No.

In the Supreme Court of the United States

JEFFREY MOATS,

Petitioner,

v.

NATIONAL CREDIT UNION
ADMINISTRATION BOARD, ET AL.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After Jeffrey Moats served as a CEO for a small credit union for 25 years, he found himself subject to an investigation by the National Credit Union Administration Board (NCUA). Faced with the prospect of litigating not only before an administrative law judge insulated by an unconstitutional for-cause removal restriction, but also without the jury trial the Constitution guarantees for claims seeking civil penalties, he filed suit in district court seeking to enjoin the unconstitutional NCUA proceedings. Relying on this Court's decision in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), Moats's lawsuit focused on constitutional issues collateral to the underlying issues and asserted a "here-and-now injury" from being subjected to an illegitimate proceeding, led by an illegitimate decisionmaker. But the district court nonetheless dismissed Moats's lawsuit for want of jurisdiction, reading the Federal Credit Union Act to explicitly preclude district court jurisdiction, so *Axon* did not apply. The Fifth Circuit affirmed.

The questions presented are:

1. Whether the Federal Credit Union Act strips federal district courts of jurisdiction over constitutional challenges to a federal agency's structure, procedures, and existence.

2. Whether Congress may, consistent with Article III, strip federal district courts of jurisdiction over structural constitutional challenges to a federal agency's authority to proceed at all.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, plaintiff-appellant below, is Jeffrey Moats.

Respondents, defendant-appellees below, are the National Credit Union Administration Board, Kyle Hauptman in his official capacity as a Board member, and Jennifer Whang in her official capacity as an Administrative Law Judge.

Former Board member Rodney Hood, in his official capacity as a Board member of the National Credit Union Administration, was also a defendant-appellee below, but his term expired August 2, 2023. Former Board member Tanya Otsuka succeeded former Board member Rodney Hood, but she was fired by President Trump on April 16, 2025. Former Board member Todd Harper, in his official capacity as a Board member of the National Credit Union Administration, was also a defendant-appellee below, but he was fired by President Trump on April 16, 2025. They are no longer parties to these proceedings.

STATEMENT OF RELATED CASES

This case arises from the following proceedings:

Moats v. Nat'l Credit Union Admin. Bd., No. 24-40259 (5th Cir.) (opinion issued Aug. 25, 2025; revised Sep. 23, 2025; petition for rehearing en banc denied Mar. 19, 2026); and

Moats v. Nat'l Credit Union Admin. Bd., No. 3:23-CV-147 (S.D. Tex.) (memorandum opinion and order granting defendants' motion to dismiss and denying plaintiff's motion for summary judgment issued Apr. 9, 2024).

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court's Rule 14(b)(iii).

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INTRODUCTION

This case presents a recurring issue of exceptional importance to our constitutional system. *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), held that Congress may not *implicitly* strip courts of jurisdiction over structural constitutional challenges to federal agencies. But *Axon* left open a more fundamental question: May Congress *explicitly* strip federal courts of jurisdiction over structural constitutional challenges to a federal agency's authority to proceed? The Fifth Circuit answered yes—consigning Petitioner Jeffrey Moats to years of proceedings before officers whose authority is constitutionally illegitimate.

Moats challenges both the "structure and authority" of the National Credit Union Administration Board (NCUA)—specifically, that his administrative law judge is unconstitutionally shielded from removal and that he has a constitutional right to a jury trial. App.2a-3a. In recent years, this Court has repeatedly recognized the importance of these structural constitutional claims. Administrative regimes that "violate[] the separation of powers . . . inflict[] a 'here-and-now' injury on affected third parties." *Seila Law LLC v. CFPB*, 591 U.S. 197, 212 (2020) (quoting *Bowsher v. Synar*, 478 U.S. 714, 727 n.5 (1986)). Resolving these claims is precisely what federal courts exist to do—especially because "agency adjudications are generally ill suited to address structural constitutional challenges." *Carr v. Saul*, 593 U.S. 83, 92 (2021). Yet the district court here dismissed Moats's claims for lack of jurisdiction, and the Fifth Circuit affirmed.

The Fifth Circuit held that the NCUA's enabling statute *explicitly* strips federal district courts of jurisdiction over constitutional challenges to ongoing

NCUA enforcement proceedings, precluding respondents like Moats from pressing these claims until after the agency process ends. That holding raises two questions warranting this Court's review.

The first is textual. The Federal Credit Union Act's (Act) jurisdiction-stripping provision bars judicial review of agency "notice[s]" and "order[s]," but says nothing about constitutional claims, 28 U.S.C. § 1331, or structural challenges to the agency's power to proceed. *Axon* and *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010), establish that such claims are wholly collateral to agency proceedings, fall outside agency competence, and inflict a present injury the moment a party is subjected to an unlawfully structured adjudication. Stripping a party of meaningful judicial relief from that injury requires unambiguous statutory language. The Act provides none.

The second question, which *Axon* left open, is constitutional. Even if the Act clearly reached structural constitutional claims, Congress lacks the power to make that choice. This Court has long recognized that certain claims carry a constitutional guarantee of access to a federal court—not merely a presumption that Congress intended to preserve such access. *Axon* said as much comparing the harms from deferred review to the Court's "established immunity doctrines," recognizing that the injury is complete when proceedings begin, and no later remedy can restore the right not to be subjected to an unconstitutional tribunal in the first place. A scheme that channels such claims exclusively to post-proceeding appellate review does not merely delay judicial resolution—it eliminates it.

Unfortunately, the Fifth Circuit is not alone in misreading this Court's precedent to trap litigants in unconstitutional proceedings, effectively eliminating meaningful judicial review. Other courts have made the same error, and only this Court can correct it. The issue also has practical importance: allowing courts to address structural constitutional defects at the outset avoids difficult remedial questions after unconstitutional principles have run their course. Enjoining the unconstitutional action at the outset is both cleaner and more faithful to the Constitution than fashioning a remedy after the fact.

The Fifth Circuit has condemned Moats to an administrative track that could last years even though his constitutional claims are plainly meritorious. The for-cause removal protection shielding the agency's administrative law judges from presidential control violate *Seila Law* and *Trump v. Slaughter*, No. 25-332, 2026 WL 1855612 (U.S. Jun. 29, 2026). And the claims against him are precisely the type this Court held in *SEC v. Jarkesy*, 603 U.S. 109 (2024), must be heard in an Article III court. There is no reason to force years of proceedings before unconstitutional officers only to order a do-over. The Court should grant the Petition.

OPINIONS BELOW

The Fifth Circuit's opinion, 153 F.4th 449, is reproduced at App.1a-11a; the Fifth Circuit's unpublished order denying rehearing en banc is reproduced at App.48a-49a. The district court's unpublished opinion is reproduced at App.12a-20a.

JURISDICTION

The Fifth Circuit issued its decision on September 23, 2025, and denied a petition for rehearing en banc on March 19, 2026. Justice Alito granted an extension of time to file a petition for writ of certiorari to July 8, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are included at App.67a-89a.

STATEMENT OF THE CASE

A. Legal Background

1. Article III of the Constitution vests the judicial power of the United States in federal courts. U.S. Const. art. III, § 1. As Justice Story recognized, the "judicial power of the United States *shall*"—not may—"be vested" in the federal courts. *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 328 (1816) (emphasis added).

Congress gave the federal district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. That grant includes the power "to issue injunctions to protect" constitutional rights. *Bell v. Hood*, 327 U.S. 678, 684 (1946).

Congress may exclude claims from district courts explicitly or implicitly. On several occasions this Court has recognized that Congress may divest district courts of their ordinary jurisdiction where the procedures are "designed to permit agency expertise to be brought to bear on particular problems." *Free*

Enter. Fund, 561 U.S. at 489 (cleaned up). Thus, parties often must await final agency action before seeking review. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207-12 (1994); *Elgin v. Dep't of Treasury*, 567 U.S. 1, 10-15 (2012).

But a statutory review scheme does not strip district court jurisdiction over "every claim concerning agency action." *Axon*, 598 U.S. at 185. When a party challenges the agency's structure—not merely its actions—the Court has not forced the party to endure the proceeding before raising that claim. Being subjected to an unconstitutional process is itself an ongoing injury. Because displacing § 1331 jurisdiction requires an affirmative congressional choice, any presumption runs in favor of jurisdiction: "the question is not whether Congress has specifically conferred jurisdiction, but whether it has taken it away." *Elgin*, 567 U.S. at 25 (Alito, J., dissenting).

This Court has twice held that such schemes do not oust district court jurisdiction over structural constitutional claims. *See Axon*, 598 U.S. at 196; *Free Enter. Fund*, 561 U.S. at 489. As *Axon* explained, structural constitutional claims are "detached" and "distant" from agency policy. *Axon*, 598 U.S. at 194. No amount of agency expertise can remedy the injury of being compelled to endure an unconstitutional proceeding. Even if a later court could order a new hearing, that relief cannot undo the harm inflicted by subjecting the party to the challenged process. *Id.* at 195.

2. Congress enacted the Federal Credit Union Act during the Great Depression to expand access to credit for working Americans. Credit unions are not-for-profit cooperative associations organized "for the pur-

pose of promoting thrift among its members and creating a source of credit for provident or productive purposes." 12 U.S.C. § 1752(1). To protect the system of cooperative credit, Congress created the National Credit Union Administration. The NCUA is an independent administrative agency. By law, it shall be composed of "three members"; "[n]ot more than two members of the Board shall be members of the same political party." 12 U.S.C. § 1752a(b)(1). Each member shall be "appointed by the President, by and with the advice and consent of the Senate" for terms of six years. *Id.* Despite the six-year term, the President may remove the NCUA Board members at will. *See* App.59a; *Harper v. Bessent*, 146 S. Ct. 839 (2025) (denying certiorari brought by two fired NCUA Board members).

The NCUA plays the same role for credit unions that the Federal Reserve and the Federal Deposit Insurance Corporation (FDIC) play for banks: lender of last resort, primary federal regulator, and administrator of the national insurance fund for credit unions. 12 U.S.C. § 1781(a). All federally chartered credit unions and federally insured credit unions must pay into the national insurance fund that "protect[s] the deposits of nearly 94 million account holders." *Nat'l Credit Union Admin. Bd. v. Barclays Cap. Inc.*, 785 F.3d 387, 389 (10th Cir. 2015). Credit-union failures cause losses to the insurance fund and risk destabilizing the entire system. *Ibid.*

To that end, the statute confers on the Board broad powers "to prescribe rules and regulations to accomplish" the agency's obligations and "to manage the NCUA itself." *Swan v. Clinton*, 100 F.3d 973, 983 (D.C. Cir. 1996). The NCUA may "place failing credit unions into conservatorship to rehabilitate them," and, if those efforts fail, to "serve as the failed institution's liquidation agent." *Barclays Cap.*, 785 F.3d at 389.

To protect those funds before liquidation becomes necessary, the NCUA may investigate whether a credit union has engaged in "unsafe or unsound practices." 12 U.S.C. § 1786(b)(1). Relatedly, the NCUA may act against "institution-affiliated part[ies]"—including credit union directors and officers, *see id.* § 1786(r)—when it has "reasonable cause to believe" they are "engaging or ha[ve] engaged in an unsafe or unsound practice in conducting the business of such credit union." *Id.* § 1786(e)(1). Upon such a finding, the NCUA issues a notice of charges setting out the alleged violations and its intention to seek sanctions. *See ibid.* (cease-and-desist order); § 1786(e)(3) (restitution); § 1786(g)(1) (bar on "further participation . . . in the conduct of the affairs of any insured credit union"); and § 1786(k)(2) (civil money penalties).

The notice triggers the right to an administrative hearing, run by the Office of Financial Institution Adjudication (OFIA) through a delegation from the Board, the FDIC, the Federal Reserve, and the Office of the Comptroller of the Currency. 12 C.F.R. § 747.3(*l*); *id.* § 19.101. An OFIA administrative law judge conducts the initial hearing under the Administrative Procedure Act. *Id.* § 1786(e)(1). OFIA's ALJs are appointed by the above banking agencies, *see* Nat'l Credit Union Admin., Off. of Gen. Couns., *Board Action Memorandum* 1 (Sep. 13, 2018), https://tinyurl.com/mt8d9kr2, exercise significant adjudicative authority, and are substantially insulated from presidential supervision. They oversee discovery, issue subpoenas and protective orders, resolve motions, and issue "recommended decision[s]." *See* 12 C.F.R. § 747.5(b).

Under the APA, "[a]n action may be taken against an [ALJ] . . . by the agency in which [she] is employed only for good cause established and determined by the Merit Systems Protection Board [(MSPB)] on the record after opportunity for hearing before the Board." 5 U.S.C. § 7521(a). OFIA ALJs cannot be referred to the MSPB unless *all* four banking agencies agree to initiate removal proceedings. *Burgess v. FDIC*, 639 F. Supp. 3d 732, 738 (N.D. Tex. 2022), *rev'd on other grounds*, *Burgess v. Whang*, 152 F.4th 579 (5th Cir. 2025); *see also Trump v. Cook*, No. 25A312, 2026 WL 1855613, at *16 (U.S. Jun. 29, 2026) (holding that the Federal Reserve—one of the agencies—is governed by Board members who themselves enjoy for-cause removal protection, further insulating OFIA ALJs from presidential control). MSPB members, in turn, may be removed by the President only for "inefficiency, neglect of duty, or malfeasance in office." 5 U.S.C. § 1202(d). Like the PCAOB members in *Free Enterprise Fund*, OFIA ALJs are insulated from presidential control by at least one level of for-cause-removal protections. *CBW Bank v. FDIC*, 769 F. Supp. 3d 1204, 1206 (D. Kan. 2025) (noting FDIC's Notice of Change in Position "that the United States will no longer defend multiple layers of removal restrictions of administrative law judges" (cleaned up)).

The ALJ may issue an initial decision on contested questions of fact and law, *see* Off. of Fin. Inst. Adjudication, *Our Judges*, https://tinyurl.com/2np34byp (last visited Jul. 4, 2026), which can be appealed to the Board, *see* 12 C.F.R. § 747.4. The Board can issue various remedial orders, including civil monetary penalties and prohibitions on participating "in the conduct of the affairs of any insured credit union." 12 U.S.C. § 1786(g)(1)(C), (k)(2). OFIA ALJs often defer to the staff of the prosecuting agency, expressing "great deference" to the "opinions," "conclusions," and "predictive judgments" of bank examiners. *See*, *e.g.*, *In re First Bank of Jack.*, FDIC-96-155b, 1998 WL 363852, at *11 (FDIC May 26, 1998), *aff'd mem.*, *First Bank of Jack. v. FDIC*, 180 F.3d 269 (11th Cir. 1999); *In re Bank 1st, Albuquerque*, FDIC-09-025b, 2010 WL 1936984, at *3 (FDIC Mar. 16, 2010); *In re Proposed Acquisition by * * * of * * * Nat'l Bank & Tr. Co.*, OCC-84-08, 1985 WL 203015, at *21 (OCC Aug. 14, 1985) (redacted in original).

Rather than permitting district-court review of agency notices and orders, the Federal Credit Union Act channels review through a specialized scheme. The Act provides that "no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section . . . to review, modify, suspend, terminate, or set aside any such notice or order." 12 U.S.C. § 1786(k)(1). Instead, affected parties may obtain review of final orders in "the court[s] of appeals of the United States," which have "exclusive" "jurisdiction" "to affirm, modify, terminate, or set aside" those orders. *Id.* § 1786(j)(2). Unlike other provisions of the Federal Credit Union Act, *see, e.g.*, 12 U.S.C. § 1785(g)(1) ("notwithstanding any State constitution or statute which is hereby preempted"); 12 U.S.C. § 1787(e)(1) ("Notwithstanding any other provision of Federal law, the law of any state, or the constitution of any State."), this provision says nothing about actions challenging the constitutionality of the Board's structure, procedures, or existence.

B. Factual and Procedural Background

1. Jeffrey Moats spent more than 25 years as CEO of the Edinburg Teachers Credit Union, a small credit union in south Texas, consistently ranking at or near the top of performance metrics. App.2a; App.56a. In March 2021, the Texas Credit Union Department placed Edinburg in a conservatorship and appointed the NCUA as the conservator. App.2a. The NCUA's first order of business was to fire Moats. App.2a. Adding insult to injury, the NCUA seized his personal property, documents, and over $1 million in retirement benefits, accusing him of commingling personal and credit-union assets. App.2a; App.53a.

After finding no evidence to support the allegation, Moats received his personal property and retirement benefits. But he did not receive the post-termination benefits, so he sued Edinburg in Texas state court to obtain those benefits. App.2a-3a.

In April 2023—two years after Edinburg entered conservatorship, and one day before Edinburg's deadline to answer Moats's state-court petition—the NCUA served Moats with a Notice of Charges. App.57a. The Notice alleged that Moats breached fiduciary duties to Edinburg and unjustly enriched himself; and demanded $4 million in restitution, at least $1 million in civil penalties, and a lifetime bar from serving as a director, officer, or participant in the affairs of any insured depository institution. App.57a-58a.

2. Moats responded to the NCUA's escalation by filing suit in the Southern District of Texas, challenging the constitutionality of OFIA ALJs, the NCUA's adjudication process, and the NCUA's structure itself. App.58a. Moats argued that under *Lucia v. SEC*,

OFIA ALJs are executive officers subject to the Appointments Clause. 585 U.S. 237, 247-51 (2018). And under an equally straightforward application of *Free Enterprise Fund*, their dual-layer protections from removal are unconstitutional. In fact, the Fifth Circuit already concluded that ALJs' for-cause protection from removal was unconstitutional. App.60a-61a; *see Jarkesy v. SEC*, 34 F.4th 446, 463 (5th Cir. 2022), *aff'd*, 603 U.S. at 140-41. Moats further argued that the Seventh Amendment guaranteed him a jury trial and the combination of investigatory, prosecutorial, adjudicative, and appellate functions within a single agency violates the Due Process Clause. App.61a-62a. He also argued that giving the NCUA the discretion to either bring in-house adjudicative actions or file suit in federal court violates the nondelegation doctrine. App.63a-65a.

The NCUA opposed Moats's motion for summary judgment on jurisdictional grounds, arguing that the Federal Credit Union Act's judicial review provision expressly ousts district courts of jurisdiction over structural constitutional challenges to the NCUA. App.13a. The district court dismissed Moats's complaint for lack of subject-matter jurisdiction and denied Moats's summary judgment motion. App.20a. It acknowledged that its decision created an intra-circuit split with the Northern District of Texas, which interpreted a substantively identical statute to not explicitly or implicitly strip the court of jurisdiction over structural constitutional claims. App.16a-17a; *see also Burgess*, 639 F. Supp. 3d 732. Due to the unresolved intra-circuit conflict, the Fifth Circuit assigned the two cases to the same panel.

3. The Fifth Circuit unanimously affirmed Moats's dismissal. App.2a-11a. The panel began by applying

Burgess—which that same panel had decided less than an hour before deciding this case, involving materially identical language—and held that § 1786(k)(1) explicitly bars district court jurisdiction over Moats's challenge. App.6a-7a. *Burgess* also rejected the petitioner's argument that *Webster v. Doe*, 486 U.S. 592 (1988), demands additional clarity to preclude constitutional claims—an argument *Moats* adopted here—because *Webster*'s heightened standard applies only when Congress forecloses *all* judicial review—not when it "simply channels judicial review of a constitutional claim to a particular court," here the courts of appeals under § 1818(h)(2). *See* App.41a.

The panel also rejected Moats's argument that *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1 (2000), requires Congress to expressly reference 28 U.S.C. § 1331 to strip district court jurisdiction. App.7a-10a. The court held that *Shalala* requires no such "magic words"; rather, it distinguished statutes that channel review from those that eliminate review entirely. App.10a. Because § 1786 channels review to the circuit courts, the panel affirmed dismissal. The Fifth Circuit denied en banc review. App.48a-49a.

REASONS FOR GRANTING THE PETITION

Under this Court's decisions in *Slaughter*, *Lucia*, and *Jarkesy*, Moats's case is airtight. The dual-layer removal protections shielding NCUA ALJs are unconstitutional, and forcing Moats through administrative adjudication violates his Seventh Amendment right to a jury trial. Yet the Fifth Circuit held that federal courts cannot remedy that injury until Moats first submits to the unlawful process.

That cannot be the law. As *Axon* recognized, a party suffers a constitutional injury when forced to endure an allegedly unconstitutional proceeding. Once incurred, that injury cannot be undone simply through review of a final agency order. Nonetheless, by reading § 1786 to bar all such claims from federal district courts, the court below concluded that Moats could not bring his structural claims in district court. That conclusion is especially untenable because the Constitution's structural protections safeguard individual liberty no less than its express guarantees.

The Fifth Circuit's jurisdictional ruling misreads both this Court's precedents and the Act's text, treating a general bar on injunctive relief as sweeping in structural constitutional claims the statute never mentions. Only this Court can correct that error. The Act's jurisdiction-stripping provision says nothing about constitutional claims, 28 U.S.C. § 1331, or any indication that Congress intended that result, and this Court's clear-statement rule requires far more before Congress may displace district-court jurisdiction. Correcting that error will reaffirm existing doctrine and ensure meaningful remedies for constitutional violations.

This case raises a second, deeper question that *Axon* left open: whether Congress could *ever* accomplish what the Fifth Circuit held that it accomplished here. Denying district-court jurisdiction over Moats's structural claims would deprive him of meaningful judicial review. As this Court explained in *Axon*, structural constitutional rights are "effectively lost" if review is deferred until after the challenged proceeding has concluded. *Axon*, 598 U.S. at 192 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). A party cannot vindicate a right not to be subjected to an unconstitutional proceeding by waiting until it is over. *Ibid.* Requiring Moats to await final agency action denies relief for the very injury his claims seek to prevent. That result also conflicts with *Marbury v. Madison*'s foundational premise that the United States is "a government of laws, and not of men"—one that ceases to deserve that title if "the laws furnish no remedy for the violation of a vested legal right." 5 U.S. (1 Cranch) 137, 163 (1803).

The Court's intervention is particularly warranted because Moats's claims are so plainly meritorious. This Court has established that ALJs are "Officers of the United States" and that restrictions limiting the President's ability to supervise and remove executive officers raise serious constitutional concerns. At minimum, OFIA ALJs continue to enjoy for-cause removal protection, and may remain subject to multiple layers of such protection. Either way, they remain significantly insulated from presidential supervision. Indeed, the Solicitor General has concluded that "multiple layers of removal restrictions for administrative law judges" violate Article II and has informed Congress that the United States will no longer defend those restrictions in court. Letter from Acting Solicitor General Sarah M. Harris to Speaker of the House Mike Johnson (Feb. 20, 2025), https://perma.cc/9CBU-HTX4. The Court has also established that the Seventh Amendment guarantees jury trials for common-law claims. The NCUA seeks restitution and fines exceeding $5 million based on well-established common-law causes of action such as breach of fiduciary duty and fraud.

The answer to this ongoing constitutional injury is simple: federal courts exist to hold government officials accountable and stop constitutional violations before they run their course. This Court has recognized that principle in cases involving the Constitution's structural protections, which guard the governed from unaccountable officials. No statutory magic words alter that conclusion. The Court should intervene to end this otherwise unremediable constitutional violation.

At minimum, the Court should hold this case pending its decision in *Johnson v. United States Congress*, No. 25-735 (cert. granted Apr. 6, 2026). Like this case, *Johnson* raises whether a specialized review scheme may foreclose district-court jurisdiction over constitutional claims otherwise cognizable in federal court. The government in *Johnson* advances the same arguments this Court rejected in *Axon*. Granting certiorari is the better course, but if the Court does not, it should at least hold this petition pending *Johnson* given the cases' substantial overlap.

I. The Court Should Grant Certiorari To Decide Whether Congress Explicitly Stripped District Courts Of Jurisdiction Over Structural Constitutional Challenges

This Court has reiterated that administrative regimes that "violate[] the separation of powers . . . inflict[] a 'here-and-now' injury on affected third parties." *Seila Law*, 591 U.S. at 212 (quoting *Bowsher*, 478 U.S. at 727 n.5); *cf. Ryder v. United States*, 515 U.S. 177, 182-83 (1995). Yet the Fifth Circuit held that no court may remedy that "here-and-now" injury until Moats first endures the unconstitutional process. In the Fifth Circuit's view, a single phrase in the

Federal Credit Union Act—"no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order"—strips district courts of jurisdiction over constitutional challenges to an agency's structure, procedures, and existence—even challenges involving structural defects the Fifth Circuit had already identified as unconstitutional. *See Jarkesy*, 34 F.4th at 451, 465-66 (finding SEC proceedings were unconstitutional because petitioners "were deprived of their Seventh Amendment right to a jury trial" and "the statutory removal restrictions for SEC ALJs are unconstitutional"), *aff'd*, 603 U.S. at 140-41 (affirming Seventh Amendment argument without reaching the remaining constitutional issues).

That reading is wrong. Nothing in the Act's text, structure, or history shows the clear congressional intent to displace district-court jurisdiction over structural constitutional claims, and this Court's precedents in *Free Enterprise Fund* and *Axon* foreclose it.

1. In *Free Enterprise Fund*, this Court held that an administrative review scheme did not strip federal district courts of jurisdiction over "an Appointments Clause or separation-of-powers claim." 561 U.S. at 487-91 & n.2. It explained that agency-review provisions preclude district-court jurisdiction only if two conditions are met: first, the statutory scheme must display a "fairly discernible [congressional] intent" to channel review; and second, the claim must be "the type Congress intended to be reviewed within the statutory structure." *Id.* at 489 (cleaned up). The Court then considered three factors: whether channeling review would "foreclose all meaningful judicial review," whether the claims are "wholly collateral" to the statutory review scheme, and whether they fall "outside

the agency's expertise." *Ibid.* (quoting *Thunder Basin*, 510 U.S. at 212-13). First, the Court concluded that the statute did not "expressly limit that jurisdiction other statutes confer on district courts." *Ibid.* Second, applying the three *Thunder Basin* factors, the Court held that structural claims fell "outside" the agency's "competence and expertise" and did "not require technical considerations of agency policy." *Id.* at 491 (cleaned up). And reading the statute to strip district-court jurisdiction would have denied petitioners any "meaningful[] [way to] pursue their constitutional claims." *Id.* at 490. Together, these principles confirm that district courts may hear challenges to an agency's structure.

Axon reaffirmed those principles and again permitted immediate review of structural challenges. *Axon*, 598 U.S. at 186. Being forced to undergo an unconstitutional proceeding is itself a present injury, and delayed review forfeits the right not to endure it—a point that applies equally here. *Id.* at 192. The claims are "collateral" because, like the petitioners in *Axon*, Moats challenges the agency's "power to proceed at all, rather than actions taken in the agency proceedings"—he contests the agency's existence and authority, not a specific order. *Id.* at 192-93. They also lie beyond agency competence because agencies have no special expertise in separation-of-powers questions. *Id.* at 194; *see also Carr*, 593 U.S. at 92 ("[A]gency adjudications are generally ill suited to address structural constitutional challenges."); *Califano v. Sanders*, 430 U.S. 99, 109 (1977) ("Constitutional questions obviously are unsuited to resolution in administrative hearing procedures and, therefore, access to the courts is essential to the decision of such questions.").

Axon confirms that litigants need not run the gamut of administrative adjudication before obtaining Article III review of structural constitutional claims. That reasoning controls here. Yet Moats faces years of constitutional injury before Article III review becomes available, and by then, any remedy will come too late. Nothing suggests Congress intended to force him to endure that injury before bringing claims materially indistinguishable from those in *Free Enterprise Fund* and *Axon*.

2. The Fifth Circuit reached a contrary conclusion by reading the Federal Credit Union Act to "explicitly preclude[] district court jurisdiction" over Moats's structural constitutional claims. App.10a. The panel relied on its concurrently issued decision in *Burgess v. Whang*, which interpreted a materially identical provision of the Federal Deposit Insurance Act. App.6a-7a; App.22a-47a. The court concluded that the phrase "no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order" sweeps in all claims—constitutional or otherwise—because, as the district court had put it, "any means any." App.10a (quoting App.19a) (internal quotations omitted). Section 1786(k)(1) channels review of agency notices and orders, but that is not a clear statement requiring litigants to endure an allegedly unconstitutional proceeding before raising structural constitutional claims. Section 1786 says nothing about constitutional challenges to the agency's structure, procedures, or existence. Yet the Fifth Circuit treated the statute's general reference to "any notice or order" as sufficient to foreclose claims this Court has repeatedly recognized as distinct from ordinary challenges to agency action. That reading allowed the

panel to sidestep this Court's structural-claims precedents. Absent a clear statement, the Fifth Circuit was wrong to do so. And every case the Fifth Circuit invoked involved only nonstructural claims; none addressed whether Congress may require a plaintiff to submit to an allegedly unconstitutional tribunal before obtaining judicial review of that injury.

Start with first principles. Congress has conferred on federal district courts jurisdiction over "all" civil actions arising under the Constitution and federal law. 28 U.S.C. § 1331. Although Congress may limit that jurisdiction, this Court permits displacement only in limited circumstances: either through a clear statement or through a statutory scheme if it provides a specialized process that preserves meaningful judicial review in an Article III court. *See Free Enter. Fund*, 561 U.S. at 489; *Thunder Basin*, 510 U.S. at 207-12.

These requirements grow more demanding when constitutional claims are at stake: "[W]here Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear." *Webster*, 486 U.S. at 603. And courts must avoid construing statutes to foreclose meaningful review of constitutional questions. *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 681 n.12 (1986). Courts therefore do not infer from silence that Congress barred Article III review of constitutional claims.

The Act falls far short. It states that "no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section." 12 U.S.C. § 1786(k)(1). The text contains no reference to 28 U.S.C. § 1331, constitutional claims, or any declaration that the review scheme is "exclusive" or the "sole" avenue for relief. When Congress wishes to channel all claims, including constitutional ones, it says so expressly. *See, e.g.*, 8 U.S.C. § 1252(b)(9) (channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions"). The Federal Credit Union Act itself shows Congress's ability to reference constitutional law when it chooses. *See* 12 U.S.C. § 1785(g)(1) ("If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute."); § 1787(e)(1) ("Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State."). Section 1786(k)(1) nowhere mentions constitutional claims, much less structural constitutional claims asserting a right not to be subjected to the proceeding itself. The Fifth Circuit therefore erred in treating a general prohibition on judicial review of "any notice or order" as a clear statement foreclosing the claims recognized in *Free Enterprise Fund* and *Axon*. Had Congress intended that result, it knew how to say so.

The Fifth Circuit tried to evade the clear-statement rule on the theory that it does not apply "when review is available in the court of appeals." App.6a; App.40a-41a. That reasoning fails in two fundamental respects.

First, the court conflated two distinct questions: *whether* jurisdiction is stripped and *what* claims the stripping reaches. To be sure, the Act may limit some district-court jurisdiction. But the clear-statement rule requires something more before that language can be read to foreclose review of structural constitutional claims. *Webster*, 486 U.S. at 603.

Second, the Fifth Circuit's reliance on *Elgin* to neutralize *Webster* is misplaced because there were no structural constitutional claims at issue. App.7a; App.40a-41a. *Elgin* involved federal employees who wanted their jobs back and whose constitutional challenge was the vehicle for getting them. Those claims fell squarely within the heartland of the Civil Service Reform Act's review scheme and were fully addressable by the Federal Circuit. *Elgin*, 567 U.S. at 7-8. The claims here—challenging the adjudicator's very authority—are categorically different. As *Axon* explains, these claims "allege injury not from this or that ruling but from subjection to all agency authority" and "would remain no matter how much expertise could be 'brought to bear' on the other issues these cases involve." *Axon*, 598 U.S. at 195. *Elgin* therefore does not apply to *Axon*-type claims, which lie outside the ordinary channeling framework and cannot be swept into that framework without a clear statement.

Nor do the cases on which the Fifth Circuit relied resolve the question presented here. *MCorp Financial* involved a challenge to an agency order—so it neither applied *Webster*'s clear-statement rule nor addressed whether "explicit" preclusion language can bar structural constitutional claims. *Bd. of Governors of Fed. Rsrv. Sys. v. MCorp Fin. Inc.*, 502 U.S. 32, 44 (1991); *see also* App.6a; App.36a-37a & n.5. And *Elgin*, as noted, addressed merits-entangled constitutional claims that fit squarely within an existing review scheme, not freestanding structural attacks on agency authority.

By treating routine channeling cases as if they answered a distinct question—whether Congress explicitly precluded structural constitutional claims—the Fifth Circuit erased the very distinction this Court drew in *Axon*. If a broadly worded jurisdictional bar suffices to foreclose immediate Article III review of claims that *Axon* deemed categorically different, then *Webster*'s clear-statement rule does no work. Courts would no longer need clear text; general language would always suffice. This Court should reject that result. The clear-statement rule ensures that Congress—not courts—decides whether to eliminate judicial review of constitutional rights.

The Fifth Circuit's treatment of *Shalala v. Illinois Council on Long Term Care, Inc.* is even more obviously incorrect. App.7a-11a. According to the court, *Shalala* shows that Congress need not use "magic words" to preclude jurisdiction and that agency channeling raises "no constitutional infirmity" so long as judicial review eventually follows. App.10a. That reading misses the point. This Court emphasized that the presumption against preclusion "is not implicated by [a] provision postponing review"—because the statutory scheme there preserved ultimate Article III review of constitutional and statutory claims in the courts following agency proceedings. *Shalala*, 529 U.S. at 19. That logic cuts against the Fifth Circuit, not in its favor. Where a statute would not just channel but effectively foreclose meaningful review of structural constitutional claims—claims that cannot be remedied after the fact under *Axon*—the presumption against preclusion is at its apex and requires an especially clear congressional statement. By ignoring the distinction between channeling and eliminating review, the Fifth Circuit used *Shalala* to support precisely the outcome *Shalala* cautioned against.

3. The better reading of the Federal Credit Union Act is that it does not reach structural constitutional

claims. The Act bars courts from "review[ing], modify[ing], suspend[ing], terminat[ing], or set[ting] aside" any notice or order issued under 12 U.S.C. § 1786 or § 1790d. 12 U.S.C. § 1786(k)(1). That language describes traditional challenges to agency decisions or ordinary procedures—claims relating to "any specific substantive decision" or "the commonplace procedures agencies use to make such a decision." *Axon*, 598 U.S. at 189. Those are the nonstructural claims for which the Act provides appellate review.

Structural constitutional claims do not fit that description. Moats does not seek to review or set aside an agency decision on the ground that it reached the wrong result. Rather, he seeks a declaration that the NCUA may not subject him to proceedings before an unconstitutionally structured tribunal. That challenge is wholly collateral to any agency decision and does not depend on the merits of the agency's actions. He does not ask a court to second-guess an agency ruling; he raises a threshold objection to the proceeding's legitimacy.

The statute's internal references reinforce this reading. Section 1786(k)(1) invokes three times "this section or section 1790d of this title" to define the scope of its bar. If Moats is correct—as this Court's precedents confirm—then any resulting notice or order would not issue "under this section or section 1790d" at all, because Congress cannot authorize unconstitutional conduct. *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973) ("[N]o Act of Congress can authorize a violation of the Constitution."). The jurisdictional bar thus applies only to "notice[s]" and "order[s]" issued under a lawfully constituted exercise of authority, not proceedings challenged as unconstitutional from the outset.

The chronology of the relevant enactments confirms this reading. Section 1786(k)(1) was enacted in its current form in 1970. Pub. L. No. 91-468, 84 Stat. 994, 1009 (1970). Congress subsequently amended 28 U.S.C. § 1331 in 1976 and again in 1980 to eliminate the amount-in-controversy requirement for federal question jurisdiction, confirming district courts' jurisdiction over cases arising under the Constitution. Pub. L. No. 94-574, 90 Stat. 2721 (1976); Pub. L. No. 96-486, 94 Stat. 2369 (1980). When statutes conflict, "the last in order of time shall be preferred to the first." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 327 (2012) (quoting *The Federalist No. 78* (Alexander Hamilton)). Consistent with that principle, this Court has read § 1331 to "confer jurisdiction on federal courts to review agency action, regardless of whether the [earlier-in-time] APA of its own force may serve as a jurisdictional predicate." *Califano*, 430 U.S. at 105. Section 1331 thus cannot be displaced by an earlier, general channeling provision that says nothing about constitutional claims.

4. Other courts have similarly held that Congress may strip district courts of jurisdiction over structural constitutional claims absent exceptionally clear language. *See CBW Bank*, 769 F. Supp. 3d at 1206, 1211 (denying petitioner relief despite government's concession that ALJ removal restrictions do not "comport with the separation of powers and Article II"); *Bonan v. FDIC*, No. 4:23-CV-8, 2023 WL 156852, at *4 (E.D. Mo. Jan. 11, 2023); *Ponte v. FDIC*, No. 24-2379, 2024 WL 4730602, at *6-8 (D.D.C. Oct. 11, 2024); *Ponte v. FDIC*, No. 1:23-cv-00165, 2023 WL 6441976, at *2 (D.R.I. Oct. 3, 2023); *Bohon v. FERC*, 92 F.4th 1121, 1123 (D.C. Cir. 2024), *cert. denied*, 144 S. Ct. 2563

(2024); *Azimov v. U.S. DHS*, No. 22-56034, 2024 WL 687442, at *1 (9th Cir. Feb. 20, 2024); *Perdue Farms Inc. v. Su*, No. 5:24-CV-477-BO-RJ, 2025 WL 338283, at *2 (E.D.N.C. Jan. 29, 2025).

That so many courts have stumbled over this Court's precedent only sharpens the need for this Court's guidance. This Court has never read any statute to strip district courts of jurisdiction to hear challenges to an agency's structure, procedures, or existence. The two times it confronted the question directly, it held the opposite. *See Axon*, 598 U.S. at 195-96; *Free Enter. Fund*, 561 U.S. at 490-91. Any other result defies common sense. A litigant subjected to an ongoing unconstitutional process cannot sensibly be told to wait until it ends before seeking relief. The claim is not that final agency action will someday cause injury; it is that the agency's structure inflicts a "here-and-now injury."

Postponing review does more than leave constitutional harms unaddressed—it creates problems for later. Once an unconstitutional process ends, courts must confront thorny severability questions and provide meaningful relief if they can. *See United States v. Arthrex, Inc.*, 594 U.S. 1, 30-35 (2021) (Gorsuch, J., concurring in part and dissenting in part) (arguing that "[t]he real question" on the separation-of-powers issue was the remedy). The better course is to stop the unconstitutional conduct before any injury occurs.

5. Even if the Act's text were ambiguous—and it is not—the canon of constitutional avoidance would require the same result. Where "an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is

plainly contrary to the intent of Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). Reading the Act to foreclose district-court jurisdiction over structural claims would raise grave constitutional doubts. This Court need not resolve those doubts here—the question whether the Constitution itself forecloses such a reading is addressed in Part II, *infra*—because the better reading avoids the problem entirely. A statutory scheme that operates to deny meaningful judicial resolution of a constitutional question would itself raise "serious constitutional question[s]." *Bowen*, 476 U.S. at 681 n.12. The avoidance canon thus independently supports reading the Act not to reach structural claims and resolving this case on statutory grounds.

II. The Court Should Grant Certiorari To Decide Whether Congress May Strip District Courts Of Jurisdiction Over Structural Constitutional Claims

Even if the Act clearly stripped district-court jurisdiction (it doesn't), Article III would compel the same result. The Fifth Circuit's reading presents the question *Axon* reserved: whether Congress may, consistent with Article III, foreclose district-court jurisdiction over structural constitutional claims. *Axon* confirms that structural constitutional injuries occur when an unconstitutional proceeding begins and cannot be undone—a premise with constitutional consequences independent of any statutory scheme. 598 U.S. at 191. It follows that a scheme routing structural claims exclusively to post-proceeding review provides not delayed vindication, but none at all. However clearly Congress speaks, the

Constitution forbids eliminating review of structural constitutional claims.

Nor is *Axon* alone in treating such injuries as irreparable once the challenged proceeding begins. The right not to suffer a structural constitutional injury resembles rights this Court has held are extinguished—not merely postponed—absent pre-judgment review. *Mitchell v. Forsyth* confirms the analogy *Axon* itself invited. *Axon*, 598 U.S. at 192. Qualified immunity is immediately appealable as of right because immunity from suit is permanently lost once trial occurs. *Mitchell*, 472 U.S. at 526. The right protected by *Seila Law* and *Collins* is analogous: it is a right against being subjected to proceedings conducted by officers who wield executive power unconstitutionally. *Seila Law*, 591 U.S. at 212; *Collins v. Yellen*, 594 U.S. 220, 253 (2021). Once those proceedings conclude, the right is gone. Appellate reversal is beside the point.

This principle—that constitutionally mandated judicial review cannot be deferred out of existence—is not new. *Marbury* and *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991), confirm that where judicial review is constitutionally required, Congress cannot channel it into a forum that effectively forecloses it.

Start with *Marbury v. Madison*. Chief Justice Marshall recognized both that Marbury possessed a legal right and that judicial review depended on access to a proper forum. 5 U.S. (1 Cranch) at 162-63. The question here likewise concerns the adequacy of the forum Congress provided for vindicating constitutional rights. Moats does not seek to avoid judicial review; he seeks access to an Article III court before the injury recognized in *Axon* occurs. A scheme that postpones review of structural constitutional claims until after the proceeding concludes deprives them of meaningful judicial resolution.

This Court's decision in *McNary* illustrates why. There, the Court allowed a broader constitutional challenge to proceed in district court, even though a statutory provision purported to limit judicial review of denials of amnesty applications in the deportation context. The Court recognized that channeling review through individual deportation proceedings would be "tantamount to a complete denial of judicial review" for the class of claims at issue, 498 U.S. at 496-97, and that a court of appeals reviewing an individual case would lack both an adequate record of the pattern-and-practice claim and the fact-finding capacity that only a district court possesses, *ibid.* *McNary* thus confirms two points: first, a nominally available channel of review can be constitutionally inadequate where it cannot vindicate the claim; second, structural claims about the legitimacy of the process itself are precisely the sort that post-hoc review cannot meaningfully redress.

This Court applied the same logic in *Johnson v. Robison*, 415 U.S. 361 (1974), and reaffirmed it in *Weinberger v. Salfi*, 422 U.S. 749 (1975). In both cases, this Court treated the avoidance canon as reflecting an underlying constitutional limit, not merely a tiebreaker for ambiguous text. In *Robison*, the Court explained that it would not read a jurisdiction-stripping statute to reach constitutional challenges where doing so would "raise serious questions concerning the constitutionality of" the statute. 415 U.S. at 366 & n.8 (collecting cases affirming power of Congress to limit jurisdiction). *Salfi* relied on *Robison* to hold that courts should not read statutes to mean that "absolutely no judicial consideration of the issue would be available," because such a result would itself "raise[] a serious constitutional question of the validity of the statute as so construed." 422 U.S. at 762.

Webster's clear-statement rule reflects the same concern. This Court has never had to decide whether the rule is merely a canon of construction or a constitutional limitation on Congress's power, because this Court has never interpreted a statute to eliminate all judicial review of constitutional claims. Instead, the Court has construed jurisdiction-stripping provisions to preserve some avenue for meaningful judicial review. The Fifth Circuit's reading of the statute presents this question.

Together, these decisions show that a review scheme depriving parties of any meaningful opportunity to obtain judicial resolution of constitutional claims raises serious constitutional concerns. *See Bowen*, 476 U.S. at 681 n.12. The Fifth Circuit's decision embraces precisely that approach, holding that parties subjected to an allegedly unconstitutional tribunal must complete the proceeding before any Article III court may determine whether the tribunal is constitutional. That holding cannot be squared with this Court's precedents, and this Court should grant certiorari to resolve the conflict it creates.

III. The Questions Presented Are Important, And This Case Is An Excellent Vehicle To Resolve Them

Although this Court has not yet decided the precise question presented, its recent separation-of-powers decisions establish the constitutional principles that govern the answer. This Court's recent separation-of-powers decisions—*Collins*, *Arthrex*, *Seila Law*, *Jarkesy*, *Lucia*, and *Free Enterprise Fund*—confirm that structural constitutional violations inflict real, cognizable injuries. But when parties may raise those claims is equally important. As this Court recognized in *Axon*, regulated parties "will lose their rights not to undergo the complained-of agency proceedings if they cannot assert those rights until the proceedings are over." *Axon*, 598 U.S. at 192. A party suffering ongoing constitutional injury need not endure that harm before seeking relief. *Axon* made that point explicit, comparing structural constitutional claims to "immunity doctrines," where a deprivation of the right not to stand trial or face other legal processes is a per se irreparable injury. *See ibid.* (quoting *Mitchell*, 472 U.S. at 526). It makes no sense to force parties to endure the entire constitutional injury before seeking relief.

Delaying judicial review of structural constitutional claims creates confusion about remedies, deprives successful litigants of meaningful relief, and imposes institutional costs on the courts.

Raymond J. Lucia's case illustrates the problem. The SEC initiated administrative proceedings against him in September 2012. After a hearing before an unconstitutionally appointed SEC ALJ and review by a Commission insulated from presidential control, the SEC found that Lucia had violated the Advisers Act, imposed a penalty, and barred him from the securities industry for life. Six years later, this Court ruled in his favor on his Appointments Clause claim and held that ALJs are "Officers of the United States." *Lucia*, 585 U.S. at 241.

Yet that ruling did not remedy the injury Lucia had already suffered: being forced to undergo an unconstitutional adjudication. His reward for prevailing was not relief from that completed injury, but a new proceeding before a different ALJ. *See In re Raymond J. Lucia Cos., Inc.*, Admin. Proc. File No. 3-15006, 2020 WL 3264213 (SEC Jun. 16, 2020). Whatever prospective value that remedy provided, it could not restore the years Lucia spent before an unconstitutionally constituted tribunal.

Moats faces the same problem here. Under the decision below, he must litigate before an OFIA ALJ, pursue administrative review, and await a final order before any Article III court may address his structural constitutional claims. But those claims challenge his right not to be subjected to that allegedly unconstitutional process. By the time judicial review becomes available, the injury *Axon* held cognizable will already have occurred.

United States v. Arthrex, Inc. tells a similar story. There, the Court confronted an Appointments Clause challenge to Administrative Patent Judges (APJs) who adjudicate inter partes review proceedings at the Patent Trial and Appeal Board. 594 U.S. at 8-9. The Court held that APJs exercise "significant authority" yet lack meaningful supervision because their decisions cannot be reviewed or reversed by the Director of the Patent and Trademark Office. *Id.* at 23. Although the Secretary of Commerce appoints them as inferior officers, they act as principal officers by finally and unreviewably adjudicating patent rights. *Ibid.* The Court held that the structure was unconstitutional. *Ibid.*

But the harder question was remedy, which exposes the costs of delayed review. Rather than invalidating the entire inter partes review scheme, the Court excised the statutory restriction that prevented the Director from reviewing final written decisions, thereby restoring a layer of executive supervision over APJ rulings. *Arthrex*, 594 U.S. at 23-27. That fix required the Court to speculate whether Congress would have preferred a modified, Director-supervised scheme over no inter partes review at all. *Id.* at 25. Yet severance raises serious problems: it does not "comport[] with traditional judicial remedial principles"; it allows the "Court to serve as a council of revision free to amend legislation," and it ignores that the "judicial power is limited to resolving discrete cases and controversies." *Id.* at 32-33 (Gorsuch, J., concurring in part and dissenting in part). In short, severance "risks undermining the very separation of powers" it "purports to vindicate." *Ibid.* *Arthrex* thus shows the costs of forcing parties to complete an administrative adjudication before seeking judicial relief. Because the constitutional issue went unaddressed at the outset, the regulated party suffered a here-and-now injury; his case (like Lucia's) was remanded for further administrative review, *id.* at 26-27, and the Court was forced to grapple with difficult severability questions.

This case presents no such complications. Because the administrative proceedings were stayed at the district court and Fifth Circuit, the Court can resolve these issues without becoming entangled in remedial problems. *See* C.A. App. 201, 432.

This case also shows what awaits parties who fight back against independent agencies. The NCUA fired Moats, seized his personal property and retirement accounts, and withheld his post-termination benefits. App.2a. After finding no evidence that he commingled personal and credit-union assets, it directed Edinburg to return his property—but still withheld the post-termination benefits. App.56a. The NCUA then served a notice of charges alleging that he breached his fiduciary duties and unjustly enriched himself. App.3a; App.56a-57a.

The agency's litigation posture has been no less opportunistic. The NCUA stipulated that its board members are removable at will by the President—a position Moats relied on in amending his complaint to drop his principal-officer removal claim. *See* Dkt. No. 22, *Moats v. Nat'l Credit Union Admin. Bd.*, No. 23-147 (S.D. Tex.) (joint stipulation of facts); App.59a. After the President removed two of the three board members, those officials reversed course entirely, contending in separate litigation that they could only be fired for cause. *See Harper v. Bessent*, No. 25-367, 2025 WL 2783043 (U.S. Sep. 25, 2025), *cert. denied*, 146 S. Ct. 839 (2025). An agency willing to take contradictory positions in federal court depending on its interests is precisely the kind of institution the Constitution's structural provisions were designed to constrain.

Unless this Court intervenes, parties will continue to defend themselves in the very agency tribunals they challenge as unconstitutional, and agencies like the NCUA will continue to act without meaningful accountability. That cannot stand. "Few things could be more perilous to liberty than some 'fourth branch' that does not answer even to the one executive official who is accountable to the body politic." *Collins*, 594 U.S. at 278-79 (Gorsuch, J., concurring in part). The

Court should grant certiorari and ensure that any victory is not in name only.

IV. At A Minimum, This Court Should Hold The Petition Pending Its Resolution Of *Johnson v. U.S. Congress*

For those reasons, this case independently warrants certiorari. At minimum, however, this Court should hold this Petition pending its decision in *Johnson v. United States Congress*, No. 25-735 (cert. granted Apr. 6, 2026). *Johnson* asks whether the Veterans' Judicial Review Act (VJRA) eliminated district-court jurisdiction over constitutional challenges to acts of Congress affecting veterans' benefits—jurisdiction this Court recognized in *Johnson v. Robison*. Although *Johnson* involves whether a revised statute abrogated a previous holding of this Court, both cases ask whether a specialized statutory review scheme can foreclose district-court jurisdiction over constitutional claims otherwise cognizable in federal court.

The briefs in *Johnson* highlight that overlap. Johnson argues that the VJRA should not be read to "expressly withdraw Section 1331" jurisdiction based on text, context, and structure. Opening.Br.16-28. He then argues that the VJRA does not implicitly strip jurisdiction, either. Opening.Br.37-44. And the government frames the issue as "whether it is fairly discernible from the VJRA that Congress intended covered veterans appealing covered agency actions to proceed exclusively through the statutory review scheme, even in cases in which they raise constitutional challenges to federal statutes." Govt.Cert.Br.7 (quoting *Elgin*, 567 U.S. at 9-10). In pressing that position, the government reprises arguments this Court rejected in *Axon*. *See*

Govt.Cert.Br.13-14; *Axon*, 598 U.S. at 193-94. If anything, this case is easier because this Court has twice rejected the view that such statutes strip structural constitutional claims from federal district courts.

The Court should hold this Petition pending *Johnson* if it declines to grant certiorari outright.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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