No. 26-45

In the Supreme Court of the United States

JEFFREY MOATS, PETITIONER

v.

NATIONAL CREDIT UNION ADMINISTRATION BOARD, A FEDERAL ADMINISTRATIVE AGENCY, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether 12 U.S.C. 1786(k)(1) precluded the district court from exercising jurisdiction to enjoin a National Credit Union Administration enforcement proceeding.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 153 F.4th 449. The memorandum opinion and order of the district court (Pet. App. 12a-20a) is available at 2024 WL 1724271.

JURISDICTION

The judgment of the court of appeals was entered on August 25, 2025. A petition for rehearing was denied on March 19, 2026 (Pet. App. 48a-49a). On June 10, 2026, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including July 8, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Credit unions are financial institutions that "pool funds from—and give loans to—their members and

other credit-union entities." *American Bankers Ass'n* v. *National Credit Union Admin.*, 934 F.3d 649, 658 (D.C. Cir. 2019), cert. denied, 591 U.S. 1016 (2020). The National Credit Union Administration (NCUA) is a federal agency that "charters and regulates federal credit unions." *NCUA Bd.* v. *Goldman, Sachs & Co.*, 775 F.3d 145, 146 (2d Cir. 2014). The NCUA also provides federal insurance to credit unions that are chartered under state law. 12 U.S.C. 1781.

All federally chartered and federally insured credit unions pay into insurance funds that are managed by the NCUA and "protect the deposits of nearly 94 million account holders." *NCUA Bd.* v. *Barclays Capital Inc.*, 785 F.3d 387, 389 (10th Cir. 2015). If particular credit unions fail, those failures cause money to be paid from the insurance funds, and they contribute to a risk of "destabilizing the entire credit union system." *Ibid.* To mitigate such risk, "Congress authorized the NCUA to place failing credit unions into conservatorship to rehabilitate them" and, if rehabilitation is not possible, to "serve as the failed institution's liquidation agent." *Ibid.*

In 12 U.S.C. 1786, Congress further authorized the NCUA to investigate whether an insured credit union "is engaging or has engaged in unsafe or unsound practices in conducting the business of such credit union, or is in an unsafe or unsound condition to continue operations as an insured credit union, or is violating or has violated an applicable law, rule, regulation, [or] order." 12 U.S.C. 1786(b)(1). If a credit union does not timely correct an identified deficiency, the NCUA can order a hearing on whether to terminate the credit union's federal insurance. *Ibid.* If there is a final adverse order, the credit union can seek judicial review in a court of appeals. 12 U.S.C. 1786(b)(2) and (j)(2).

Congress has also authorized the NCUA to take action when it has "reasonable cause to believe" that a credit union's "institution-affiliated party" (*e.g.*, a credit union director or officer) is or has engaged in "an unsafe or unsound practice in conducting the business of such credit union, or is violating or has violated * * * a law, rule, or regulation." 12 U.S.C. 1786(e)(1); see 12 U.S.C. 1786(r) (defining "institution-affiliated party"). In such a case, the NCUA issues the party a notice, and the agency orders a hearing to determine whether a cease-and-desist order should issue. 12 U.S.C. 1786(e)(1). If it makes certain findings, the NCUA can, among other things, bar or suspend an individual from participating in the credit union's operation and order restitution and money penalties. 12 U.S.C. 1786(e)(3), (g)(1)-(3), and (k)(2). Persons aggrieved by such orders can obtain judicial review in the courts of appeals. 12 U.S.C. 1786(j)(1) and (2).

Alternatively, if delay would likely "cause insolvency" or threaten the credit union's financial condition, the NCUA can issue a temporary cease-and-desist order that takes effect immediately. 12 U.S.C. 1786(f)(1). In such a case, the credit union or affiliated party can seek immediate judicial review in a district court to set aside or enjoin the temporary order. 12 U.S.C. 1786(f)(2). Courts also have jurisdiction to hear certain suits initiated by the NCUA. The NCUA can seek immediate district-court enforcement of a temporary cease-and-desist order if the credit union or affiliated party threatens to violate it. 12 U.S.C. 1786(f)(4). And after an NCUA order is final and all judicial review is exhausted, the NCUA may, "in its discretion," sue in district court to enforce a final order, and the district court "shall have jurisdiction and power to order and require compliance." 12 U.S.C. 1786(k)(1).

The paths set forth in Section 1786 provide the exclusive means to obtain judicial review of NCUA enforcement proceedings. Section 1786 states that, "except as otherwise provided in this section * * * , no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section * * * or to review, modify, suspend, terminate, or set aside any such notice or order." 12 U.S.C. 1786(k)(1).

2. Petitioner served as the longtime chief executive officer of the Edinburg Teachers Credit Union, a federally insured credit union in Texas. Pet. App. 2a. In 2021, the Texas Credit Union Department placed Edinburg in conservatorship and appointed the NCUA as its conservator, and petitioner was fired as CEO. *Ibid.*

The NCUA later issued a notice of charges and ordered a hearing under 12 U.S.C. 1786 to determine whether petitioner had "violated the law, breached his fiduciary duties to [Edinburg], and engaged in unsafe and unsound practices." Pet. App. 12a-13a (citation omitted). The notice of hearing alleged, among other things, that petitioner, without approval from Edinburg's board, had "directed [credit union] staff to transfer large sums to him" and to "fund his retirement account wholly from [credit union] funds," which was prohibited by the "plain language of the retirement account program." C.A. ROA 215. The notice further alleged that petitioner had directed staff to pay him $220,000 for unused vacation time "without board approval" and "in the absence of any [credit union] policy permitting such payment." *Ibid.*

After receiving the notice, petitioner sued the NCUA in district court, invoking the court's federal-question jurisdiction under 28 U.S.C. 1331. Pet. App. 2a. In the operative complaint, petitioner raised several constitutional challenges to the NCUA proceedings, arguing that (1) the administrative law judge assigned to the hearing "was unconstitutionally shielded from removal"; (2) "the enforcement action deprived [petitioner] of his right to a jury trial"; (3) the proceeding violated due process; and (4) the proceeding violated the nondelegation doctrine. *Id.* at 3a; see *id.* at 13a, 60a-65a. Petitioner sought "a declaration" that the hearing violated his rights "and an injunction" barring the NCUA from proceeding with the hearing. *Id.* at 53a, 61a-63a, 65a. The parties agreed to stay the hearing pending the resolution of petitioner's suit. *Id.* at 3a n.1, 13a.

Based on the preclusion of jurisdiction established by 12 U.S.C. 1786(k)(1), the district court granted the government's motion to dismiss for lack of subject-matter jurisdiction. Pet. App. 12a-20a. The court concluded that Section 1786(k)(1) "is an explicit bar to all of [petitioner's] claims." *Id.* at 19a. The court explained that, because "an adjudication in [the district] court of [petitioner's] claims would plainly 'affect' the 'enforcement of' the pending Notice of Charges, § 1786(k) explicitly precludes district court review." *Ibid.*; see *id.* at 17a. The court rejected petitioner's argument that Section 1786(k)(1) is inapplicable to constitutional claims. See *id.* at 18a-19a.

3. The court of appeals affirmed. Pet. App. 1a-11a. The court agreed with the district court that Section 1786(k)(1) applies by its terms to petitioner's suit, and that a clearer statement of preclusive intent was not required in order for the statute to preclude constitutional claims. See *id.* at 6a-7a, 10a-11a. The court of appeals rejected petitioner's contention that a statute must "reference § 1331 or another jurisdictional statute to explicitly preclude district court jurisdiction." *Id.* at 7a (comma omitted).

Petitioner filed a petition for rehearing en banc, which the court of appeals denied with no judge requesting a vote. Pet. App. 48a-49a.

ARGUMENT

Petitioner challenges (Pet. 12-29) the court of appeals' determination that 12 U.S.C. 1786(k)(1) precluded the district court from adjudicating his suit to enjoin the NCUA enforcement proceedings. The court of appeals' decision is correct and does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. The court of appeals correctly held that 12 U.S.C. 1786(k)(1) precluded petitioner from bringing his claims in district court. Pet. App. 4a-11a.

a. "Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider" and "when, and under what conditions, federal courts can hear" those cases. *Bowles* v. *Russell*, 551 U.S. 205, 212-213 (2007). In general, district courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1331. But Congress frequently has chosen to "substitute for that district court authority an alternative scheme of review" for various claims. *Axon Enter., Inc.* v. *FTC*, 598 U.S. 175, 185 (2023). Congress "may do so explicitly, providing in so many words that district court jurisdiction will yield." *Ibid.* Or it may "do so implicitly, by specifying a different method to resolve claims about agency action." *Ibid.*

"When dealing with an express preclusion clause," this Court generally "determine[s] the scope of preclusion simply by interpreting the words Congress has chosen." *Elgin* v. *Department of the Treasury*, 567 U.S. 1, 25 (2012) (Alito, J., dissenting); see *Axon*, 598 U.S. at

208-209 (Gorsuch, J., concurring in the judgment). Absent express preclusion, the question is "whether the particular claims brought were 'of the type Congress intended to be reviewed within'" the relevant special review scheme. *Axon*, 598 U.S. at 186 (citation omitted). To aid the implicit-preclusion inquiry, the Court applies three factors derived from *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200 (1994), asking (1) "could precluding district court jurisdiction 'foreclose all meaningful judicial review' of the claim?"; (2) "is the claim 'wholly collateral to the statute's review provisions'?"; and (3) "is the claim 'outside the agency's expertise'?" *Axon*, 598 U.S. at 186 (quoting *Thunder Basin*, 510 U.S. at 212-213) (brackets omitted).

Section 1786(k)(1) explicitly divested the district court of jurisdiction over this case, obviating any need for an implicit-preclusion analysis. As relevant here, that provision states that, "except as otherwise provided in this section * * * , no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section * * * or to review, modify, suspend, terminate, or set aside any such notice or order." 12 U.S.C. 1786(k)(1). Petitioner's suit plainly aims "to affect by injunction or otherwise" the NCUA's "issuance or enforcement" of a notice under Section 1786, and to "modify, suspend, terminate, or set aside * * * such notice." *Ibid.*; see Pet. App. 17a (observing that petitioner seeks to "halt the pending enforcement proceedings in [their] tracks"). And petitioner does not contend that his suit falls within any of the avenues for judicial review "provided in" Section 1786, 12 U.S.C. 1786(k)(1), such as review of an NCUA order in a court of appeals, 12 U.S.C. 1786(j)(2).

The "plain, preclusive language" of Section 1786(k)(1) therefore squarely encompasses petitioner's suit. *Board* *of Governors of the Fed. Reserve Sys.* v. *MCorp Fin., Inc.*, 502 U.S. 32, 39 (1991) (applying the materially identical preclusion provision in 12 U.S.C. 1818(i)(1)). Petitioner's contention (Pet. 23) that Section 1786(k)(1) covers only "traditional" challenges to agency action, and not "[s]tructural" constitutional challenges to agency procedures of the kind he has raised, lacks any basis in the statutory text.

b. Petitioner principally contends that, as a general rule, statutes like Section 1786(k)(1) do not preclude structural constitutional claims absent "exceptionally clear language," such as language mentioning "constitutional claims, 28 U.S.C. § 1331, or structural challenges to the agency's power to proceed." Pet. 2, 24; see Pet. 15-26. Even assuming that Section 1786(k)(1) would not satisfy petitioner's clear-statement rule, his proposed rule is unfounded.

Petitioner invokes (Pet. 16-18) *Axon* and *Free Enterprise Fund* v. *Public Company Accounting Oversight Board*, 561 U.S. 477 (2010); but in each of those cases, the Court performed an *implicit*-preclusion analysis under *Thunder Basin*, rather than interpreting and applying an express preclusion provision like Section 1786(k)(1). See *Axon*, 598 U.S. at 185-196; *Free Enterprise Fund*, 561 U.S. at 489-491. The nature of a structural constitutional claim is relevant in the implicit-preclusion analysis. For example, such a claim will often fall outside an administrative agency's expertise, making it less likely that Congress intended to channel the claim through the agency. See, *e.g.*, *Axon*, 598 U.S. at 194-195. A court's role with respect to an express preclusion provision, by contrast, is simply to apply "the words Congress has chosen." *Elgin*, 567 U.S. at 25 (Alito, J., dissenting). And as explained above, Section 1786(k)(1)'s plain text broadly precludes suits to enjoin

NCUA enforcement actions, whether the proffered basis for an injunction is a structural constitutional challenge or some other type of claim. Even if the *Thunder Basin* factors may inform the interpretation of an ambiguous express-preclusion statute, Section 1786(k)(1) is not ambiguous in any relevant respect.

Petitioner's reliance (Pet. 19-22) on *Webster* v. *Doe*, 486 U.S. 592 (1988), is similarly misplaced. The *Webster* Court held that "where Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear." *Id.* at 603. But "*Webster*'s 'heightened showing'" is required only where a statute "purports to 'deny *any* judicial forum for a colorable constitutional claim,'" not "where Congress simply channels judicial review of a constitutional claim to a particular court." *Elgin*, 567 U.S. at 9 (emphasis added; citations omitted). Section 1786 does not preclude judicial review of constitutional claims like petitioner's, but instead channels those claims to the courts of appeals on review of NCUA orders. See 12 U.S.C. 1786(j)(2).

Petitioner objects (Pet. 19, 22, 26) that review in the court of appeals is not "meaningful" because he would have to undergo the allegedly unconstitutional NCUA proceedings before obtaining such review. Again, petitioner conflates the explicit- and implicit-preclusion inquiries. Cf. *Axon*, 598 U.S. at 190 (assessing whether preclusion would "foreclose all meaningful judicial review") (citation omitted). In any event, petitioner does not explain why he could not obtain a "meaningful judicial resolution" (Pet. 26) of his constitutional claims in a court of appeals. This Court's resolution of a Seventh Amendment challenge to administrative proceedings in *SEC* v. *Jarkesy*, 603 U.S. 109 (2024), for example, provided meaningful relief for the challenger in that case. See *id.* at 119 (noting that the claim arose on a petition for review in the court of appeals); see also Pet. 3, 11-12, 16 (petitioner likening his claims to those in *Jarkesy*). The same was true in the other decisions that petitioner characterizes in the same way. See, *e.g.*, Pet. 30-31 (discussing *Lucia* v. *SEC*, 585 U.S. 237 (2018)).

On the same ground, petitioner more broadly argues (Pet. 26-29) that Congress is constitutionally barred from channeling structural constitutional claims to the courts of appeals. But a litigant is not constitutionally entitled to obtain his preferred form of relief, or to seek relief in his preferred forum, simply because his underlying claim arises under the Constitution. Cf., *e.g.*, *Egbert* v. *Boule*, 596 U.S. 482 (2022) (declining to recognize an implied cause of action for damages for certain First and Fourth Amendment claims). Petitioner misconstrues this Court's holdings (in cases like *Axon* and *Free Enterprise Fund*) that Congress *did not* implicitly channel certain structural constitutional claims to the courts of appeals as holdings that Congress "may not" do so. Pet. 1; see Pet. 4-5.

The other precedents that petitioner invokes are also inapposite. In *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), for instance, this Court held that certain constitutional challenges to agency procedures were not encompassed by a preclusion statute that channeled claims to the courts of appeals. See *id.* at 491-494. But the Court observed that Congress "could easily" have effected such channeling by "us[ing] broader statutory language," *id.* at 494, and the Court did not suggest that doing so would have raised a constitutional problem. *Johnson* v. *Robison*, 415 U.S. 361 (1974), involved a statute that (unlike Section 1786(k)(1)) would have foreclosed *all* judicial review of certain constitutional claims if it had been construed to preclude district-court review. See *id.* at 366; see also *Weinberger*

v. *Salfi*, 422 U.S. 749, 762 (1975) (distinguishing *Robison* on that basis). And because no authority supports petitioner's contention that Congress may not channel to the courts of appeals structural constitutional challenges to agency procedures, there is also no basis for applying the canon of constitutional avoidance in this case, contra Pet. 25-26.

2. The court of appeals' decision does not otherwise warrant this Court's review. Petitioner does not contend that the decision below conflicts with any decision of another circuit. Cf. *Axon*, 598 U.S. at 184-185 (noting a circuit conflict on implicit preclusion of structural constitutional claims). As he recognizes (Pet. 24-25), the only other court of appeals decisions to have addressed explicit preclusion of structural claims are consistent with the decision below. See *Azimov* v. *United States Dep't of Homeland Sec.*, No. 22-56034, 2024 WL 687442, at *1 (9th Cir. Feb. 20, 2024); *Bohon* v. *FERC*, 92 F.4th 1121, 1123-1124 (D.C. Cir.), cert. denied, 144 S. Ct. 2563 (2024). Petitioner also overstates (Pet. 29-34) the importance of the question presented. If the NCUA enforcement proceedings culminate in the entry of an adverse order against him, he will have the opportunity to raise his constitutional claims in a court of appeals. See *Axon*, 598 U.S. at 191-192 (agreeing that "many review schemes—involving not only agency action but also civil and criminal litigation—require parties to wait before appealing, even when doing so subjects them to 'significant burdens'") (citation omitted).

In the alternative, petitioner urges (Pet. 34-35) this Court to hold the petition for a writ of certiorari pending the resolution of *Johnson* v. *United States Congress*, No. 25-735 (cert. granted Apr. 6, 2026). That approach is unwarranted. Although *Johnson* involves the application of an express jurisdiction-preclusion statute to constitutional claims, it does not involve structural challenges like petitioner's. Rather, the constitutional claims in *Johnson* arise under the Equal Protection and Bill of Attainder Clauses and do not attack agency procedures. See U.S. Br. at 10, *Johnson*, *supra* (No. 25-735); see also *id.* at 41 n.2 (noting that the Court in *Johnson* need not address preclusion of "collateral constitutional challenges to agency procedures"). Because the structural nature of petitioner's claims is central to his contention that Section 1786(k)(1) does not preclude his suit, the Court's decision in *Johnson* is unlikely to have significant implications for the proper disposition of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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