No. 20-1026

In the Supreme Court of the United States

EAGLE TRUST FUND, ET AL., PETITIONERS

v.

UNITED STATES POSTAL SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that petitioners lack a cause of action to pursue their claims for judicial review of the U.S. Postal Service's decision to grant a change-of-address request.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is not published in the Federal Reporter but is reprinted at 811 Fed. Appx. 669. The opinion of the district court (Pet. App. 7a-34a) is reported at 365 F. Supp. 3d 57. The order of the district court denying reconsideration (Pet. App. 35a-37a) is not published in the Federal Supplement. The initial decision of the administrative judge (Pet. App. 40a-47a) is available at 2017 WL 5516586. The final decision of the Judicial Officer (Pet. App. 49a-54a) is available at 2017 WL 5516585.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 2020. A petition for rehearing was denied on August 28, 2020 (Pet. App. 38a). The petition for a writ of certiorari was filed on January 25, 2021. On March 19, 2020, the Court extended the time within which to

file any petition for a writ of certiorari due on or after that date to 150 days from the date of the lower-court judgment, order denying discretionary review, or order denying a timely petition for rehearing. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Over several decades, Phyllis Schlafly created a series of educational, advocacy, and policy organizations with "Eagle"-themed names. Pet. App. 7a. All of those organizations originally received their mail through a central post-office box in Alton, Illinois, and much of that mail was simply addressed to "Phyllis Schlafly, Eagle Forum," rather than being directed to a particular Eagle entity. *Ibid.* (citation omitted). Then, in 2016, the entity formally titled "Eagle Forum" broke from the rest of the Eagle entities and filed a change-of-address request asking the United States Postal Service to forward mail addressed to "Eagle Forum" to the breakaway entity's new place of business. *Id.* at 9a. Petitioner John Schlafly—the son of Phyllis Schlafly and one of the leaders of the remaining Eagle entities, including petitioners Eagle Trust Fund and Eagle Forum Education and Legal Defense Fund—opposed the change-of-address request. *Id.* at 10a.

In September 2017, the Postal Service issued an initial decision finding that Eagle Forum's change-of-address request should be granted and that the Postmaster accordingly should deliver mail addressed to "Eagle Forum" to that entity's new address. Pet. App. 10a-12a; 40a-47a. The decision explained that in mail disputes "the sender's intent" is generally paramount, but here "the sender's intent for items addressed to Eagle Forum is difficult, if not impossible, to determine" because historically senders addressed all Eagle entity

mail to "Eagle Forum." *Id.* at 44a-45a. The Postal Service therefore looked to the *Mailing Standards of the United States Postal Service* (*Domestic Mail Manual*),[1] which provides that the "addressee" controls the delivery of its mail. *Id.* at 45a-46a (citing *Domestic Mail Manual* § 508.1.1.1). Applying that guidance, the Postal Service determined that "Eagle Forum—and not Eagle Trust or Eagle Forum Education and Legal Defense Fund—should control delivery of mail addressed to Eagle Forum." *Id.* at 46a.

Petitioner Schlafly filed an administrative appeal, arguing that the initial decision ran contrary to Section 507.2.1.5 of the *Domestic Mail Manual*, which states that a change-of-address request cannot be filed for "[a]n addressee (e.g., an individual or a business entity or other organization) * * * for mail originally addressed to the addressee at an organization, business, place of employment, or other affiliation. The organization or business may change the address (but not the addressee's name) on a mailpiece to redirect it to the addressee." See Pet. App. 13a n.4; *id.* at 51a.

The Postal Service denied the appeal. Pet. App. 13a; *id.* at 49a-53a. The decision explained that the cited provision of the *Domestic Mail Manual* governs a situation where "the face of a piece of disputed mail" includes the names of multiple businesses because it is addressed to one entity "at" another company where the entity was formerly conducting business. *Id.* at 51a-52a. In that situation, Section 507.2.1.5 instructs that the company at which the entity was formerly conducting business may redirect the mail. *Ibid.* But in this case, the disputed mail is not being sent to "Eagle Forum *at*

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[1] The *Domestic Mail Manual* is a postal regulation. 39 C.F.R. 211.2(a)(2).

Eagle Trust Fund or another of the many organizations and business entities" in the Eagle sphere. *Id.* at 52a. "[I]f the words on a piece of mail identify only Eagle Forum, Eagle Forum is the addressee which is allowed to control delivery." *Ibid.* Accordingly, the Postal Service granted Eagle Forum's change-of-address request. *Ibid.*

2. Petitioners filed suit against the Postal Service in the District Court for the District of Columbia. Pet. App. 14a. As relevant, petitioners' complaint alleged that the Postal Service failed to use "reasoned decisionmaking" in resolving the change-of-address dispute and that it failed to follow its own regulations. *Id.* at 15a (citation omitted).[2]

a. The district court dismissed petitioners' claims. Pet. App. 7a-34a. The court determined that petitioners had no cause of action for judicial review of the Postal Service's administrative decisions because, while the Administrative Procedure Act (APA) would ordinarily provide a cause of action, "Congress has expressly *exempted* [Postal Service] actions from review under the APA" through 39 U.S.C. 410(a). Pet. App. 21a. Section 410(a) provides that, with certain inapplicable exceptions, "no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5" (which include the judicial review provisions

[2] Petitioners also alleged that the Postal Service violated due process because it failed to provide a means for seeking reconsideration of its administrative decision based on post-decision changes in the law or facts. Pet. App. 15a. The district court found that petitioners had not pleaded sufficient facts to establish that constitutional claim, *id.* at 20a, and petitioners did not renew their contention on appeal or before this Court.

of the APA) "shall apply to the exercise of the powers of the Postal Service." 39 U.S.C. 410(a).

The district court considered the possibility that some form of "non-statutory" judicial review was available despite Section 410(a). Pet. App. 21a (citation omitted). The court recognized that the D.C. Circuit had permitted such "non-statutory" review in certain circumstances, but the court determined that nonstatutory review is limited to cases in which a plaintiff alleges that the agency's actions were ultra vires—that is, that the agency acted "in excess of its delegated powers and contrary to a specific prohibition in" a statute. *Id.* at 24a, 27a (quoting *Leedom* v. *Kyne*, 358 U.S. 184, 188 (1958)). Here, the court found that petitioners were not asserting that the Postal Service lacked any statutory authority to resolve disputes regarding mail delivery or that its decision was contrary to a statutory mandate, but rather that the decisionmaking was unreasoned and contrary to Postal Service regulations. *Id.* at 25a-30a. In a footnote, the court also rejected petitioners' belated attempt to fit their suit into the ultra vires exception by alleging, "[i]n their opposition brief," that the Postal Service's view that its decisions are insulated from judicial review is itself unconstitutional, and therefore ultra vires; the court observed that "[s]uch a confused 'hail Mary' contention" needed no more substantial response. *Id.* at 28a n.6.

b. Petitioners moved to alter the judgment under Federal Rule of Civil Procedure 59(e), contending that 39 U.S.C. 410(a) "is unconstitutional insofar as this Court has interpreted it to bar review of" mail-dispute decisions. Pet. App. 36a. The district court rejected the

motion, observing that petitioners had raised that argument in their prior briefing, and nothing in their motion persuaded the court to revisit it. *Ibid.*

c. The court of appeals affirmed. Pet. App. 1a-6a. In an unpublished, per curiam decision, the court agreed with the district court's determination that petitioners "have no cause of action under which to" seek review of the Postal Service decision. *Id.* at 3a. The court reiterated that APA review "is unavailable" in light of 39 U.S.C. 410(a), and that non-statutory review "is available only to determine whether the agency has acted ultra vires—that is, whether it has exceeded its statutory authority." Pet. App. 3a-4a (citation, emphasis, and internal quotation marks omitted). And the court agreed with the district court's determination that the alleged failure to engage in reasoned decision-making and follow agency regulations does not "amount[] to ultra vires action," describing petitioners' allegations as "a heartland arbitrary-and-capricious challenge under the APA, not a claim that the Service exceeded its statutory authority." *Id.* at 4a.

The court also rejected petitioners' attempt to "recast" their claim that the agency had violated its own regulations as a "violation of due process" and therefore an allegation that the agency acted "ultra vires." Pet. App. 4a. The court observed, but did not decide, that some constitutional claims might "be brought *on their own* where a statute that forecloses APA review does not meet the 'heightened showing' we require of Congress to preclude review of constitutional claims." *Id.* at 5a (quoting *Webster* v. *Doe*, 486 U.S. 592, 603 (1988)). But it noted that its "opinions to that effect do not speak in terms of ultra vires review," and petitioners had not "in fact" brought a constitutional claim regarding the

agency's alleged violation of its regulations because "[t]he relevant portion of the complaint says nothing about due process or the Constitution." *Ibid.*

Finally, the court of appeals rejected the assertion that "constitutional avoidance" should lead it to interpret Section 410(a) to permit review of petitioners' claims. Pet. App. 5a. The court declined to consider the merits of petitioners' assertion that Postal Service decisions must be subject to judicial review to prevent the Service from enjoying Article III powers that are reserved for the judiciary alone. *Ibid.* The court explained that, while "[a] party may bring an actual Article III challenge in the future," plaintiffs had instead relied on the argument that the court should interpret Section 410(a) in a way to avoid the constitutional issue. *Ibid.* The court explained that, "even if [it] thought such an argument had merit," it could not "sidestep" the court of appeals' prior precedent rejecting petitioners' suggested interpretation of Section 410(a). *Ibid.*

ARGUMENT

Petitioners contend that the court of appeals erred in determining that they lack a cause of action to pursue their claims for judicial review of the Postal Service decisions granting Eagle Forum's change-of-address request. The unpublished, per curiam decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Moreover, this case would be an inappropriate vehicle for reviewing the question presented because many of the arguments in the petition for certiorari were not pressed or passed upon below. Further review is unwarranted.

1. The court of appeals correctly held that petitioners lack a cause of action because 39 U.S.C. 410(a) precludes judicial review of petitioners' claims under either the APA or a "non-statutory" alternative to the APA.

a. Congress enacted Section 410(a) as part of the Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 719, a statute designed to confer on the Postal Service the "status of a private commercial enterprise," *Loeffler* v. *Frank*, 486 U.S. 549, 556 (1988) (citation omitted), that would be "run more like a business than had its predecessor." *Franchise Tax Bd.* v. *USPS*, 467 U.S. 512, 519-520 (1984). Section 410(a) advances that goal by mandating that the laws that generally govern the operation of public entities do not apply to the Postal Service; it provides that, with exceptions not relevant here, "no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service." 39 U.S.C. 410(a). And because chapters 5 and 7 of Title 5 are the provisions of the APA dealing with "Administrative Procedure" (chapter 5) and "Judicial Review" (chapter 7), Section 410(a) makes clear that one of the ways Congress sought to make the Postal Service more like a private entity was by foreclosing APA review of its internal decisionmaking.

Nonetheless, the D.C. Circuit has concluded that Section 410(a) does not foreclose all judicial review of the Postal Service's administrative decisionmaking. Pet. App. 3a-4a; *Mittleman* v. *Postal Regulatory Comm'n*, 757 F.3d 300, 305 (D.C. Cir. 2014). The court of appeals has reasoned that, even before the APA, courts were permitted to perform some "non-statutory" administrative review, and that "non-statutory" review

remains available despite Section 410(a). Pet. App. 3a-4a. That conclusion, however, is not uncontested. The Ninth Circuit has refused "to override [Section 410(a)'s] express removal of APA review of the Service's actions by imputing an implicit Congressional intent to preserve common-law principles of judicial review." *Currier* v. *Potter*, 379 F.3d 716, 725 (2004), cert. denied, 545 U.S. 1127 (2005); see *Board of Governors of the Fed. Reserve Sys.* v. *MCorp Fin., Inc.*, 502 U.S. 32, 44 (1991) (rejecting judicial review when "Congress has spoken clearly and directly" to preclude it); cf. *Air New Zealand Ltd.* v. *Civil Aeronautics Bd.*, 726 F.2d 832, 836 n.3 (D.C. Cir. 1984) (Scalia, J.) (observing that "all nonstatutory review is now, in a sense, statutory review" under the APA).

The unpublished decision below, however, does not implicate any potential disagreement as to whether nonstatutory review of Postal Service decisions is available despite Section 410(a) because the D.C. Circuit correctly found that petitioners' claims do not qualify for nonstatutory review. As the D.C. Circuit explained, nonstatutory review is generally limited to claims that an agency acted ultra vires, and petitioners' complaint does not allege that the Postal Service acted contrary to any statutory command. Pet. App. 3a-5a. Rather, the complaint asserts only that the Postal Service's decision was unreasoned and contrary to its own regulations, "heartland" APA claims that are squarely foreclosed by Section 410(a). *Id.* at 4a. Accordingly, whether or not Section 410(a) leaves room for nonstatutory review, there is no cause of action for petitioners' particular claims.

b. Petitioners challenge the court of appeals' conclusion on several grounds, but none is persuasive.

First, petitioners assert (Pet. 19-20) that the APA itself permits review of their claims because Section 410(a) does not preclude the APA's application to the change-of-address decisions. That argument runs directly contrary to petitioners' own complaint and briefing below, in which they appropriately conceded that Section 410(a) expressly exempts the Postal Service decisions challenged here from judicial review under the APA. See Pet. App. 60a (acknowledging in the operative complaint that "Congress has exempted USPS from the [Administrative Procedure Act]"); see also *id.* at 22a (district court noting that petitioners "have taken care not to *cite* the APA specifically" as providing the statutory basis for any of their causes of action). This Court does not generally grant certiorari to review contentions "not pressed or passed upon below," *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation omitted), and there is no reason to depart from that practice here because petitioners' newly presented argument lacks merit. The plain text of Section 410(a) broadly provides that "chapters 5 and 7" of the APA do not "apply to the exercise of the powers of the Postal Service," 39 U.S.C. 410(a), and every court of appeals to consider the issue has found that this language precludes APA judicial review of Postal Service decisions in general. See, *e.g.*, *Mittleman*, 757 F.3d at 305; *Emery Worldwide Airlines, Inc.* v. *United States*, 264 F.3d 1071, 1084 (Fed. Cir. 2001); *Harrison* v. *USPS,* 840 F.2d 1149, 1155 (4th Cir. 1988); *Booher* v. *USPS*, 843 F.2d 943, 945 (6th Cir. 1988); *Currier*, 379 F.3d at 725.

Second, petitioners assert (Pet. 20-21) that even if Section 410(a) precludes APA review, their claims are still subject to non-APA review. But, as explained, the D.C. Circuit did not question the existence of some non-

APA review; it merely determined that petitioners' claims did not fall within the bounds of nonstatutory review because petitioners had not adequately alleged that the Postal Service exceeded its statutory authority. See p. 9, *supra*. In making that determination, the court of appeals relied on its prior precedents finding that this Court's cases, including *American School of Magnetic Healing* v. *McAnnulty*, 187 U.S. 94 (1902), and *Leedom* v. *Kyne*, 358 U.S. 184 (1958), can be read to afford a limited form of nonstatutory review that extends only to claims that an agency has exceeded its authority by acting ultra vires. See *Mittleman*, 757 F.3d at 305; *Aid Ass'n for Lutherans* v. *USPS*, 321 F.3d 1166, 1173 (D.C. Cir. 2003).

Petitioners do not contest the court of appeals' fact-bound determination that they did not allege ultra vires acts by the Postal Service. Instead, petitioners appear to contend (Pet. 18) that common-law review following "the *McAnnulty* line of agency-review cases" is more capacious than the court of appeals has long understood judicial review under that same line of authority to be. But petitioners offer no precedent supporting their suggested revisions to the court of appeals' doctrine. Moreover, they fail to explain how the expansive form of nonstatutory review they contemplate is meaningfully distinct from arbitrary-and-capricious review under the APA, or how their theory comports with Section 410(a)'s express preclusion of APA review for Postal Service decisions. If, as petitioners suggest, they can bring the very same claims that Section 410(a) precludes under the APA through a nonstatutory cause of action, Section 410(a)'s express reference to the APA's judicial review provisions would be superfluous.

Petitioners' attempt to draw support from *Air Courier Conference of America* v. *American Postal Workers Union*, 498 U.S. 517 (1991), is unavailing. Nothing in that decision "signaled" (Pet. 17, 20, 23-24) either that Section 410(a) "may *do less* than exempt USPS from the APA" or that the statute "can have no effect on *non-APA* review." Rather, in *Air Courier*, this Court granted certiorari to review a D.C. Circuit decision in which the court of appeals had rejected an APA claim against the Postal Service on the merits. This Court refused to consider the Postal Service's assertion that Section 410(a) should have precluded the D.C. Circuit from ever reaching the merits of petitioners' APA claim on the ground that the Postal Service "raised this argument for the first time in its brief in opposition to the petition for writ of certiorari." 498 U.S. at 522. The Court explained that the Postal Service had not raised Section 410(a) to either of the lower courts, and while the Service had attempted to excuse that failure by characterizing Section 410(a) as a jurisdictional bar, the Court concluded that Section 410(a) instead governs "[w]hether a cause of action exists"—a question that this Court deemed not jurisdictional and therefore capable of being "assumed without being decided." *Id.* at 522-523 & n.3. That determination says nothing about whether the Court would have found that Section 410(a) precluded review had the issue been properly presented. And three Justices concurred in the *Air Courier* judgment on the express basis that the Court should have at least "notice[d] on [its] own motion" the preclusion afforded by Section 410(a) because the unambiguous text "provides that the judicial review provisions of the [APA] do not apply to the exercise of the

powers of the Postal Service." *Id.* at 531-532 (Stevens, J., concurring in the judgment).

Third, petitioners contend (Pet. 17-18, 26-28) that review must at least be available in the District Court for the District of Columbia because of that court's "unique equity jurisdiction." Petitioners fail to explain why specific features of the D.C. district court's equity jurisdiction would require review that is broader in scope than that permitted by D.C. Circuit precedent. Moreover, this Court is a "court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), and petitioners acknowledge (Pet. 27) that "[n]o decisions" within the relevant line of court of appeals authority—including the decision below—have ever "even considered" their novel argument.

Finally, petitioners contend (Pet. 22-23; 28-31) that precluding review of their claims violates Article III of the Constitution, such that Section 410(a) must be either interpreted to permit judicial review in this case or simply deemed unconstitutional. But again, no court of appeals has addressed the merits of this argument, and petitioners did not even press the direct constitutional challenge below. Pet. App. 5a. Indeed, the court of appeals expressly held open the possibility that it might consider the "actual Article III challenge in the future" if a party squarely raised it—"unlike the plaintiffs here." *Ibid.* Petitioners assert (Pet. 30-31) that the court of appeals *should* have addressed their constitutional challenge, but they do not seek review of the court of appeals' factbound determination that the challenge was not properly presented, and no reason exists for this Court to depart from its general practice of declining to decide a question that has never been addressed by the lower courts. See *Cutter*, 544 U.S. at 718 n.7.

In any event, petitioners' constitutional argument lacks merit because this Court's "precedents have given Congress significant latitude to assign adjudication of public rights to entities other than Article III courts." *Oil States Energy Servs., LLC* v. *Greene's Energy Grp., LLC*, 138 S. Ct. 1365, 1373 (2018). Those "precedents have recognized that the [public-rights] doctrine covers matters 'which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments.'" *Ibid.* (quoting *Crowell* v. *Benson*, 285 U.S. 22, 50 (1932)). The mail dispute underlying this case is quintessentially a matter arising between the Postal Service and those who seek its services, in connection with the Postal Service's performance of its core function of delivering mail to the appropriate location. Far from making any "legal determinations" about "plaintiffs' property" (Pet. 32), the Postal Service's decision-makers in this case made clear that they did "not decide who actually owns the contents of the disputed mail," as their decisions were confined to determining where to deliver mail based on the way it was addressed—subject to recipients' ongoing obligation to "promptly forward[]" any mail that they determine is someone else's property. Pet. App. 47a. This limited decision made in the ordinary course of its routine operations is therefore one that falls comfortably within the "significant latitude" available to Congress to assign the determination of public rights "to entities other than Article III Courts." *Oil States*, 138 S. Ct. at 1373; see *Crowell*, 285 U.S. at 51 ("Familiar illustrations of administrative agencies created for the determination" of public rights "are found in connection with the exercise of the congressional power as to interstate and

foreign commerce, taxation, immigration, the public lands, public health, *the facilities of the post office*, pensions and payments to veterans.") (emphasis added).

2. The unpublished decision of the court of appeals does not conflict with the decisions of any other court. Petitioners appear to acknowledge (Pet. 25-26) that the Ninth Circuit would have reached the same result in this case as the D.C. Circuit did here because it has found that Section 410(a) broadly precludes judicial review of Postal Service actions. See *Currier*, 379 F.3d at 724-726 (holding that there was no private right of action "to subject the Postal Service to suit for violations of regulations"). Petitioners allege (Pet. 24-26), however, that the Sixth and Seventh Circuits would have reached a different outcome because they have recognized that there is a cause of action through which a plaintiff can claim that "USPS violated its own rules." Pet. 24. But neither court has precedent demonstrating that it would permit judicial review of petitioners' claims.

Petitioners contend (Pet. 24) that the Sixth Circuit recognized the availability of judicial review for claims that the Postal Service violated its own regulations in *Booher*, *supra*. But *Booher* held that there was no "basis for judicial review" of a claim by a postal employee on probationary status challenging his dismissal. 843 F.3d at 946. In finding that judicial review was barred, the court referred to "the absence of specific allegations of violations of the agency's own procedures and regulations," *ibid.*, but the court did not decide (or even consider) whether review would have been available if such allegations existed.

The Seventh Circuit's decision in *Peoples Gas, Light & Coke Co.* v. *USPS*, 658 F.2d 1182 (1981), likewise does

not show that judicial review of petitioners' claims would be available in that circuit. There, the plaintiff was the operator of a heating plant that sought to enjoin the Postal Service from procuring power for a post office through an alternative source of fuel. *Id.* at 1185-1188. The Seventh Circuit held that dismissal of the complaint was required because the plaintiff failed to "satisfy the zone of interest requirement for standing." *Id.* at 1200; *id.* at 1192-1202. It also stated—in a portion of the opinion that was not necessary to the outcome—that "procurement decisions of the United States Postal Service are subject to judicial review," notwithstanding Section 410(a). *Id.* at 1185. And, in finding that "common law review principles" could provide a basis for judicial review "to test the validity *of a procurement decision* made by the Postal Service," the court suggested that a reviewing court could consider the Postal Service's adherence to "legal restrictions contained in its governing regulations." *Id.* at 1192 (emphasis added); see also *id.* at 1191 ("We conclude that the exemptions found in section 410 of the Postal Reorganization Act do not manifest a congressional intent to foreclose all judicial review of alleged violations by the Postal Service's procurement regulations.").

Peoples Gas's dicta do not support review here because the decision was related only to judicial review in the procurement context, where separate statutory provisions complicate the question of what forms of review are available. See, *e.g.*, 28 U.S.C. 1491. Indeed, the Seventh Circuit relied in significant part on the seminal D.C. Circuit decision governing the standard of judicial review (under the APA) for government contracting procurement decisions. See *Peoples Gas*, 658 F.2d at 1191 (citing *Scanwell Labs., Inc.* v. *Shaffer*, 424 F.2d

859, 874 (D.C. Cir. 1970)); see also *Impresa Construzioni Geom. Domenico Garufi* v. *United States*, 238 F.3d 1324, 1331 (Fed. Cir. 2001) (discussing the "long and complicated" "history of the judicial review of government contracting procurement decisions," including the role of the *Scanwell* case in that history). Dicta regarding the reviewability of procurement decisions therefore cannot establish that the Seventh Circuit would have permitted judicial review of petitioners' claims, which have nothing to do with procurement.

Moreover, petitioners' assertion (Pet. 31-32) that review is warranted because of a conflict as to whether courts may review claims that the Postal Service violated its own regulations disregards that the D.C. Circuit declined to decide whether a plaintiff could obtain review of such claims by pressing them in the form of a due process challenge. Pet. App. 5a. And it disregards that the Sixth and Seventh Circuit decisions on which petitioner relies do not address whether judicial review should be limited to ultra vires challenges and are from 1988 and 1981, respectively, suggesting that the question presented arises infrequently and therefore does not merit this Court's attention, especially in a case arising from an unpublished decision below.

3. Even if the arguments raised in the petition might warrant review in some circumstances, this case would be a poor vehicle for review because many of petitioners' contentions have not been passed upon by the courts below or by *any* court of appeals. See pp. 10, 13, *supra*. It would be premature to address those issues

before the contours of the arguments have been developed and analyzed by the lower courts.[3]

Moreover, it would be particularly inappropriate to grant certiorari in this case because it is very unlikely that petitioners' claims could succeed, even if they were deemed reviewable. Petitioners' district court complaint challenges the Postal Service's decision based on the Service's alleged failure to follow *Postal Operations Manual* Issue 9 § 841.751 (July 2002). See Pet. App. 72a. But in the administrative proceedings, petitioner Schlafly never mentioned that provision, arguing instead that the change-of-address should be denied based on provisions of the *Domestic Mail Manual*. See p. 3, *supra*; Pet. App. 46a-47a; *id.* at 50a-51a. Accordingly, even if judicial review of petitioners' claims were possible, they would fail for the independent reason that petitioners failed to present the argument on which they now rely to the agency.

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[3] Petitioners have filed a pair of supplemental briefs in support of certiorari, contending that this Court's decisions in *Salinas* v. *United States Railroad Retirement Board*, 141 S. Ct. 694 (2021), and *United States* v. *Arthrex, Inc.*, 141 S. Ct. 1970 (2021), support the need for review. Petitioners are mistaken on both counts. Petitioners observe that *Salinas* reiterated the proposition that this Court will not find that a statute forecloses judicial review unless "the statute's language or structure" establish as much. 141 S. Ct. at 698 (internal citation omitted). But here, Section 410(a)'s text squarely forecloses review with respect to petitioners' particular claims. And, to the extent petitioners attempt to rely on *Arthrex* to support an argument involving the Appointments Clause, the court of appeals found that they had forfeited an Appointments Clause argument by raising it for the first time on appeal, see Pet. App. 6a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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