No. 26-426

IN THE

Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, *et al.*,

Petitioners,

v.

D.V.D., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF *AMICI CURIAE* PROFESSORS OF CIVIL PROCEDURE, ADMINISTRATIVE LAW, AND FEDERAL COURTS IN SUPPORT OF RESPONDENTS

Kelsi Brown Corkran
Counsel of Record
Rupa Bhattacharyya
William Powell
INSTITUTE FOR CONSTITUTIONAL ADVOCACY & PROTECTION, GEORGETOWN LAW
600 New Jersey Ave., NW
Washington, DC 20001
(202) 661-6728
kbc74@georgetown.edu

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE[1]

Amici are professors of civil procedure, administrative law, and federal courts who offer a unique perspective about the statutory regimes that govern how courts review government actions. Amici have written extensively about administrative agencies, federal judicial review, and complex civil litigation. Together, we share an interest in rules and remedies that support the judiciary's role to say what the law is. Amici are listed in the Appendix and file this brief in our individual capacities as scholars. We provide titles and institutional affiliation solely for purposes of identification.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici submit this brief to address "[w]hether the district court had authority to enter classwide declaratory relief and APA vacatur under 8 U.S.C. § 1252(f)(1)." Order, *Dep't of Homeland Sec. v. D.V.D.*, No. 26-426, 2026 WL 2917860 (U.S. Sept. 29, 2026). Section 1252(f)(1) says that no court other than this Court "shall have jurisdiction or authority to enjoin or restrain the operation of" certain provisions of the Immigration and Nationality Act, except in the case of an individual immigrant.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amici certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amici and their counsel, made a monetary contribution intended to fund this brief's preparation or submission.

For nearly three decades, this Court has consistently interpreted this carefully worded provision as "nothing more or less than a limit on injunctive relief." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999). Amici write to explain why that reading is right and why Section 1252(f) does not bar non-coercive alternatives to an injunction, including declaratory relief and orders vacating agency actions under the Administrative Procedure Act. We make three points.

First, the law has long treated injunctions differently from other remedies in litigation involving the government. Injunctions operate on legal *actors*. They specifically prescribe how a party must act, or refrain from acting, and they come with the full backing of a court's coercive powers to hold the enjoined party in contempt for failure to comply. By contrast, declaratory judgments and orders of vacatur operate on legal *relations* and legal *actions*. They declare rights and determine the legality of rules and policies that the government adopts. Such remedies do not compel people to act in a specified way under penalty of contempt. That difference is not a technicality. When courts choose to only declare rights or vacate orders, they opt for the "milder alternative" of deciding what the law is, without dictating the specific steps that the Executive Branch must take to conform its actions to the law.

Second, Congress has recognized this critical difference between injunctions and other remedies in statutes governing judicial review for over 100 years. Since the turn of the twentieth century, statutes governing judicial review have carefully delineated judicial authority to "enjoin" and "restrain"

government actors from other remedies—like those that "stay," "suspend," "invalidate, or "set aside" government rules and regulations. Courts presume that Congress writes these judicial review statutes with care, and that Congress does not strip courts of procedural powers or remedies unless it clearly says so. Reading judicial review statutes this way respects Congress's choices, while protecting the judiciary's independent role in our system of checks and balances to halt and to remedy legal violations.

Third, the plain text and structure of Section 1252(f)(1), like similarly worded statutes, bars only *injunctive* relief, not remedies that declare law or set aside government actions. Congress specifically titled Section 1252(f) a "limit on *injunctive* relief." 8 U.S.C. § 1252(f) (emphasis added). And unlike other sections of the statute, nothing in the text of Section 1252(f)(1) specifically bars other forms of relief, like declaratory judgments. Nor does it anywhere mention the power under the Administrative Procedure Act (APA) to "set aside" agency action, 5 U.S.C. § 706(2), and Congress has said that later statutes can modify the APA only "expressly," *id.* § 559. Instead, when read in context, Section 1252(f)(1) leaves in place traditional judicial remedies to interpret law and set aside unlawful agency action.

The government's contrary reading would displace the careful choices Congress makes when it selects among remedies in judicial review statutes with an amorphous inquiry into whether a judicial order would have "the practical effect of an injunction." Pet. Br. 27. That argument is without foundation in our law. This Court has made clear that the downstream, practical effects of declaratory relief or vacatur supply

no reason to bar those remedies under laws that specifically prohibit only injunctive relief. That is because every judgment against the government has practical effects. A test based on a judgment's effects would not tell a court in advance what remedies it could grant, and it would cast doubt on similarly worded statutes long used to review government action.

ARGUMENT

I. Courts Have Many Alternatives to the "Strong Medicine" of the Injunction

After a court determines that a defendant has violated the law, it must make another decision: What is the remedy? That choice matters. Remedies are the essential means by which substantive law takes actual effect in the real world. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). And different remedies target different subjects, require different levels of precision, and carry different consequences for the parties.

Some remedies operate like judicial commands. At common law, for example, the writ of mandamus from a higher court forced an official or an inferior tribunal to carry out a duty they were legally required to perform. James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of Ex parte Young*, 72 Stan. L. Rev. 1269, 1301 (2020). In equity, prohibitory injunctions commanded parties to refrain from action, while mandatory injunctions commanded parties to take affirmative steps to repair a problem. Dan B. Dobbs & Caprice L. Roberts, Law of Remedies: Damages—Equity—Restitution §2.1(2), at 49–54

(West 3d ed. 2018). The injunctive remedy operated on the parties, requiring them to take specified actions under the law, on penalty of contempt. 4 John Norton Pomeroy, A Treatise on Equity Jurisprudence § 1317, at 3162 (4th ed. 1919) ("The fundamental doctrine of equity as originally administered" was that its "remedies and decrees operated *in personam* upon defendants.")

Injunctions, for these reasons, are considered extraordinary remedies. Courts do not grant them as a matter of course. Unlike for other remedies, parties must show that they will experience "irreparable injury" without one. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). Courts also must craft injunctions with specificity so that people can follow them. Fed. R. Civ. P. 65(d)(1)(B)–(C). When there is an allegation that a losing party has not followed an injunction, a court can gather information about the party's conduct, and then determine whether to terminate the decree, modify it, or give the party more time to comply with it. *See* Fed. R. Civ. P. 60(b)(5); Fed. R. Civ. P. 70 (enforcement of judgment); *Brown v. Plata*, 563 U.S. 493, 542 (2011) ("The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible." (citation omitted)). If the party still does not comply, a court can conduct additional hearings, hold the party in contempt, and impose sanctions. *See United States v. United Mine Workers*, 330 U.S. 258, 303–04 (1947); *Ex parte Young*, 209 U.S. 123, 126–27 (1908) (contempt custody of a state attorney general who violated an injunction); *see also* 18 U.S.C. § 401(3) (authorizing federal courts to punish disobedience of a lawful writ or order by fine or imprisonment).

But courts can also grant other ordinary remedies that do not entail ongoing judicial management or control over a party. Courts may declare the parties' legal rights or legal duties. *See, e.g.,* 28 U.S.C. § 2201(a). They may stay rules or orders pending review. *See, e.g.,* 5 U.S.C. § 705; *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4 (1942). They may suspend, annul, or invalidate regulations or decisions. *See* 28 U.S.C. §§ 2342, 2349(a)–(b). Or they may set aside and hold unlawful certain government actions. *See* 5 U.S.C. § 706(2). These judgments do not command people to act or refrain from acting in a certain way. *Steffel v. Thompson*, 415 U.S. 452, 471 (1974). They do not impose specific requirements; nor do they require judicial monitoring, adjustment, or sanction. *See* Fed. R. Civ. P. 57 advisory committee's note to 1937 adoption (treating a demand for a "declaration of rights" as distinct from a demand for "coercive relief"). They instead answer a legal question, with a binding legal judgment, without any immediate threat of penalty for contempt.

Courts have long treated these remedies as "much milder form[s] of relief" than an injunction. *Steffel*, 415 U.S. at 471; *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165–166 (2010) (describing vacatur as "a less drastic remedy"). Because they target legal authority and government actions, without commanding government "actors," they permit losing parties to decide, in the first instance, how to bring their conduct into line with the law.

Unlike an injunction, for example, a stay does not direct "the conduct of a particular actor," but instead "operates upon the judicial proceeding itself." *Nken v. Holder*, 556 U.S. 418, 428 (2009). To be sure, both can

have "the practical effect of preventing some action." *Id.* But a stay does this by "temporarily suspending the *source* of the authority to act," not by regulating the "actor's conduct." *Id.* at 428–29 (holding that an immigrant who seeks a stay of removal "does not ask for a coercive order against the Government, but rather for the temporary setting aside of the source of the Government's authority to remove."); *Make the Road N.Y. v. Mullin,* 179 F.4th 16, 31 (D.C. Cir. 2026) ("an order enjoining or restraining is a judicial command that coerces a party's behavior—which a stay does not do."). No additional judicial management, supervision, or sanction against a person is required.

The same is true for declaratory judgments. Congress passed the Declaratory Judgment Act in 1934 as an alternative to the "strong medicine of the injunction." *Steffel*, 415 U.S. at 466; S. Rep. No. 73-1005, at 2–3, 6 (1934) (explaining that declaratory relief could conclusively settle contested rights without an "immediately coercive decree," avoid forcing parties to act at their peril, and reduce reliance on injunctions). Accordingly, the declaratory judgment only "declare[s] the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). It has "the force and effect of a final judgment or decree," *id.*, but it does not command a party to act in a particular way, nor is it "ultimately coercive." *Steffel*, 415 U.S. at 471 (internal quotation marks omitted); Restatement (Second) of Judgments § 33 cmt. c (1982) ("A declaratory action is intended to provide a remedy that is simpler and less harsh than coercive relief ...").

This remedy serves an important and supplemental role to the injunction. As explained by the father of America's declaratory judgment, Edwin Borchard:

> There are many reasons why an injunction may be unobtainable, yet a declaration perfectly proper. The declaration may clarify the position for the future, or the facts may not be deemed to warrant so drastic a remedy as injunction, which may not lie for any number of reasons. Yet, instead of dismissing the case, the declaration serves to adjudicate the controversy.... Of course, where an injunction would lie, *a fortiori* the milder declaration may be sought and granted. But the established fact is that where an injunction would not lie, a declaration may nevertheless be granted if the conditions of a judgment are present.

E. B., *Need for Injunctive Relief as Prerequisite for Granting Declaratory Judgment*, 56 Yale L.J. 139, 140 (1946). In the event that a party does not conform his conduct to the declaration, his adversary may return to the court to seek "[f]urther necessary or proper relief." 28 U.S.C. § 2202. But that additional relief may be granted only "after reasonable notice and hearing." *Id.*

These same principles apply to decisions that "set aside" the order of a lower court or action of an administrative agency after a higher court finds that it is incorrect. A higher court that vacates a judgment on appeal does not order the trial judge to do anything. *Vacatur,* Black's Law Dictionary (12th ed. 2024) ("A rule or order upon which a *proceeding* is

vacated." (emphasis added)). Instead, the higher court's vacatur removes the judgment's legal effect. It then often remands the case to the lower court for further proceedings consistent with the opinion—with the risk that it may have to hear the case again. *See, e.g., Fairfax's Devisee v. Hunter's Lessee*, 11 U.S. (7 Cranch) 603 (1813), *on remand sub nom. Hunter v. Martin*, 18 Va. (4 Munf.) 1 (1815), *rev'd sub nom. Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

A court that sets aside an agency action "vacates that order … in much the same way." *Corner Post, Inc. v. Bd. of Governors*, 603 U.S. 799, 830 (2024) (Kavanaugh, J., concurring). Unlike judicial review of statutes, "in which courts enter judgments and decrees only against litigants," the APA and related review provisions "empower[] the judiciary to act directly against the challenged agency action." *Id*. at 838 (quoting Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 1012 (2018)). Orders that stay judgments, vacate judgments, or that stay or vacate agency actions share the same key feature: They reinstate the legal rules previously in force, but they do not proscribe, restrain, or "order parties to do anything." *Make the Road N.Y.,* 179 F.4th at 31; *see id.* (explaining that a stay "is just the preliminary form of vacatur.").

The variety of remedies available to courts helps to ensure the effectiveness of the many statutory schemes governing judicial review of executive action. In cases where plaintiffs can demonstrate irreparable injury and the other prerequisites for injunctive relief, courts may issue injunctions that restrain and enjoin government officers and that are backed by

penalty of contempt. *See* Richard H. Fallon, Jr. & Daniel J. Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 Harv. L. Rev. 1731, 1736 (1991) (describing more robust "constitutional remedies adequate to keep government within the bounds of law"). But in other cases, courts can "say what the law is" *without* specifying how a government officer must comply with an injunctive order. *See Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (officials are assumed to "abide by an authoritative interpretation" of the law); *Steffel*, 415 U.S. at 470 ("The persuasive force of the court's opinion and judgment may lead state prosecutors, courts, and legislators to reconsider their respective responsibilities toward the statute.")

II. Congress Has Distinguished Between Different Forms of Judicial Relief in Other Statutes for Over a Century

A. Judicial Review Statutes Carefully Distinguish the Power to "Enjoin or Restrain" From Non-Coercive Judicial Remedies

Congress has long understood the difference between injunctions and other remedies. In the earliest judicial review schemes of the twentieth century, Congress repeatedly described the judicial power to "enjoin" and "restrain" separately from other remedies—including those that suspend or set aside agency actions. When Congress first created statutory schemes to review actions of the Interstate Commerce Commission, the 1906 Hepburn Act gave courts separate authority to "enjoin, set aside, annul, or suspend any order or requirement of" the ICC.

Hepburn Act of 1906, ch. 3591, § 5, 34 Stat. 584, 592. Similarly, the Urgent Deficiency Act of 1913 separately described the power of "suspending or restraining the enforcement, operation, or execution of, or *setting aside,* in whole or in part, any order" of the Commission. Urgent Deficiencies Act of 1913, ch. 32, 38 Stat. 208, 219–20 (emphasis added). Such judicial review statutes grew in popularity during the 1930s, as Congress adopted new schemes to ensure judicial review of New Deal agencies.[2] *See Corner Post*, 603 U.S. at 830 n.2 (Kavanaugh, J., concurring) (collecting pre-APA statutes); Mila Sohoni, *The Power to Vacate a Rule*, 88 Geo. Wash. L. Rev. 1121, 1146–1151 (2020).

That tradition continues today. The Administrative Orders Review Act gives federal appellate courts power to review federal agency actions from the Federal Communications Commission, the Secretary of Agriculture, and the

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[2] For a sampling of New Deal-era statutes that adopt similar distinctions between remedies, *see* 12 U.S.C. § 1467a(g)(5)(B), (j) (Home Owners' Loan Act of 1933, as amended) (separating jurisdiction to effect an order "by injunction or otherwise" from authority to "affirm, modify, terminate, or set aside, in whole or in part"); 47 U.S.C. § 402(a) (Communications Act of 1934) (covering proceedings "to enjoin, set aside, annul, or suspend" Commission orders); 12 U.S.C. § 1786(k)(1) (Federal Credit Union Act of 1934, as amended) (separating jurisdiction to affect an order "by injunction or otherwise" from jurisdiction to "review, modify, suspend, terminate, or set aside" it); *id.* § 1818(i)(1) (Federal Deposit Insurance Act of 1933, as amended) (same); 27 U.S.C. §§ 205(e), 208(a) (Federal Alcohol Administration Act of 1935) (authorizing suits "to enjoin, annul, or suspend" final agency action).

Secretary of Transportation, among others. 28 U.S.C. §§ 2341–2351; *see* Jonathan R. Siegel, Admin. Conf. of the U.S., *Sourcebook of Federal Judicial Review Statutes* 29–35 (2022).

That law similarly spoke with precision to the relief that courts may issue: "enjoin, *set aside*, suspend (in whole or in part), or *to determine the validity of*" agency action. 28 U.S.C. § 2342 (emphasis added). It also separately references a final "judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency," "an interlocutory injunction," and "a temporary stay or suspension." *Id.* § 2349(a), (b).

Most notably, the APA has long differentiated between judicial remedies. Codifying judicial practices developed over decades, the APA recognizes that challengers may bring "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus." 5 U.S.C. § 703. It separately authorizes courts to "postpone the effective date of an agency action," *id.* § 705, and to "hold unlawful and set aside agency action," *id*. § 706(2).[3]

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[3] After Congress adopted the APA, it continued to delineate remedies in other statutes. For a broader sampling of such statutes adopted over the past several decades, *see* 7 U.S.C. § 136n(b)–(c) (Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972) (providing for court of appeals review *(cont'd)*

Congress has been just as explicit when imposing *limits* on judicial remedies that enjoin and restrain

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to "affirm or set aside" an Administrator's order and separately providing for district court jurisdiction "to prevent and restrain violations" of the Act); 42 U.S.C. § 300j-7(a) (Safe Drinking Water Act of 1974) (providing that action reviewable within specified time frames is not subject to later review in an action "to enjoin enforcement," while directing courts in specified cases to "set aside and remand" a penalty order); 45 U.S.C. § 719(e)(1)(A), (1)(E), (2) (Regional Rail Reorganization Act of 1973, enacted Jan. 2, 1974) (separately addressing actions for "injunctive or other relief" and actions "to set aside or annul" a conveyance, and authorizing orders "enjoining" or "restraining" conveyances); 7 U.S.C. § 2149(c) (Animal Welfare Act Amendments of 1976) (authorizing a court to "enjoin, set aside, suspend ..., or to determine the validity" of the Secretary's order); 42 U.S.C. § 8514(a)(1), (c) (Emergency Energy Conservation Act of 1979) (referring separately to actions "for declaratory judgment" and requests for "injunctive relief … in conjunction with a final judgment"); 7 U.S.C. §§ 3804(b), 3805(b) (Swine Health Protection Act of 1980) ("enjoin, set aside, suspend ..., or to determine the validity"); 45 U.S.C. § 1105(a)(1) (Northeast Rail Service Act of 1981) (listing actions for "injunctive, declaratory, or other relief"); 12 U.S.C. § 4623(a), (c) (Federal Housing Enterprises Financial Safety and Soundness Act of 1992) (separately addressing requests to "modify, terminate, or set aside" an action and limits on a court's power to "stay, enjoin, or otherwise delay" it pending judicial review); 19 U.S.C. § 1516a(g)(4)(A) (Tariff Act of 1930, as amended by the North American Free Trade Agreement Implementation Act of 1993) (authorizing an action for "declaratory judgment or injunctive relief, or both"); 12 U.S.C. § 5229(a) (Emergency Economic Stabilization Act of 2008) (directing courts to "set aside" unlawful final actions under the APA while providing that "[n]o injunction or other form of equitable relief" may issue in specified cases); *id.* § 5563(d)(2) (Consumer Financial Protection Act of 2010) (separating jurisdiction to effect orders "by injunction or otherwise" from jurisdiction to "review, modify, suspend, terminate, or set aside" them).

conduct. For example, after adopting the Declaratory Judgment Act in 1934, Congress took the extra step to amend it to expressly exclude controversies "with respect to Federal taxes." Revenue Act of 1935, ch. 829, § 405, 49 Stat. 1014, 1027. That is because the Anti-Injunction Act, originally adopted in 1867, barred only suits "for the purpose of *restraining* the assessment or collection of any tax." 26 U.S.C. § 7421(a) (emphasis added). And courts correctly concluded that the Anti-Injunction Act's "restraining" language by itself did not bar federal declaratory relief. *See, e.g., Penn v. Glenn*, 10 F. Supp. 483, 484–87 (W.D. Ky. 1935) (holding that declaratory relief was permitted because the tax collector may "respect the decision," but "he would not be compelled to do so."); *see also Bob Jones Univ. v. Simon*, 416 U.S. 725, 732 n.7 (1974).

The APA states that Congress cannot impliedly repeal the judicial remedies it provides in new statutes. A law cannot "supersede or modify" the APA's judicial-review provisions "except to the extent that it does so expressly." 5 U.S.C. § 559. When a judicial review scheme does not affirmatively disable any provision of the APA, the APA applies. *See Shaughnessy v. Pedreiro*, 349 U.S. 48, 50–53 (1955) (holding that parties could continue to seek declaratory relief under the APA despite statutory review scheme requiring habeas review of "final" deportation orders); *Asiana Airlines v. FAA*, 134 F.3d 393, 397 (D.C. Cir. 1998) ("the import of the § 559 instruction is that Congress's *intent to make a*

substantive change [must] be clear." (citations omitted)).[4]

Congress also expressly set out different kinds of judicial remedies in several laws passed the same year as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). In the Prison Litigation Reform Act of 1996, for example, it chose the broader term "prospective relief" when it wanted to reach beyond injunctions. *See* 18 U.S.C. § 3626(g)(7) (defining "prospective relief" as "all relief other than compensatory monetary damages.") In the Federal Courts Improvement Act of 1996, it treated injunctive and declaratory relief as distinct steps, providing that in suits against judicial officers "injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983.

B. Courts Carefully Interpret Restraints on Judicial Remedies Consistent with Congressional Intent and Customary Judicial Authority

Courts reading judicial review statutes presume that Congress will not displace conventionally available procedures or traditional avenues of judicial review and relief unless it clearly says so. *Nken*, 556

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[4] For examples of such express provisions, *see*, *e.g.*, 42 U.S.C. § 7607(d)(1) (Clean Air Act) ("[S]ection 706 of [the APA] shall not … apply to actions to which this subsection applies."); 15 U.S.C. § 57a(e)(5)(C) (Magnuson-Moss Warranty – Federal Trade Commission Improvement Act) ("Section 706(2)(E) of [the APA] shall not apply to any rule promulgated under subsection (a)(1)(B).").

U.S. at 433 (Congress does not strip courts of a customary power "without clearly expressing such a purpose"); *Califano v. Yamasaki*, 442 U.S. 682, 699–701 (1979) (holding that the statute lacked "the necessary clear expression of congressional intent" to prohibit class actions); *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 140–42, 144–46 (1967) (finding no clear and convincing intent to "cut down more traditional channels of review," including declaratory and injunctive relief); *Citizens for Resp. & Ethics in Wash. v. FEC*, 993 F.3d 880, 889–90 (D.C. Cir. 2021) (holding that Congress displaces the APA only when it creates procedures "so clearly different from those required by the APA that it must have intended to displace the norm.")

This presumption against the implied repeal of judicial rules and remedies serves fundamental separation of powers values. It allows Congress to regulate the lower federal courts' power, while also protecting the courts' independence and superior expertise to manage the cases that come before them. *See Scripps-Howard Radio*, 316 U.S. at 15 (observing that if Congress had to itemize every judicial procedure and remedy, it would "stultify the purpose of Congress to utilize the courts as a means for vindicating the public interest"); *see also* Adam S. Zimmerman, *The Class Appeal*, 89 U. Chi. L. Rev. 1419, 1482 (2022) (describing need for the presumption so that courts can predictably "review important and recurrent problems"); Amy C. Barrett, *Procedural Common Law,* 94 Va. L. Rev. 813, 841, 878–79 (2008) (observing that federal courts' procedural authority can "exceed that of Congress,"

and that courts have a "stronger claim to constitutional authority in matters of procedure").

Against this background, courts have faithfully interpreted congressional restraints on judicial remedies—carefully distinguishing laws that bar restraints on actors from other remedies to preserve predictability, accountability, and judicial review. For much of the twentieth century, for example, Congress required three-judge district courts for "interlocutory or injunctive relief" against state and federal laws. But this Court made clear those restrictions did not apply to declaratory relief actions because such relief only "affected an Act of Congress in a totally noncoercive fashion." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 155 (1963).

This Court has required the same express language in statutory review schemes for judicial stays. In *Nken*, the government argued that Section 1252(f)(2), which says that "no court shall enjoin the removal of any alien," applied to a judicial stay. 556 U.S. at 425. This Court, however, rejected the government's argument that "a stay is simply a form of injunction." *Id.* at 426. Strictly reading the text of the provision, the Court observed that Congress used the word "stay" in a separate part of the statute, but not in Section 1252(f). *Id.* at 430. It also rejected the government's "practical effect" argument: "Whether such a stay might technically be called an injunction is beside the point; that is not the label by which it is generally known. The sun may be a star, but 'starry sky' does not refer to a bright summer day." *Id.*

More recently, in *CIC Services, LLC v. IRS*, this Court unanimously held that a suit to "set aside" an

IRS notice—a reporting mandate enforced by a tax penalty—is not a suit "restraining" the tax. 593 U.S. 209 (2021). The Anti-Injunction Act bars any "suit for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a). The government argued that avoiding the notice's burdens and avoiding the penalty were "two sides of the same coin," so that a suit against the notice was essentially a suit against the tax. *CIC Servs.*, 593 U.S. at 219. Strictly reading both the text of the statute and the face of the plaintiff's complaint, the Court disagreed: A "request to 'set aside' that rule" was simply not the same as one to "block the application of a penalty" by a government actor. *Id.* at 219.

The cases on which the government relies, *see* Pet. Br. 28, are no different. The Tax Injunction Act of 1937 (TIA), for example, prohibits courts from issuing remedies that "enjoin, *suspend* or restrain" the collection of state taxes. 28 U.S.C. §1341 (emphasis added). In *California v. Grace Brethren Church*, the Court notably relied on the word "suspend," which does not appear in Section 1252(f), to bar the use of declaratory relief. 457 U.S. 393, 408 (1982) (holding that declaratory relief "may in every practical sense operate to *suspend* collection of the state taxes until the litigation is ended" (emphasis added) (citation

omitted)).[5] Notably, when the Court later construed the word "restrain" in the same statute, it gave the word its narrower meaning in equity—reaching only orders that "stop (or perhaps compel)" the acts the statute describes. *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 12–14 (2015).[6]

In sum, courts do not lightly assume that Congress strips courts of their equitable, legal, or procedural authority to interpret and apply the law. Absent explicit language, or an "inescapable inference," the "full scope of [the court's] jurisdiction is to be recognized and applied." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946).

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[5] The Court also relied on the unique federalism concerns animating the TIA, which curbs federal court interference in state tax collections when taxpayers already possess remedies in state court. *Grace Brethen Church*, 457 U.S. at 409–10; *see also Samuels v. Mackell*, 401 U.S. 66, 69–73 (1971) (no federal declaratory relief relating to a state court tax prosecution in light of potential improper interference with ongoing state proceedings). *Cf. Steffel*, 415 U.S. at 462 ("When no state proceeding is pending, and thus considerations of equity, comity, and federalism have little vitality, the propriety of granting federal declaratory relief may properly be considered independently of a request for injunctive relief.")

[6] In any event, it is not clear the extent to which the Court in *Grace Brethren Church* was even presented with a pure claim for declaratory relief. *See Direct Mktg. Ass'n*, 575 U.S. at 12 n.1 ("[N]owhere in their brief to this Court did the plaintiffs in *Grace Brethren Church* separate out their request to enjoin the tax from their request for relief from the recordkeeping and reporting requirements.").

III. Section's 1252(f)(1) Text and Structure, Like Other Similarly-Worded Statutes, Only Limits Injunctions that "Enjoin and Restrain," Not Those That Declare Law

A. Section 1252(f)'s Text Permits Declaratory Relief and Vacatur Under the APA

The text and structure of Section 1252(f)(1)—much like other statutes governing how courts review government action—specifically limits only the judicial power to issue injunctive relief against government actors. It does not prevent courts from reviewing the legality of government actions and providing remedies that are not injunctive relief.

When Congress wrote Section 1252(f)(1), it chose its words carefully. Section 1252(f) says, in relevant part:

> (f) Limit on injunctive relief
>
> (1) In general
>
> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to *enjoin or restrain* the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, *other than with respect to the application of such provisions to an individual alien* …

8 U.S.C. § 1252(f)(1) (emphasis added).

Several features of this provision, like other judicial review statutes that Congress has written, indicate that it does not apply to actions for declaratory relief or vacatur under the APA. First, the title states that it is a "limit on injunctive relief." *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (observing how titles and headings clarify the meaning of a statute). Second, its operative language bars only remedies that "enjoin or restrain." When Congress pairs the words "enjoin" and "restrain," courts have interpreted "restrain" narrowly to mean only those "equitable remedies that restrict or stop official action," *Direct Mktg. Ass'n*, 575 U.S. at 13, and not declaratory judgments, stays, and APA remedies. *See Nken*, 556 U.S. at 425–32 (applying the same careful analysis to find that stays do not "enjoin or restrain"); *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) (vacatur under the APA does not enjoin or restrain because "a vacatur does nothing but re-establish the status quo absent the unlawful agency action," and "neither compels nor restrains further agency decision-making").

Third, these provisions stand in stark contrast to those that bar classwide declaratory relief in other parts of the same statute. Unlike Section 1252(f)(1), Section 1252(e) sweepingly applies to all forms of relief, not just injunctive relief. It also makes clear that courts cannot "enter declaratory, injunctive, or other equitable relief" in actions pertaining to expedited-removal orders, and prohibits them from certifying "a class under Rule 23." 8 U.S.C. § 1252(e)(1). Congress clearly knew when it enacted IIRIRA how to write a provision that barred class actions for declaratory relief. When Congress uses

particular language in one section of a law, but "omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).

Finally, Section 1252(f)(1) would also make little sense as a bar on *both* classwide injunctive relief and other forms of classwide relief, because it only withdraws authority from courts "other than the Supreme Court." That clause protects this Court's own power to grant the relief the lower courts cannot. *See Biden v. Texas*, 597 U.S. 785, 799 (2022). If classwide declaratory relief were barred along with classwide injunctive relief, "it is hard to see how any class action could proceed, as no relief would be available in the lower courts," which "in turn, would prevent any such case from reaching this Court, rendering Congress' reservation of this Court's authority a nullity." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 572 n.9 (2022) (Sotomayor, J., concurring in the judgment in part and dissenting in part); Gerald L. Neuman, *Federal Courts Issues in Immigration Law*, 78 Tex. L. Rev. 1661, 1686 (2000) (if Section 1252(f)(1) barred both declaratory and injunctive relief on behalf of a class, "it is difficult to see how the district court could acquire jurisdiction over the class action in the first place").

B. Section 1252's Text Does Not Bar Non-Coercive Remedies That Practically Affect Future Government Action

The government's fallback position is that Section 1252(f)(1) reaches any remedy that "has the practical effect of an injunction," and that the declarations and

vacatur here have that effect because class members could seek follow-on injunctions if officials do not conform to them. Pet. Br. 27–30. This "practical effect" test ignores the plain text of the statute—which permits injunctions in individual cases—and could create wasteful satellite litigation over the court's remedial powers in the earliest stages of a case.

First, Section 1252(f)(1) expressly contemplates that courts can make non-coercive legal judgments on a classwide basis—as described above—while not barring individual applications for injunctive relief. By its terms, Section 1252(f)(1) does not bar "injunctions with respect to an individual alien," and Section 1252(f)(2) prescribes rules for injunctive relief in "particular cases." This reading of Section 1252(f)(1) also comports with the structure of the Declaratory Judgment Act. When someone obtains a non-coercive declaratory judgment, it serves as the basis for "a later injunction to give effect to the declaratory judgment." *Steffel*, 415 U.S. at 461 n.11; *see* 28 U.S.C. § 2202.

Second, courts do not interpret the words "enjoin or restrain" to apply to the downstream effects of judgments that declare rights or set aside rules. *Make the Road N.Y.*, 179 F.4th at 31 (Section 1252(f)(1) "doesn't bar remedies that might restrict government action in a functional sense; it restricts courts from issuing only those remedies that are formally coercive"). Instead, courts have repeatedly interpreted "enjoin and restrain" to apply to actions that formally and directly aim to control the conduct of officials. *See id.* at 32 n.15 ("'Restrain' may capture forms of coercive relief that 'enjoin' might not—such

as mandamus, which compels official action"); *Direct Mktg. Ass'n*, 575 U.S. at 12–13 (rejecting a broad reading of "restrain" as any action "hold[ing] back" collection and confining it to orders that stop or compel specified acts).[7]

This Court rejected the same incorrect "practical effect" argument in *CIC Services*. There, the government asserted that "setting aside" a tax reporting requirement would violate the Anti-Injunction Act because it had the practical effect of "restraining" tax collections down the line. 593 U.S. at 220. The Court disagreed. Even if setting aside the reporting requirement meant never collecting the tax,

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[7] When Congress wants to include the downstream effects of declaratory relief or vacatur, it has said so in unmistakable terms. 12 U.S.C. § 4617(f) (barring any court actions that "restrain or *affect*" the Federal Housing Finance Agency's exercise of powers or functions as conservator or receiver) (emphasis added)); *id.* § 1821(j) (barring court actions that "restrain or *affect*" the same powers by the Federal Deposit Insurance Corporation) (emphasis added)); *see also Collins v. Yellen*, 594 U.S. 220, 227–28, 237–42 (2021) (holding "restrain or affect" clause barred the shareholders' actions for declaratory and injunctive relief and vacatur under § 4617(f)); *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 606, 615–16 (D.C. Cir. 2017) (same); *Freeman v. FDIC*, 56 F.3d 1394, 1399 (D.C. Cir. 1995) (applying Section 1821(j) to bar a declaration that would effectively prevent the FDIC from foreclosing).

that was "the suit's after-effect, not its substance." *Id.*[8]

Third, a "practical effect" test cannot be administered in a predictable way. Every appellate court opinion with persuasive or precedential authority *could* have practical effects on official conduct. And many district court opinions provide persuasive authority as well. But those decisions, no more than judgments that declare rights or set aside rules, do not *compel* government officials. The government's test would require a district court to predict—as a threshold inquiry into its own original jurisdiction—what options officials will have to comply with its ultimate opinion, how strongly officials will feel bound to conform their conduct to any judgment, and whether further relief is likely to be sought. But courts, as well as parties, require "[s]imple jurisdictional rules." *Hertz v. Friend*, 559 U.S. 77, 94 (2010); *Direct Mktg. Ass'n*, 575 U.S. at 14 (warning against a broad definition of "restrain" that would produce "needless litigation" over a "vague and obscure" jurisdictional boundary) (cleaned up).

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[8] The government relies on this Court's statement in *Aleman Gonzalez* that to "restrain" is to "check, hold back, or prevent (a person or thing) from some course of action." 596 U.S. at 549 (internal quotation marks omitted); *see* Pet. 27, 28. But the Court made clear that it was addressing judicial orders that *compelled officials to act*. 596 U.S. at 550 ("injunctions that order federal *officials* to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions" (emphasis added)). To the extent that officials feel restrained after losing an action for declaratory relief or vacatur, that restraint comes not from the court order, but from the operation of preexisting law.

The government's "practical effect" formulation here reveals the problem. It accepts that "[s]ome declaratory judgments are not coercive," Pet. Br. 26, and argues that the statute prohibits "the vacatur here," *id.* at 29 (capitalization altered). But it offers no way to distinguish the permitted judgments from the forbidden ones other than their anticipated consequences. The possibility of follow-on relief cannot be it. That is a feature of every declaratory judgment, 28 U.S.C. § 2202, and injunctions in individual cases are what Section1252(f)(1) preserves.

Nor should the potential for joinder or classwide relief make a difference. Declaratory relief under Rule 23(b)(2) cannot "*abridge*, enlarge or modify any substantive right." 28 U.S.C. § 2072(b) (emphasis added); *see Shady Grove Orthopedic Assocs.*, *P.A. v. Allstate Ins.* Co., 559 U.S. 393, 407–408 (2010) (plurality opinion). For that reason, whether a district court has jurisdiction to enter a classwide injunction is "irrelevant" to the separate question of whether the court has "jurisdiction to entertain the plaintiffs' request for declaratory relief." *See Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (plurality opinion).

It is better, instead, to draw the line that Congress and courts have long drawn between formal judicial remedies. Limitations on actions to "enjoin and restrain" apply to lawsuits that directly tell government actors what to do. But, absent a clear expression of intent, Congress does not strip courts of their other traditional powers to administer justice, declare law, or set aside unlawful government actions.

CONCLUSION

For the reasons stated herein, *amici* respectfully urge this Court to affirm the court of appeals' judgment.

Respectfully submitted,

Kelsi Brown Corkran
Counsel of Record
Rupa Bhattacharyya
William Powell
INSTITUTE FOR CONSTITUTIONAL ADVOCACY & PROTECTION, GEORGETOWN LAW
600 New Jersey Ave., NW
Washington, DC 20001
(202) 661-6728
kbc74@georgetown.edu

Counsel for Amici Curiae

November 23, 2026

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Sergio Campos
Professor of Law
Boston College School of Law

Maureen S. Carroll
Professor of Law
University of Michigan Law School

Myriam E Gilles
Catharine Waugh McCulloch Professor of Law
Northwestern Pritzker School of Law

J. Maria Glover
Carmack Waterhouse Professor of Law
Georgetown University Law Center

Helen Hershkoff
Herbert M. and Svetlana Wachtell Professor of
Constitutional Law and Civil Liberties
NYU School of Law

David Marcus
Professor of Law
UCLA School of Law

Howard M. Wasserman
Professor of Law
FIU College of Law

Michael J. Wishnie
William O. Douglas Clinical Professor of Law
Yale Law School

Adam S. Zimmerman
Robert Kingsley Professor of Law
USC Gould School of Law