal courts, including expertise pertaining to the government's arguments that courts cannot hear this case because Respondents lack a cause of action and fail a "zone of interests" test. *Amici curiae* are:

- Erwin Chemerinsky, Dean, Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley Law
- Kristin Collins, Professor of Law, Boston University School of Law
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[1] The parties have consented to the filing of this brief, and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

- Stephen I. Vladeck, Charles Alan Wright Chair in Federal Courts, University of Texas School of Law

INTRODUCTION AND SUMMARY OF ARGUMENT

In February 2019, after months of trying to secure funding from Congress to build a wall along the southern border, President Trump issued an order declaring a national emergency and directing that funds Congress appropriated for other purposes be diverted to build the wall. Respondents challenged that order and its implementation, arguing that this diversion of funds exceeds the President's constitutional and statutory authority. Agreeing, the district court entered a permanent injunction against border-wall construction in specified regions using funds transferred under Section 8005 of the 2019 Department of Defense appropriations statute. Pet. App. 174a, 189a. The court of appeals affirmed. *Id.* at 1a, 78a.

As the lower courts recognized, Respondents are entitled to judicial review of their claims. Petitioners argue that they may not bring these claims because they lack a cause of action and fall outside the "zone of interests" protected by Section 8005. Pet. Br. 17-18. Longstanding precedent refutes both arguments.

First, "equitable relief . . . is traditionally available to enforce federal law," *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015), just as the Framers and the First Congress prescribed. The courts may therefore provide injunctive remedies when officials injure a plaintiff by exceeding their constitutional or statutory authority. *See, e.g.*, *Harmon v. Brucker*, 355 U.S. 579, 581-82 (1958) ("Generally, judicial relief is available to one who has been injured by an act of a government official which is in excess of his

express or implied powers."). From the earliest days of the American Republic, courts have reviewed claims that officials exceeded their statutory power or violated the Constitution without requiring a statutory cause of action. This case is no different. While courts may not "create remedies previously unknown to equity jurisprudence," *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 332 (1999), there is nothing novel about the remedy sought here—an injunction "to prevent an injurious act by a public officer" taken without legal authority, *Carroll v. Safford*, 44 U.S. 441, 463 (1845).

Second, no zone-of-interests test limits the ability of injured plaintiffs to pursue equitable remedies for conduct that exceeds lawful authority. Petitioners' contrary argument confuses two types of claims: (1) suits brought under a statutory cause of action to enforce a statutorily created right or duty, and (2) suits brought to halt injury from *ultra vires* or unconstitutional conduct. The zone-of-interests test applies to the former, not the latter. Where plaintiffs rely on a statutory cause of action, the zone-of-interests test is a "tool for determining who may invoke the cause of action" and is thus "a straightforward question of statutory interpretation." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129-30 (2014). But where plaintiffs instead invoke a court's equitable power to prevent injury by enjoining illegal conduct, the question is simply "whether the relief [the plaintiffs] requested . . . was traditionally accorded by courts of equity." *Grupo Mexicano*, 527 U.S. at 319. In this case, it plainly was. "Prevention of impending injury by unlawful action is a well-recognized function of courts of equity." *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 536 (1925).

ARGUMENT

I. Equitable Relief Is Traditionally Available to Prevent Injuries from Unauthorized Executive Conduct.

A. As this Court has explained, "the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act." *Grupo Mexicano*, 527 U.S. at 318 (quotation marks omitted). The use of this equitable jurisdiction to review injurious official conduct "reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong*, 575 U.S. at 327.

Indeed, the antecedents of modern equitable review stretch back to the medieval period. Traditionally, English common law courts issued a "variety of standardized writs," each of which encompassed a "complete set of substantive, procedural, and evidentiary law, determining who ha[d] to do what to obtain the unique remedy the writ specifie[d] for particular circumstances." John F. Preis, *In Defense of Implied Injunctive Relief in Constitutional Cases*, 22 Wm. & Mary Bill of Rts. J. 1, 9 (2013) (quotation marks omitted). But as these writs ossified over time, failing to provide recourse in many situations, the Court of Chancery began ordering "new and distinct remedies for the violation of preexisting legal rights," in effect "creat[ing] a cause of action where none had existed before." *Id.* at 12, 20; *see* Thomas O. Main, *Traditional Equity and Contemporary Procedure*, 78 Wash. L. Rev. 429, 437-45 (2003).

Courts of equity regularly granted injunctive relief to prevent injury caused by public officials who acted "beyond the line of their authority." *Frewin v. Lewis*,

4 Mylne & Craig 249, 254-55 (Ch. 1838); *see, e.g.*, *Hughes v. Trs. of Morden College*, 1 Vesey 188 (Ch. 1748) (enjoining commissioners who injured plaintiff "without authority" because they "act[ed] contrary" to the statute that ostensibly authorized them).

From an early date, equitable relief was available against the Crown and its officers. This began with the development of the "petition of right," which "sought royal consent to the litigation of legal claims in the courts of justice" in cases where a "remedy against the Crown" was necessary. James E. Pfander, *Sovereign Immunity and the Right to Petition: Toward a First Amendment Right to Pursue Judicial Claims Against the Government*, 91 Nw. U. L. Rev. 899, 909 & n.36 (1997). Royal consent, when given, "authorized the court to hear the case, to decide it on legal principles, and to render a judgment against the Crown." *Id.*; *see* Louis L. Jaffe, *Suits Against Governments and Officers: Sovereign Immunity*, 77 Harv. L. Rev. 1, 5-6 (1963). This device soon expanded "into other, more routinely available remedies" with no "requirement that the subject first obtain leave from the King." Pfander, *supra*, at 912-13. By the seventeenth century, English courts had come to grant injunctive relief "against the King on general equitable principles without insisting on the King's prior consent." *Id.* at 914.

The courts of law and equity also developed various "prerogative writs," such as the writ of mandamus, that could be used to obtain relief against government officers "before the damage was done." Jaffe, *supra*, at 16-17; *see Rex v. Barker*, 3 Burr. 1265, 1267, 97 Eng. Rep. 823, 824-25 (K.B. 1762) (mandamus "ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one"). These prerogative writs were used, among other things, to rein in

"[o]fficials who acted in excess of jurisdiction." Jaffe, *supra*, at 19.

B. Against this backdrop, the Framers of the Constitution conferred on the federal courts the "judicial Power" to decide "all Cases, in Law and Equity," U.S. Const. art. III, § 2, cl. 1, and the First Congress gave those courts diversity jurisdiction over suits "in equity," *see* Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 73, 78. In doing so, the Framers and the First Congress incorporated the established understanding that equitable courts had the power to order prospective relief from unlawful action by government officers. *See* Act of May 8, 1792, ch. 36, § 2, 1 Stat. 275, 276 (directing that "the forms and modes" of equitable proceedings in federal court were to follow "the principles, rules and usages which belong to courts of equity"); *Case of Hayburn*, 2 U.S. 408, 410 (1792) (adopting "the practice of the courts of King's Bench and Chancery in England, as affording outlines for the practice of this court"); *Boyle v. Zacharie*, 31 U.S. 648, 658 (1832) ("remedies in equity are to be administered . . . according to the practice of courts of equity in the parent country"). As Joseph Story explained, "in the Courts of the United States, Equity Jurisprudence embraces the same matters of jurisdiction and modes of remedy, as exist in England." 1 Joseph Story, *Commentaries on Equity Jurisprudence: As Administered in England and America* 64-65 (1836).

Under the equitable principles administered by American courts, injunctive relief was available where "a wrong is done, for which there is no plain, adequate, and complete remedy in the Courts of Common Law." *Id*. at 53; *see Payne v. Hook*, 74 U.S. 425, 430 (1868) (where a court "ha[s] jurisdiction to hear and determine th[e] controversy, ... [t]he absence of a complete and adequate remedy at law, is the only test of

equity jurisdiction"). Among the situations in which equitable review was available were cases involving "continuing injuries" and those brought to "prevent a permanent injury from being done" which "cannot be estimated in damages." *Osborn v. Bank of U.S.*, 22 U.S. 738, 841-42 (1824).

Although equity was often employed "to provide remedies for the violation of rights . . . recognized in courts of law" that "could not be adequately remedied in those courts," its role was broader: on many subjects, the rules of equity defined "the primary rights and liabilities of litigants." Kristin A. Collins, *"A Considerable Surgical Operation": Article III, Equity, and Judge-Made Law in the Federal Courts*, 60 Duke L.J. 249, 280, 254 (2010). As Story explained, "equitable rights and equitable injuries" were distinct from "legal rights and legal injuries," and the courts of equity could "administer remedies for rights, which [the] Courts of Common Law do not recognize at all." 1 Story, *supra*, at 25-26, 28. For instance, there were "many cases of impending irreparable injuries" over which "Courts of Equity will interfere and grant redress; but which the Common Law takes no notice of." *Id.* at 29; *see Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 447 (1830) (contrasting "suits in which *legal* rights were to be ascertained and determined" with "those where equitable rights alone were recognized, and equitable remedies were administered").

Thus, contrary to Petitioners' assertion, a plaintiff seeking equitable relief did not have to show that a statute "conferred some particular 'privilege' on the plaintiff, or [that] the violation otherwise invaded a 'legal right.'" Pet. Br. 37 (quoting *Tenn. Elec. Power Co. v. Tenn. Valley Auth.*, 306 U.S. 118, 137-38 (1939)). Instead, equity jurisdiction also embraced situations "where the principles of law by which the ordinary

courts are guided *give no right*," but "the interference of the judicial power is necessary to *prevent a wrong*." John Mitford, *A Treatise on the Pleadings in Suits in the Court of Chancery* 103 (2d ed. 1787) (emphasis added). As one Chancellor explained in 1491—specifically rejecting an argument that he lacked jurisdiction because no common law right was violated—in many situations "there is no remedy at the common law and no right, and yet a good remedy in equity." 1 John Norton Pomeroy, *A Treatise on Equity Jurisprudence as Administered in the United States of America* § 50 n.1 (1881) (quoting Year Book of Henry VII, folio 12).

Rather than show the invasion of a "legal right," Pet. Br. 37, plaintiffs needed to show their entitlement to equitable relief from their injury. *See* Mitford, *supra*, at 121, 46 (if "the subject of the suit is such upon which a court of equity will assume jurisdiction," the court may "restrain the defendant from . . . doing any injurious act"). Meeting that standard did not require that prior cases had addressed exactly the same type of injury: "although the precise case may never have occurred, if the same principle applies, the same remedy ought to be afforded." *Osborn*, 22 U.S. at 841.

Emblematic of these rules was the prominent case *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518 (1851), where a state alleged injury to its private financial interests due to an illegally built bridge that obstructed commercial navigation, *id.* at 557, 559-60. Granting injunctive relief, this Court explained that "where a special and an irremediable mischief is done to an individual" through unlawful conduct, "there is no other limitation to the exercise of a chancery jurisdiction . . . except the value of the matter in controversy, the residence or character of the parties, or a claim which arises under a law of the United States." *Id.* at 566, 563. Equitable relief was therefore

available, without specific statutory authorization, "on the ground of a private and an irreparable injury." *Id.* at 564. Notably, this Court granted that relief even though no federal or state law "provided an analogous right or liability." Collins, *supra*, at 286; *see id.* (citing "the absence of a statutory or common law basis for [the] assertion that the bridge constituted a nuisance warranting an injunction"). As with many equity cases brought in the lower courts, this Court "was not simply determining whether the infringement of a right could be remedied, but also was ascertaining the rights of [the plaintiff] to be free of the alleged nuisance that would be caused by the bridge." *Id.* at 287 n.170.

From the early days of the Republic, the judiciary used its equitable powers to review the lawfulness of injurious conduct by government officials, without requiring a statutory cause of action. In *Osborn v. Bank of the United States*, this Court held that state officials were properly enjoined from seizing the plaintiffs' funds "without authority." 22 U.S. at 845; *see id.* ("it is the province of a Court of equity, in such cases, to arrest the injury, and prevent the wrong"). In *Carroll v. Safford*, this Court expressed "no doubt" that "relief may be given in a court of equity . . . to prevent an injurious act by a public officer, for which the law might give no adequate redress," if that officer exceeded his statutory authority. 44 U.S. at 463. Decisions by state and lower federal courts were in accord. *See, e.g.*, *Belknap v. Belknap*, 2 Johns. Ch. 463, 473 (N.Y. Ch. 1817) ("the jurisdiction of chancery on this subject is well settled," and where "persons acting under a statute" have "exceeded their powers, . . . chancery would restrain them by injunction, and keep them strictly within the limits of their power"); *id.* at 474 (granting injunction against public officers based

"upon the construction of the act" in question); *Baring v. Erdman*, 2 F. Cas. 784, 786 (C.C.E.D. Pa. 1834) (where acts of public officials "transcend the authority conferred on them by law," they are subject to control by injunction to prevent "irreparable injury").

Similarly, this Court held from an early date that executive officials who violated federal statutes to the injury of a plaintiff were subject to remedial correction through writs of mandamus. *See, e.g.*, *Kendall v. United States ex rel. Stokes*, 37 U.S. 524, 608-09 (1838) (ordering the Postmaster General to comply with a federal statute by disbursing funds to the plaintiffs as required by that law); *Marbury v. Madison*, 5 U.S. 137, 163-71 (1803) (concluding that because William Marbury was entitled by law to his commission, he was also entitled to a mandamus remedy).

C. As federal power and the jurisdiction of the lower federal courts expanded, later decisions entrenched "the availability of equitable relief against unlawful government action." James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of* Ex Parte Young, 72 Stan. L. Rev. 1269, 1330 (2020); *see, e.g.*, *Davis v. Gray*, 83 U.S. 203, 219-20 (1872) (upholding injunction against state officials, finding "no reason why a court of equity" could not restrain them "from doing illegal acts"); *Crampton v. Zabriskie*, 101 U.S. 601, 609 (1879) (upholding injunction because it was "eminently proper for courts of equity to interfere . . . to prevent the consummation of a wrong" when local officials act "in excess of their powers"); *Bd. of Liquidation v. McComb*, 92 U.S. 531, 536 (1875) (upholding injunction against state agency acting beyond its legal authority, based on courts' authority "to interpose by injunction or *mandamus*"); *id.* at 541 ("In such cases, the writs of *mandamus* and injunction are somewhat correlative to each other.").

As before, an officer's mistaken assertion that a statute authorized his conduct did not make equitable review unavailable, nor did it require an injured plaintiff to identify a statutory cause of action. In *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94 (1902), this Court enjoined federal officials from confiscating the plaintiffs' mail based on a mistaken interpretation of the fraud statutes. "The acts of all [federal] officers must be justified by some law," this Court explained, "and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief." *Id.* at 108; *see also, e.g.*, *Santa Fé Pac. R.R. Co. v. Payne*, 259 U.S. 197, 198-99 (1922) ("the position of the Railroad Company is that the Secretary [of the Interior] went beyond the powers conferred upon him by the statute," and "the Company is entitled to bring that question into court").

The merger of law and equity did not alter the availability of equitable review. *See* Main, *supra*, at 474. Indeed, the statute authorizing that merger prohibited new rules that would "abridge, enlarge, [or] modify the substantive rights of any litigant." Rules Enabling Act, Pub. L. No. 73-415, 48 Stat. 1064, 1064 (1934). And this Court continued to affirm that "judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers." *Harmon*, 355 U.S. at 581-82. That remained true when officials claimed statutory authority for their actions—requiring the courts to construe those statutes and, if necessary, enforce their limits.

In *Harmon*, for instance, this Court held that an Army Secretary's mode of discharging two servicemembers was "in excess of powers granted him by Congress." *Id.* at 581. As here, the Secretary claimed his actions were authorized by statute, *id.* at 580, and his

assertion required the judiciary "to construe the statutes involved to determine whether [he] did exceed his powers," *id.* at 582. But this Court did not even suggest that the servicemembers could proceed only if the statutes cited by the Secretary gave them a private right of action. Instead, this Court made clear that if the plaintiffs "alleged judicially cognizable injuries," then "judicial relief from this illegality would be available." *Id.*

Most famously, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), this Court blocked the implementation of the President's executive order to seize certain steel mills because his order "was not authorized by an act of Congress or by any constitutional provisions." *Id.* at 583. Nowhere in the Court's opinion, or in any concurring or dissenting opinion, is there any hint that the suit was defective because the steel mill owners lacked a statutory cause of action. And that is not because the owners' right to judicial review was conceded. On the contrary, the government argued without success that the standards described above for "equity's extraordinary injunctive relief" were not met. *Id.* at 584.

Similarly, in *Dames & Moore v. Regan*, 453 U.S. 654 (1981), this Court resolved the merits of an action seeking an injunction based on a claim that the President and the Treasury Secretary went "beyond their statutory and constitutional powers." *Id.* at 667. Unlike in *Youngstown*, in *Dames & Moore* the President "purported to act under authority of" two federal statutes, *id.* at 675, which this Court had to interpret to resolve the case, *see id.* at 675-88. But the Court never suggested that the plaintiffs needed to identify a cause of action in those statutes to obtain equitable relief. By resolving the case on the merits, this Court implicitly rejected that notion.

This Court did the same in *Dalton v. Specter*, 511 U.S. 462 (1994), where plaintiffs alleged violations of a law governing military base closures. *Id.* at 466. Although the Court emphasized that this was a "claim alleging that the President exceeded his statutory authority," *id.* at 474, it did not hold that the plaintiffs could sue only if the base-closure statute provided them with a cause of action. Rather, citing *Dames & Moore*, the Court interpreted the statute and held that review was not available because the particular statute at issue committed the decision "to the discretion of the President." *Id.* at 474-76; *see id.* at 477 ("our conclusion . . . follows from our interpretation of an Act of Congress"). In doing so, this Court again demonstrated that equitable review does not become unavailable simply because a case hinges on statutory limits.

This Court did so again in *Armstrong v. Exceptional Child Center*. There too, the plaintiffs sought an injunction based on a claim that officials injured them by violating the terms of a federal statute. 575 U.S. at 323-24. Although that statute provided no cause of action, *id.* at 331, this Court confirmed that "equitable relief . . . is traditionally available to enforce federal law," *id.* at 329. In some circumstances, Congress may "displace" the equitable review that is presumptively available, *id.*, because "[t]he power of federal courts of equity to enjoin unlawful executive action is subject to express and implied statutory limitations," *id.* at 327; *e.g.*, *id.* at 328 (concluding based on statutory interpretation that "the Medicaid Act implicitly precludes private enforcement" of the relevant provision). But where Congress has not foreclosed review, then "relief may be given in a court of equity . . . to prevent an injurious act by a public officer." *Id.* at 327 (quoting *Carroll*, 44 U.S. at 463).

These are only a few of the many cases in which

this Court has permitted equitable review of *ultra vires* executive conduct without any statutory cause of action. *See, e.g.*, *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 165, 170 (1993); *Oestereich v. Selective Serv. Sys. Local Bd. No. 11*, 393 U.S. 233, 235, 238-39 (1968); *Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959); *Land v. Dollar*, 330 U.S. 731, 734, 736-37 (1947); *Stark v. Wickard*, 321 U.S. 288, 310 (1944).

Likewise, this Court has recognized that equitable review is traditionally available, without a statutory cause of action, to prevent injuries by officials whose actions violate the Constitution. *See, e.g.*, *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010); *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Ex parte Young*, 209 U.S. 123 (1908). As this Court has noted, "injunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally." *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001). If a party seeks prospective relief from an injury caused by a constitutional violation, a "private right of action directly under the Constitution" exists "as a general matter, without regard to the particular constitutional provisions at issue." *Free Enter. Fund*, 561 U.S. at 491 n.2. A statutory cause of action has never been required.

D. Petitioners also argue that the cause of action for unlawful agency actions now provided by the Administrative Procedure Act (APA) somehow limits the scope of traditional equitable review, making that review available only where the APA's requirements, including its "zone-of-interests" test, are satisfied. Pet. Br. 31. Apart from mischaracterizing equitable review as a type of "implied" cause of action, *see infra*, Petitioners offer no rationale for that argument, and there is none.

The APA does not limit the scope or availability of

traditional equitable relief. While equitable review is subject to "express and implied statutory limitations," *Armstrong*, 575 U.S. at 327, Congress's intent to foreclose such review "must be clear," *Webster v. Doe*, 486 U.S. 592, 603 (1988). "Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946); *see SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018) (reaffirming "the strong presumption in favor of judicial review" of agency action, which "require[s] clear and convincing indications that Congress meant to foreclose review" (quotation marks omitted)).

The APA contains no indication, much less a clear one, that Congress sought to foreclose traditional equitable review or confine it to situations in which the APA itself makes review available. "Nothing in the APA purports to be exclusive or suggests that the creation of APA review was intended to preclude any other applicable form of review." Jonathan R. Siegel, *Suing the President: Nonstatutory Review Revisited*, 97 Colum. L. Rev. 1612, 1666 (1997). To the contrary, the APA expressly states that it "do[es] not limit or repeal additional requirements imposed by statute or otherwise recognized by law." 5 U.S.C. § 559; *see* U.S. Dep't of Justice, *Attorney General's Manual on the Administrative Procedure Act* 139 (1947) (explaining that this language was meant "to indicate that the act will be interpreted as supplementing constitutional and legal requirements imposed by existing law"). Consistent with the statutory text, no intent to limit traditional equitable review is evident in the legislative history of the APA or its 1976 amendments. *See* Siegel, *supra*, at 1665-69.

Thus, the APA did "not repeal the review of *ultra*

vires actions that was recognized long before." *Dart v. United States*, 848 F.2d 217, 224 (D.C. Cir. 1988); *see Dames & Moore*, 453 U.S. at 675-88 (resolving claim for injunctive relief from *ultra vires* action without reference to the availability of APA review); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1326-27 (D.C. Cir. 1996) (conducting *ultra vires* review where an APA cause of action was not pled); *Aid Ass'n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 1166, 1168, 1173 (D.C. Cir. 2003) (explaining that regardless of whether APA review is available, claims that an agency "exceeded its statutory authority in purporting to apply [a] statute" are "clearly" reviewable (quotation marks omitted)). Nor does the APA preclude equitable relief from constitutional violations outside of the Act's framework of review. *See Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992) (although the President's actions are not reviewable under the APA, they "may still be reviewed for constitutionality"); *id.* at 803-06 (conducting such review).

Finally, Petitioners offer no basis for narrowing the scope of traditional equitable review by imposing "the same zone-of-interests requirement as an APA claim." Pet. Br. 33. As the next section explains, that requirement governs claims brought under a statutory cause of action to preserve statutorily created rights. It has no bearing on nonstatutory claims for equitable relief to prevent injuries caused by government officers who act outside of their lawful authority.

II. When Plaintiffs Seek Equitable Relief from *Ultra Vires* or Unconstitutional Conduct, No Zone-of-Interests Test Applies.

Although judicial review of *ultra vires* and unconstitutional actions has long been available in equity, Petitioners maintain that Respondents cannot bring this suit because their injuries supposedly are not

"related to the interests protected by Section 8005's limitations." Pet. Br. 18. This argument confuses two distinct types of claims: (1) suits brought under a statutory cause of action to enforce a statutorily created right, and (2) suits brought to enjoin *ultra vires* or unconstitutional conduct. The zone-of-interests test applies to the former, not the latter. No such test limits review here.

A. The zone-of-interests test governs "statutorily created causes of action," *Lexmark*, 572 U.S. at 129, because its function is to help construe the breadth of statutes that confer a right to sue. When plaintiffs rely on a statutory cause of action, the test serves as a "tool for determining who may invoke the cause of action." *Id.* at 130; *see id.* at 129 ("*a statutory cause of action* extends only to plaintiffs whose interests fall within the zone of interests protected *by the law invoked*" (emphasis added) (quotation marks omitted)). The zone-of-interests test therefore has no place in a case like this one—where Respondents' claims are not premised on the deprivation of a statutorily created right, but rather on an injury caused by government officials who exceeded their authority.

In establishing new legal duties or prohibitions, statutes often create new legal rights corresponding to those duties or prohibitions. *See, e.g.*, *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 174 (2011) (statute protecting employees from retaliation by employers); *Lexmark*, 572 U.S. at 132 (statute protecting businesses from false advertising by competitors). Many such statutes authorize particular classes of persons to sue to enforce the statute's duties or prohibitions and thereby vindicate those newly established rights. *See, e.g.*, *Thompson*, 562 U.S. at 175 (discussing 42 U.S.C. § 2000e-5(f)(1)); *Lexmark*, 572 U.S. at 122 (discussing 15 U.S.C. § 1125(a)).

"Statutory rights and obligations are established by Congress, and it is entirely appropriate for Congress, in creating these rights and obligations, to determine in addition, who may enforce them and in what manner." *Davis v. Passman*, 442 U.S. 228, 241 (1979). A cause of action may be "implicit in a statute not expressly providing one," *Cort v. Ash*, 422 U.S. 66, 78 (1975), but regardless of whether a putative cause of action is claimed to be express or implied, the question remains a matter of statutory interpretation: "The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001).

When a statute provides a cause of action to enforce a statutorily created right, plaintiffs are entitled to invoke this cause of action only if the interests they seek to vindicate are the type of interests that Congress meant to protect. *See, e.g.*, *Lexmark*, 572 U.S. at 128 ("[T]he question this case presents is whether Static Control falls within the class of plaintiffs whom Congress has authorized to sue under § 1125(a). In other words, we ask whether Static Control has a cause of action under the statute.").

This limitation, known as the zone-of-interests test, recognizes that when Congress creates a statutory cause of action, Congress does not necessarily intend it to extend to persons "whose interests are unrelated to the statutory prohibitions." *Thompson*, 562 U.S. at 178. "Whether a plaintiff comes within the zone of interests," therefore, "is an issue that requires [courts] to determine, using traditional tools of statutory interpretation, whether *a legislatively conferred cause of action* encompasses a particular plaintiff's claim." *Lexmark*, 572 U.S. at 127 (emphasis added) (quotation marks omitted). Thus, whether "Congress

intended to make a remedy available to a special class of litigants" is a "question of statutory construction." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 688 (1979) (citing *Cort*, 422 U.S. 66).

Therefore, the zone-of-interests test, like the broader analysis of whether a statutory cause of action exists, is simply "a straightforward question of statutory interpretation." *Lexmark*, 572 U.S. at 129. "In cases such as these, the question is which class of litigants may enforce in court *legislatively created rights or obligations*." *Davis*, 442 U.S. at 239 (emphasis added); *see Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1302-03 (2017) ("The question is whether the statute grants the plaintiff the cause of action that he asserts. . . . an issue that requires us to determine . . . whether *a legislatively conferred cause of action* encompasses a particular plaintiff's claim." (emphasis added) (quotation marks omitted)).

B. Equitable actions seeking to enjoin *ultra vires* or unconstitutional conduct are entirely different. They are not premised on the deprivation of a statutory right, and they do not depend on the existence of a statutory cause of action. Instead, they seek a traditionally available remedy for injuries that stem from unauthorized official conduct. *Armstrong*, 575 U.S. at 326-27. Rather than vindicate a legislatively created right by invoking a legislatively conferred cause of action, such actions rest on the historic availability of equitable review to obtain prospective injunctive relief from harm caused by "unconstitutional" or "ultra vires conduct." *Dalton*, 511 U.S. at 472.

"The substantive prerequisites for obtaining an equitable remedy . . . depend on traditional principles of equity jurisdiction." *Grupo Mexicano*, 527 U.S. at 318-19 (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure* § 2941, at 31 (2d ed.

1995)). That is because the equitable power conferred by the Judiciary Act of 1789 "is an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." *Id.* at 318 (quoting *Atlas Life Ins. Co. v. W.I. Southern, Inc.*, 306 U.S. 563, 568 (1939)). In the absence of statutory limitations, this equitable "body of doctrine" is what determines whether injunctive relief is available. *Atlas Life*, 306 U.S. at 568; *cf. Grupo Mexicano*, 527 U.S. at 329 (distinguishing cases "based on statutory authority" from those based "on inherent equitable power").

As explained, that body of doctrine has long authorized prospective relief from *ultra vires* and unconstitutional conduct without a statutory cause of action. And it is impossible to consider the zone of interests that a statutory cause of action was meant to cover when a suit is not based on a statutory cause of action.

This Court reaffirmed these distinctions most recently in *Armstrong*. There, this Court recognized that whether a statute provides a cause of action to enforce its terms is a different question than whether an equitable challenge may be brought to stop injurious conduct that violates the statute. Accordingly, this Court separately analyzed, as distinct inquiries, two different questions: (1) whether the Medicaid Act provided a statutory cause of action, and (2) whether the Act foreclosed the equitable relief that would otherwise be available to enforce federal law. *Compare Armstrong*, 575 U.S. at 327 ("We turn next to respondents' contention that . . . this suit can proceed against [the defendant] in equity."), *with id.* at 331 ("The last possible source of a cause of action for respondents is the Medicaid Act itself.").

Undaunted, Petitioners creatively suggest that the

zone-of-interests test applies to suits for equitable relief "because the equitable powers of federal district courts are themselves conferred by statute." Pet. Br. 35 (citing *Grupo Mexicano*, 527 U.S. at 318). As the court of appeals generously put it, this argument is "a stretch." Pet. App. 262a n.25. The statutory foundation of equitable review hardly implies that every cause of action recognized in the exercise of that jurisdiction is "therefore *created by statute*." *Id.*; *see Grupo Mexicano*, 527 U.S. at 326 (distinguishing "the Court's general equitable powers under the Judiciary Act of 1789" from its "powers under [a] statute").

In equitable cases like this one, therefore, the question is simply "whether the relief [Respondents] requested . . . was traditionally accorded by courts of equity." *Id.* at 319. And as discussed above, "equitable relief . . . is traditionally available to enforce federal law," *Armstrong*, 575 U.S. at 329, where jurisdictional requirements are met, a plaintiff is being injured, and a damages remedy would not ameliorate that injury. Such relief, moreover, has long been available to enjoin actions by officials that exceed statutory limits. *See supra* at 9-14 (citing cases). And when officials violate the Constitution, equitable review is likewise available "as a general matter." *Free Enter. Fund*, 561 U.S. at 491 n.2; *see supra* at 14.

In short, when plaintiffs invoke a statutorily created cause of action to enforce a statutorily created right, the zone-of-interests test helps maintain fidelity to congressional intent about the scope of that cause of action. But when plaintiffs are injured by *ultra vires* or unconstitutional conduct and file suit to enjoin that conduct, there is no congressional intent to discern and no zone-of-interests test to apply.

C. Petitioners nevertheless insist that plaintiffs who sue in equity to enjoin *ultra vires* conduct must

show that they fall within the zone of interests protected by whatever statute the executive cites as authority for its conduct—here the funds-transfer statute. Pet. Br. 31.

That argument makes little sense: a "litigant's interest normally will not fall within the zone of interests of the very statutory or constitutional provision that he claims does not authorize action concerning that interest." *Haitian Refugee Ctr. v. Gracey*, 809 F.2d 794, 811 n.14 (D.C. Cir. 1987). For that reason, plaintiffs challenging executive conduct as *ultra vires* "need not . . . show that their interests fall within the zones of interests of the constitutional and statutory powers invoked by the President." *Id.*

Unsurprisingly, therefore, this Court has never applied a zone-of-interests test (or any analog to that test) in any case alleging *ultra vires* executive action—much less dismissed a case on that basis. In *Youngstown*, for instance, "the steel mill owners [were] not . . . required to show that their interests fell within the zone of interests of the President's war powers in order to establish their standing to challenge the seizure of their mills as beyond the scope of those powers." *Id.*

Likewise, in *Dames & Moore*, where the plaintiff "alleged that the actions of the President and the Secretary of the Treasury . . . were beyond their statutory and constitutional powers," 453 U.S. at 667, this Court resolved the case on the merits. The plaintiff's injury consisted of being unable to recover money owed to it under a contract, but this Court did not ask whether that injury fell within the zone of interests protected by the two statutes that the executive claimed authorized its conduct—both of which focused on foreign policy. *Id.* at 675. Nor did the Court ask whether this injury fell within the zone of interests of a third statute that, according to the plaintiff, divested the executive

of whatever power it once had in this area. *Id.* at 684.

So too in *Dalton*, where the plaintiffs' claim was based on alleged violations of procedural requirements in a law governing military base closures. 511 U.S. at 466. With no statutory cause of action available, either in that law or in the APA, *see id.* at 469-70, this Court regarded the plaintiffs' claim as one alleging "ultra vires conduct," specifically, that "the President exceeded his statutory authority" by "violat[ing] a statutory mandate," *id.* at 472, 474. Yet this Court did not ask whether any plaintiffs fell within the zone of interests of the base-closure statute. As in *Dames & Moore*, the Court proceeded to address the substance of their claims. *See Dalton*, 511 U.S. at 474-76 (finding the President's actions unreviewable because the statute "commits the decision to the discretion of the President").

D. Petitioners also contend that "the zone-of-interests requirement applies to equitable actions seeking to enjoin constitutional violations." Pet. Br. 35. That too is wrong. This Court has never dismissed a constitutional claim under the zone-of-interests test, and *Lexmark* makes clear why: constitutional claims do not involve probing congressional intent regarding the scope of a remedy that Congress has created.

None of the cases on which Petitioners rely, all of which predate *Lexmark*, suggest otherwise. While a footnote in *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318 (1977), applied a zone-of-interests analysis to a dormant Commerce Clause claim, *id.* at 320 n.3, this Court explained that it was evaluating whether the plaintiffs "ha[d] standing" under "the two-part test of *Data Processing Service v. Camp*, 397 U.S. 150 (1970)," *id.* As indicated by that quote, the *Data Processing* test treated the zone-of-interests inquiry as part of prudential "standing." *See Data Processing*,

397 U.S. at 153 ("The question of standing . . . concerns . . . whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.").

This Court explicitly repudiated that framework in *Lexmark*, explaining that "'prudential standing' is a misnomer as applied to the zone-of-interests analysis, which asks whether this particular class of persons ha[s] a right to sue under this substantive statute." 572 U.S. at 127 (quotation marks omitted); *see Collins v. Mnuchin*, 938 F.3d 553, 574 (5th Cir. 2019) (en banc) ("The Supreme Court once considered the zone of interests a matter of 'prudential standing,' but now calls it one of statutory interpretation."); *Ray Charles Found. v. Robinson*, 795 F.3d 1109, 1120-21 (9th Cir. 2015) (*Lexmark* "recast the zone-of-interests inquiry as one of statutory interpretation.").

Petitioners also cite *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982), but that opinion simply repeated the same quote from *Data Processing* in the course of summarizing the "prudential principles that bear on the question of standing." *Valley Forge*, 454 U.S. at 474. Thus, the opinion's passing reference to "constitutional" guarantees in that lone quote has been superseded by *Lexmark*.

Even before *Lexmark* clarified these matters, this Court routinely entertained equitable claims to enjoin unconstitutional actions without applying a zone-of-interests test. *E.g.*, *Free Enter. Fund*, 561 U.S. at 492 (holding that removal protections for agency heads violated the separation of powers); *Franklin*, 505 U.S. at 806 (concluding "on the merits" that executive action did not violate the Enumeration Clause).

E. Although equitable review has never required that plaintiffs satisfy a zone-of-interests test or anything like it, Petitioners urge this Court to impose such a requirement for the first time here—by shoehorning equitable review into the concept of an "implied cause of action." Pet. Br. 18. Indeed, Petitioners' brief is replete with references to what they call "implied equitable cause[s] of action." *See id.* at 21, 22, 31, 33, 35, 37, 38.

There is a reason, however, that this Court has never used that formulation to describe traditional equitable review. Applying "traditional principles of equity jurisdiction," *Grupo Mexicano*, 527 U.S. at 318-19, has nothing to do with "finding an implied private right of action," *Sandoval*, 532 U.S. at 291, in the text of a statute or the Constitution. This Court should reject Petitioners' invitation to reconceptualize the fundamental nature of equitable review and the judicial role in checking unauthorized government conduct.

Granting injunctive relief under traditional equitable principles—what Petitioners call "implying" a cause of action in equity—is entirely different from concluding, as a matter of statutory interpretation, that a right of action is "implied" in a statute based on the perceived need "to provide such remedies as are necessary to make effective a statute's purpose." *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1015 (2020) (quotation marks omitted); *see Cort*, 422 U.S. at 78 ("In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,'—that is, does the statute create a federal right in favor of the plaintiff?" (quoting *Tex. & Pac. Ry. Co. v. Rigsby*, 241 U.S. 33, 39 (1916))).

Equitable review is likewise unrelated to

"recognizing implied causes of action" in the Constitution under the *Bivens* doctrine. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1855 (2017); *see id*. at 1856 ("When determining whether traditional equitable powers suffice to give necessary constitutional protection—or whether, in addition, a damages remedy is necessary—there are a number of economic and governmental concerns to consider."). Unlike a judicially inferred damages remedy, "redress designed to halt or prevent [a] constitutional violation" is a "traditional form[] of relief" that "d[oes] *not* ask the Court to imply a new kind of cause of action." *United States v. Stanley*, 483 U.S. 669, 683 (1987) (emphasis added and quotation marks omitted); *see Malesko*, 534 U.S. at 74 (contrasting injunctive relief with "the *Bivens* remedy, which we have never considered a proper vehicle for altering an entity's policy"). Quite the opposite: "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong*, 575 U.S. at 327.

* * *

In sum, when a plaintiff seeks to enjoin injuries from unconstitutional or *ultra vires* conduct, no zone-of-interests test applies—regardless of whether the executive argues that a statute authorizes its conduct. If, for instance, the executive branch had claimed in *Youngstown* that its seizure of the steel mills was authorized by a wartime emergency statute, the steel-mill owners would not then have had to demonstrate that the financial interests they sought to vindicate fell within the zone of interests protected by such a statute. This case is no different.

CONCLUSION

For the foregoing reasons, the decisions below should be affirmed.

Respectfully submitted,

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