[ARGUMENT SCHEDULED FOR DECEMBER 15, 2025]

No. 25-5303

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FEDERAL EDUCATION ASSOCIATION, et al.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF THE DISTRICT OF COLUMBIA AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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Certificate as to Parties, Rulings, and Related Cases

Except for American Civil Liberties Union of the District of Columbia and Deb Haaland, who appears as one of the *amici* in the *Amicus* Brief on behalf of Former Cabinet Secretaries, Agency Heads and Other Federal Officers and Employees, all parties, intervenors, and *amici* appearing before the district court and in this Court are listed in the Brief for Plaintiffs-Appellees. References to the rulings at issue and related cases also appear in the parties' briefs.

Statutes and Regulations

All applicable statutes are contained in the addendum to the Brief for Defendants-Appellants.

Corporate Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(A), *amicus* American Civil Liberties Union of the District of Columbia states that it is a 501(c)(3) non-profit organization and has no parent corporations. It does not issue any stock, and therefore no publicly owned corporation holds ten percent or more of its stock.

/s/ Aditi Shah
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Counsel for Amicus Curiae

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GLOSSARY

ACLU-DC	American Civil Liberties Union of the District of Columbia
Defs. Br.	Brief of Defendants-Appellants
FLRA	Federal Labor Relations Authority
FSLMRS	Federal Service Labor Management Relations Statute
J.A.	Joint Appendix
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
Pls. Br.	Brief of Plaintiffs-Appellees

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae American Civil Liberties Union of the District of Columbia ("ACLU-DC") is a non-profit, non-partisan organization with more than 10,000 members. It is dedicated to the principles of liberty, separation of powers, and the rule of the law enshrined in the Constitution. ACLU-DC regularly appears in the courts of this Circuit as counsel or *amicus* in cases seeking to enjoin unlawful actions by government officials, including cases involving claims that federal officials acted *ultra vires* (in excess of) their statutory authority. *See, e.g.*, *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 2025 WL 1825431 (D.D.C. July 2, 2025); *J.G.G. v. Trump*, 786 F. Supp. 3d 37 (D.D.C. 2025); *Mathis v. United States Parole Comm'n*, 749 F. Supp. 3d 8 (D.D.C. 2024).

Pursuant to Circuit Rule 29(a)(4)(E), *amicus* certifies that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amicus*, its members, or its counsel, made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff-Appellee unions ("Plaintiffs") challenge President Trump's March 27, 2025 Executive Order excluding them from coverage under the Federal Service Labor-Management Relations Statute ("FSLMRS"), which protects federal employees' collective bargaining rights. 5 U.S.C. § 7101. Plaintiffs challenge the

Executive Order on the grounds that it violates the First and Fifth Amendments and is *ultra vires* (in excess of) the President's authority under the FSLMRS. Regarding Plaintiffs' likelihood of success, the government makes three arguments: first, that the district court lacked jurisdiction because the FSLMRS requires Plaintiffs to submit their claims to the Federal Labor Relations Authority ("FLRA"), Defs. Br. at 17; second, that the district court lacked jurisdiction over Plaintiffs' *ultra vires* claim because the FSLMRS commits exclusion decisions to the President's unreviewable discretion, *id.*; and third, that even if Plaintiffs' *ultra vires* claim is reviewable, "the President's exclusion determination cannot be found *ultra vires* because it is not *obviously* beyond the terms of the statute," *id.* at 18 (emphasis added).

Amicus writes to address the government's third argument, which rests on a mistaken premise regarding the standard applicable to *ultra vires* claims—an important issue that warrants clarification from this Court. The government asserts in categorical fashion that "*ultra vires* claimants must demonstrate that the agency has plainly and openly crossed a congressionally drawn line in the sand." *Id.* at 37 (quoting *Fed. Express Corp. v. U.S. Dep't of Com.*, 39 F.4th 756, 765 (D.C. Cir. 2022)). Under this approach, plaintiffs "face a high bar to establish a right to relief" and would "have to show that the President acted 'in excess of [his] delegated powers and contrary to a *specific prohibition*' in a statute.'" *Id.* at 36 (quoting *Nuclear Regul. Comm'n v. Texas*, 605 U.S. 665, 681 (2025)). Meeting this standard

has been likened to a "Hail Mary pass," *id.* at 37 (quoting *Fed. Express Corp.*, 39 F.4th at 765), requiring "extreme" error to prevail, *id.* (quoting *Glob. Health Council v. Trump*, 2025 WL 2326021, at *12 (D.C. Cir. Aug. 13, 2025)). Although the government correctly describes a standard that applies to *some* claims that officials have acted *ultra vires* their statutory authority, the government's assertion that it applies to all such claims is wrong.[1]

The government's blanket position—that the "Hail Mary" standard applies to all *ultra vires* claims regardless of the circumstances—is contrary to binding precedent and ignores a critical distinction that is foundational to this Court's and the Supreme Court's *ultra vires* jurisprudence: The heightened standard applies to *ultra vires* claims only where there is a statutory limitation on judicial review. Where there is no statutory limitation on judicial review, the ordinary, century-old standard of *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94 (1902), applies. Under that standard, courts exercise their powers in equity to determine whether the challenged conduct is authorized by law. This is the default standard courts apply to determine whether officials have acted *ultra vires* their statutory authority.

[1] There is no dispute in this case that the "Hail Mary" standard proffered by the government is inapposite to claims that a federal official's action is *ultra vires* his or her constitutional authority. *See, e.g.*, *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587-88 (1952). Although the government in other cases has argued that the President's constitutional authority vitiates statutory limits on his conduct, it does not make that claim here.

In contrast, the heightened standard for *ultra vires* claims that the government proffers here stems from *Leedom v. Kyne*, 358 U.S. 184 (1958), which addressed courts' powers in equity where a plaintiff challenges a government official's action outside the strictures of a judicial review scheme provided by Congress. In *Leedom*, the plaintiff labor union sought to vacate an action by the National Labor Relations Board ("NLRB") that was contrary to the express requirements of § 9(b)(1) of the National Labor Relations Act ("NLRA"), *see id.* at 185-86, but was not a type of action within the scope of judicial review authorized under that statute, *id.* at 187. The NLRB did not dispute that its action was contrary to the statute, but argued that judicial review was not available under the NLRA. *Id.* at 187-88; *see also Nuclear Regulatory Comm'n*, 605 U.S. at 681 (describing *Leedom*). The Supreme Court rejected the government's non-reviewability argument. *See Leedom,* 358 U.S. at 190. However, the Court's explanation of the type of suit it was authorizing—"one to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act," *id.* at 188—has come to stand for a key limitation on *ultra vires* review in circumstances like those in *Leedom*. Specifically, where a challenger to executive action proceeds outside the confines of a reticulated judicial review scheme set up by Congress, the plaintiff is required to demonstrate not only that the action was contrary to the law, but that it was "'in excess of its delegated powers and contrary to a *specific prohibition*' in a statute." *Nuclear Regul.*

Comm'n, 605 U.S. at 681 (citation omitted). This limitation exists to prevent "an easy end-run around the limitations of . . . judicial-review statutes." *Id.*

The *Leedom* standard of review for *ultra vires* claims is an exception to the default *McAnnulty* standard. Only where there is a statutory limitation on judicial review of the challenged action—that is, only where review in equity may amount to an end-run around statutory limitations on review—does the plaintiff need to show that the action was an exercise of power in violation of a "specific prohibition" in the statute. To be sure, many of this Circuit's recent *ultra vires* cases have fit into this category and therefore have called for the application of the *Leedom* standard. But where there is no statutory limitation on judicial review, courts exercise their equitable power to consider a claim that an official acted *ultra vires* and apply the default *McAnnulty* standard to assess the merits of that claim: If the challenging party demonstrates that the action was unauthorized by the statute, it will prevail.

The Supreme Court and this Court have confirmed as much. The same year as *Leedom*, the Supreme Court decided the *ultra vires* claim in *Harmon v. Brucker*, 355 U.S. 579 (1958), where there was no statutory limitation on judicial review, by assessing simply "whether the [Executive Branch official] did exceed his powers." *Id.* at 582. The Court also reiterated that "[g]enerally, judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers." *Id.* at 581-82 (citing *McAnnulty*, 187 U.S. at 108).

This Court has also adhered to the distinction between *McAnnulty*'s ordinary rule and *Leedom*'s special one, applying the *McAnnulty* standard to enjoin *ultra vires* actions where there is no statutory limitation on judicial review, *see, e.g.*, *Humane Soc. of the U.S. v. Glickman*, 217 F.3d 882, 888 (D.C. Cir. 2000); *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1339 (D.C. Cir. 1996), and applying the heightened *Leedom* standard where there was such a statutory limitation, *see, e.g.*, *Fed. Express Corp.*, 39 F.4th at 763. This line makes practical sense: When an *ultra vires* claim is raised and Congress has not limited judicial review, there is no risk that *ultra vires* review will "become an easy end-run around the limitations of . . . judicial-review statutes," so the challenger should not need to complete a "Hail Mary pass." *Nuclear Regul. Comm'n*, 605 U.S. at 681.

The government's brief elides the distinction between the *McAnnulty* and *Leedom* standards by attempting to make the latter the rule across the board. And not for the first time. *See, e.g.*, Appl. for Stay at 28-30, *Trump v. Glob. Health Council*, No. 25A227 (S. Ct. Aug. 26, 2025) (withdrawn) (arguing that the heightened *Leedom* standard applies to respondents' *ultra vires* claim without regard to whether there is a statutory limitation on judicial review). The government's sweeping position carries broad implications that extend beyond this case. Subjecting all challenges brought in equity against unlawful executive action to the heightened *Leedom* standard would contravene a century of binding precedents and

unduly undermine courts' equitable powers to provide remedies for those harmed by executive action in excess of limits set by Congress.

Accordingly, if this Court reaches the merits of Plaintiffs' *ultra vires* claim, it should reject the government's argument that the heightened *Leedom* standard requiring a showing that the President acted contrary to a specific statutory prohibition applies by default. If the FSLMRS reflects no congressional intent to limit judicial review of the President's decision to exclude agencies and subdivisions from the statute's coverage, this Court should analyze Plaintiffs' *ultra vires* claim the same way Plaintiffs and the district court have—applying the ordinary *McAnnulty* standard—to decide whether the President's decision was authorized by the statute.

ARGUMENT

I. Where a Statute Does Not Limit Judicial Review, the Ordinary *McAnnulty* Standard Applies to *Ultra Vires* Claims.

Federal courts have long exercised inherent equitable power to enjoin government officials who exceed their statutory authority. This equitable power, tracing back to the English common law, requires no statutory cause of action and enables courts to enforce statutory limits Congress places on Executive Branch authority without the heightened showing that *Leedom* requires. Instead, courts apply the default, century-old standard under *McAnnulty*, which asks simply whether

the challenged action was authorized by law, not whether it violated a specific statutory prohibition.

A. Federal Courts Have Inherent Equitable Power To Enjoin Government Officials from Acting *Ultra Vires*.

The government's position that even if there is no statutory limitation on judicial review, Plaintiffs must satisfy a heightened standard—*i.e.*, demonstrating that the President acted contrary to a specific statutory prohibition—ignores two fundamental principles about federal courts' powers in equity and the Executive's powers vis-à-vis Congress. First, as the Supreme Court has "long held," federal courts have inherent equitable power to enjoin state and federal officials from violating federal law. *E.g.*, *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015). Such equitable authority "reflects a long history of judicial review of illegal executive action, tracing back to England" and "is a judge-made remedy." *Id.* at 327. No statutory cause of action is needed to invoke a court's equity jurisdiction. *See* S. Bray & P. Miller, *Getting into Equity*, 97 Notre Dame L. Rev. 1763, 1798-99 (2022).

Second, when Executive Branch officials violate federal law, they act *ultra vires*—literally, "beyond the powers," *Ultra Vires*, *Black's Law Dictionary* (12th ed. 2024), delegated to the official by Congress or vested in the official by the Constitution. It is well settled that the President's "power, if any" to take a given

action "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Where an Executive Branch official's "powers are limited by statute," as the President's are here, "his actions beyond those limitations . . . are ultra vires his authority and therefore may be made the object of specific relief." *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689 (1949).

Since at least the mid-nineteenth century, the Supreme Court has recognized that even in the absence of a statutory cause of action, federal courts can, pursuant to their inherent equitable power, enjoin public officials from acting *ultra vires*. *See, e.g.*, *Carroll v. Safford*, 44 U.S. 441, 463 (1845) (holding that "in a proper case, relief may be given in a court of equity" to, *inter alia*, "prevent an injurious act by a public officer, for which the law might give no adequate redress"); *Osborn v. Bank of U.S.*, 22 U.S. 738, 838-39 (1824) (federal court sitting in equity may enjoin a state officer from enforcing a state law that conflicts with the Constitution); *Davis v. Gray*, 83 U.S. 203, 220 (1872) (same); *Ex parte Young*, 209 U.S. 123, 150-51 (1908) (same). These cases are part of the "long history . . . tracing back to England," *Armstrong*, 575 U.S. at 327, demonstrating that no statutory cause of action is needed for courts to enjoin public officials from acting *ultra vires* or otherwise violating federal law.

Two early cases illustrate the Supreme Court's exercise of its inherent equitable power to enjoin federal officials' *ultra vires* acts in the absence of any

statutory cause of action. In *Noble v. Union River Logging Railroad Co.*, 147 U.S. 165 (1893), where it was "contended that the act of the head of a [federal] department . . . was ultra vires," the Court held that injunctive relief was available "[i]f he has no power at all to do the act complained of." *Id.* at 171-72. Perhaps the most-cited example is *McAnnulty*, where the Court assessed whether the Postmaster General's refusal to provide mail service to a business he deemed fraudulent was "justified by the statutes," and "if not, whether the complainants have any remedy in the courts." 187 U.S. at 103. On the merits, the Court held that the Postmaster General's decision was "not authorized by those statutes." *Id.* at 109. In accordance with the principle that "in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief," the Court instructed the lower courts to grant plaintiffs' motion for a temporary injunction to prohibit further withholding of their mail. *Id.* at 108-10.

B. In Considering Challenges to Officials' *Ultra Vires* Actions Where There Is No Statutory Limitation on Judicial Review, the Only Question Is Whether the Action Was Authorized by Law.

Where there is no statutory limitation on judicial review, this Court and the Supreme Court have exercised their powers in equity and applied the ordinary, default standard to adjudicate claims that a government official acted *ultra vires*: whether the official's action was authorized by law.

More than a century ago, the Supreme Court set out this ordinary standard in *McAnnulty*. There, the Postmaster General invoked statutory authority to stop mail service and prohibit payment of postal money orders to a business that he deemed to be fraudulent. 187 U.S. at 100 & n.†. The Court disagreed with the Postmaster General's conclusion that the plaintiff's business activities violated mail-fraud statutes and held that the Postmaster General did not have statutory authority to withhold the plaintiffs' mail. *Id.* at 107. The Court noted that "[t]he acts of all [government] officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief." *Id.* at 108. Because the Postmaster General's order was "based on a mistaken view of the law," the Court instructed the lower courts to grant plaintiffs' motion for a temporary injunction prohibiting further withholding of the mail from the plaintiffs. *Id.* at 110. The Court did not require the plaintiffs to show that the official's action was "'contrary to a *specific prohibition*' in a statute," *Nuclear Regul. Comm'n*, 605 U.S. at 681 (citation omitted), before enjoining his action.

As this Court recognized, "[t]he reasoning of *McAnnulty* has been employed repeatedly." *Chamber of Com.*, 74 F.3d at 1327. In *Philadelphia Co. v. Stimson*, 223 U.S. 605 (1912), the Supreme Court held that the principle that an officer "cannot claim immunity from [the] injunction process" applies equally to a "[f]ederal officer acting in excess of his authority or under an authority not validly

conferred" as it does to state officers. *Id.* at 620. The standard the Court applied to determine whether the officer was acting within the scope of his authority was whether the Secretary of War "exceed[ed] the power which had been conferred." *Id.* at 638. In *Stark v. Wickard*, 321 U.S. 288 (1944), the Court held that "[t]he responsibility of determining the limits of statutory grants of authority . . . is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their jurisdiction," and that on remand, "[t]he trial court is free to consider whether the statutory authority given the Secretary is a valid answer to the petitioners' contention." *Id.* at 310-11.

In each of these cases challenging a government official's action as beyond the official's statutory powers, the Supreme Court conducted a straightforward inquiry to determine whether the official's action was *ultra vires*: It asked whether the official's action was authorized by Congress, not (per the government's proposed standard) whether the official acted "'in excess of [the official's] delegated powers and contrary to a *specific prohibition*' in a statute." Defs. Br. at 36 (quoting *Nuclear Regul. Comm'n*, 605 U.S. at 681). Nor did the Court describe the standard applied in those cases as a "high bar" or as requiring "extreme" error. *Id.* at 36-37 (citation omitted). Instead, the simple inquiry is whether the act was "justified by some law." *McAnnulty*, 187 U.S. at 108. In cases where the act was not justified by law, courts exercise their equitable power to enjoin unlawful executive action.

Challenges to presidential *ultra vires* actions are no exception to this general rule. This Court held as much in *Chamber of Commerce of U.S. v. Reich*, which concerned whether the President's Executive Order "barring the federal government from contracting with employers who hire permanent replacements during a lawful strike . . . conflict[ed] with the [NLRA]." 74 F.3d at 1324. In that case, this Court first held that it had jurisdiction under *McAnnulty* and its progeny to review the plaintiffs' claim notwithstanding the lack of a statutory cause of action. *Id.* at 1328. On the merits of the plaintiffs' claim that the Executive Order conflicted with the NLRA, this Court "look[ed] to the extensive body of Supreme Court cases that mark out the boundaries of the field occupied by the NLRA" to determine whether the "tension between the President's Executive Order and the NLRA" was an "unacceptable conflict." *Id.* at 1333-34. It did not ask whether the Executive Order was contrary to a specific prohibition in the NLRA. Indeed, the Court made clear that it could not "possibly matter for purposes of reviewability" whether the mandate the plaintiffs seek to enforce "is found in the statute in so many words." *Id.* at 1330.

Similarly, in *Dames & Moore v. Regan*, 453 U.S. 654 (1981), the Supreme Court applied the ordinary *McAnnulty* standard to determine whether the President acted within his authority under the International Emergency Economic Powers Act to nullify attachments and liens on Iranian assets in the United States and direct the transfer of those assets to Iran, concluding based on the text and history of the statute

that the President's actions were authorized. *Id.* at 671-74.

In both cases, where Congress did not limit judicial review, this Court and the Supreme Court assessed the Executive Branch's statutory authority using the same, straightforward *McAnnulty* standard: asking simply whether the official's acts—in those cases, the President's—were authorized by law.

II. The Heightened *Leedom* Standard Applies Only If the Statute Limits Judicial Review of the Challenged Act.

The government's proposed standard of review for *ultra vires* claims, which stems from *Leedom*, applies only when Congress has limited judicial review. This Court has characterized *Leedom* as an "exception" that "permits, in certain limited circumstances, judicial review of agency action for alleged statutory violations *even when a statute precludes review*." *Nyunt v. Chairman, Broad. Bd. of Governors*, 589 F.3d 445, 449 (D.C. Cir. 2009) (emphasis added). When Congress has limited judicial review of the challenged action, this Court has held that plaintiffs can obtain review under *Leedom* only where "(i) there is no express statutory preclusion of all judicial review; (ii) there is no alternative procedure for review of the statutory claim; and (iii) the agency plainly acts in excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory." *Fed. Express. Corp.*, 39 F.4th at 763 (cleaned up). As the Supreme Court noted in *Nuclear Regulatory Commission*, this approach prevents end-runs around Congress's chosen

review procedures. 605 U.S. at 681. But where Congress has not confined judicial review, *Leedom*'s heightened standard is inapposite.

In *Leedom*, a labor union challenged a decision by the NLRB to include both professional and nonprofessional employees in a bargaining unit without holding a vote by the professional employees. 358 U.S. at 185. The union filed suit, claiming that the NLRB's action directly conflicted with a requirement in the NLRA. *Id.* at 186. The government did not dispute that the NLRB's action violated the statute's requirement, but argued that the NLRA's judicial review provisions foreclosed the lawsuit. *Id.* at 187-88.

Leedom decided two related but separate issues: First, it held that even though the plaintiff was proceeding outside the judicial review structure of the NLRA, the district court could still exercise its equitable powers to review the plaintiff's claim that the NLRB had exceeded its authority. *Id.* at 188. Second, *Leedom* established a heightened standard for plaintiffs to prevail on such claims: To avoid "an easy end-run" around those statutory judicial-review limitations, *Nuclear Regul. Comm'n*, 605 U.S. at 681, plaintiffs proceeding under *Leedom* can prevail on the merits of their equitable claim only if the defendant official acted "*in excess* of [his] delegated powers and contrary to a *specific prohibition* in the Act" that was "*clear and mandatory*." *Leedom*, 358 U.S. at 188 (emphasis added). That standard was

directly tied to the circumstances of that case, in which the plaintiff sought judicial review "apart from the review provisions of the [statute]." *Id.*

The Supreme Court's post-*Leedom* cases make clear that the Court continued to require plaintiffs bringing equitable *ultra vires* claims to show that the challenged action was "contrary to a specific," "clear and mandatory" statutory prohibition, 358 U.S. at 188, *only* where there was a statutory limitation on judicial review. For example, in *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964), a union challenged an NLRB decision defining a bargaining unit and ordering an election among its employees, and the parties agreed that the type of decision at issue was, "in the normal course of events . . . not directly reviewable in the courts." *Id.* at 475-76. The Court accordingly assessed whether the case fell within "the painstakingly delineated procedural boundaries of [*Leedom v.*] *Kyne*," *id.* at 481, and, because it did not, reversed the lower court's decision in the union's favor, *see id.* at 481-82.

The most recent example is *Nuclear Regulatory Commission*. There, the petitioners challenged the Commission's decision to grant a license to an entity to store spent nuclear fuel in a Texas facility. 605 U.S. at 668-69. But the Hobbs Act limited judicial review of such decisions only to applicants for licenses or those who intervened in the licensing proceeding; because petitioners were neither, they could not obtain review under the Act. *Id.* at 680. Petitioners asserted in the alternative "claims of *ultra vires* agency action." *Id.* The Supreme Court applied the *Leedom*

standard to petitioners' *ultra vires* claim because the Hobbs Act specifically circumscribed review of the decisions at issue and petitioners were trying to proceed outside of the statutorily defined process. *See id.* at 681. The Court made clear that "[t]he [*Leedom v.*] *Kyne* exception is a narrow one" because otherwise, "ultra vires review could become an easy end-run around the limitations of the Hobbs Act and other judicial-review statutes.'" *Id.* That reasoning would have no purchase where there is no "judicial-review statute[]" and therefore no possible end-run. *Id.*

Likewise, the common denominator across this Court's decisions applying the *Leedom* standard to *ultra vires* claims is the presence of a statutory limitation on judicial review. *See, e.g.*, *Glob. Health Council v. Trump*, 153 F.4th 1, 20 & n.17 (D.C. Cir. 2025) (statutory scheme barred claim under the Administrative Procedure Act ("APA") to enforce the statute); *Fed. Express Corp.*, 39 F.4th at 763 (statute exempted challenged agency action from review under the APA); *Nat'l Ass'n of Postal Supervisors v. United States Postal Serv.*, 26 F.4th 960, 970-71 (D.C. Cir. 2022) (same); *Changji Esquel Textile Co. v. Raimondo*, 40 F.4th 716, 721 (D.C. Cir. 2022) (same); *Nyunt*, 589 F.3d at 448-49 (channeling scheme under the Civil Service Reform Act precluded plaintiff's APA claim); *Griffith v. Fed. Lab. Rels. Auth.*, 842 F.2d 487, 492 (D.C. Cir. 1988) ("Congress intended to cut off judicial review of FLRA decisions regarding arbitral awards of the sort involved in this case"). Indeed, as noted above, this Court has repeatedly defined the "*Leedom v. Kyne* exception"

by the presence of a statutory limitation on judicial review. *See, e.g.*, *Nyunt*, 589 F.3d at 449; *Griffith*, 842 F.2d at 492 (*Leedom* exception applies "[e]ven where Congress is understood generally to have precluded review").

Leedom did not displace the default *McAnnulty* standard in the ordinary case (*i.e.*, where Congress has not limited review). In *Harmon v. Brucker*, 355 U.S. 579 (1958), decided the same year as *Leedom*, the plaintiffs claimed that the Secretary of the Army acted *ultra vires* by issuing other-than-honorable discharge certificates to service members based on their conduct prior to induction. *Id.* at 580. The Supreme Court applied the longstanding *McAnnulty* standard and simply asked whether the statute authorized the Secretary's action, concluding it did not. *See id.* at 582-83. *See also, e.g.*, *Dames & Moore*, 453 U.S. at 671-74 (holding that the President's actions were authorized by the statute); *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 551-52 (1976) ("What we must decide is whether [the statute] also authorizes the President to control [petroleum and petroleum product] imports by imposing on them a system of monetary exactions in the form of license fees."); *Train v. City of New York*, 420 U.S. 35, 47 (1975) (holding that President's order to impound funds was unauthorized by the statute).

This Court's precedents likewise reflect the distinction between *McAnnulty* and *Leedom* standards for *ultra vires* review. As noted above, in *Chamber of Commerce*, this Court applied the ordinary *McAnnulty* standard rather than the

heightened *Leedom* standard in considering whether the President's Executive Order conflicted with the NLRA. 74 F.3d at 1333-34. In *Humane Society of the U.S. v. Glickman*, 217 F.3d 882 (D.C. Cir. 2000), this Court, without relying on review under the APA or any "specific review provision," applied ordinary tools of statutory interpretation to assess the plaintiffs' claim that the agency's decision that a permit was not required to kill migratory birds violated the Migratory Bird Treaty Act. *Id.* at 884, 886-88. In neither *Chamber of Commerce* nor *Humane Society* did the Court ask whether the act was contrary to a specific, clear, and mandatory statutory prohibition. *See also Am. Fed'n of Lab. & Cong. of Indus. Organizations v. Kahn*, 618 F.2d 784, 796 (D.C. Cir. 1979) (en banc) (applying the ordinary *McAnnulty* standard in rejecting the plaintiffs' claim that the President's Executive Order denying government contracts to companies that failed to comply with voluntary wage and price standards was outside the President's authority under the Federal Property and Administrative Services Act and barred by other statutes).

The throughline of these precedents is clear: A plaintiff challenging a government official's action as *ultra vires* the official's statutory authority is not automatically required to show that the action was contrary to a clear and mandatory statutory prohibition. The default rule is the opposite: The *Leedom* standard of review applies *if and only if* there is a statutory limitation on judicial review.

III. Applying the Heightened *Leedom* Standard to All *Ultra Vires* Claims Would Undermine Separation-of-Powers Principles and Courts' Ability to Enjoin Violations of Federal Law.

The government's position that *all* claims challenging statutory violations as *ultra vires* must meet the high *Leedom* bar would frustrate courts' long-recognized power to enjoin statutory violations by federal officials, *see Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015), at an unacceptable cost to the separation of powers. Since the time of *Marbury v. Madison*, 5 U.S. 137 (1803), Article III courts have reviewed challenges to violations of federal law to ensure "the boundaries between each branch" are "fixed 'according to common sense and the inherent necessities of the governmental co-ordination.'" *Immigr. & Naturalization Serv. v. Chadha*, 462 U.S. 919, 962 (1983) (Powell, J., concurring) (quoting *J.W. Hampton, Jr. & Co. v. United States,* 276 U.S. 394, 406 (1928)). In recognition of the judiciary's role in enforcing statutory constraints on Executive Branch authority, Congress drafts legislation against the "strong" background presumption that judicial review will be available. *Bowen v. Michigan Acad. of Fam. Physicians*, 476 U.S. 667, 670 (1986). Because "executive determinations generally are subject to judicial review," courts "presume that review is available," even "when a statute is silent." *Patel v. Garland*, 596 U.S. 328, 346 (2022) (internal quotation marks and citation omitted). Indeed, "the very essence of civil liberty . . . consists in the right of every individual to claim the protection of the laws, whenever he receives an

injury," *Marbury*, 5 U.S. at 163, and the judiciary's "duty . . . to decide questions of right" applies "not only between individuals, but between the government and individuals," *United States v. Nourse*, 34 U.S. 8, 28 (1835); *see also* Louis L. Jaffe, *The Right to Judicial Review I*, 71 Harv. L. Rev. 401, 432 (1958) ("[J]udicial review is the rule. It rests on the congressional grant of general jurisdiction to the article III courts. . . . [T]he intention to exclude it must be made specifically manifest.").

Applying the *Leedom* standard to all claims that an official has acted *ultra vires* his or her statutory authority would unduly limit courts' ability to enjoin illegal executive action. In *Train*, for example, the Supreme Court applied the ordinary *McAnnulty* standard in assessing whether President Nixon's order to impound funds was authorized by the Federal Water Pollution Control Act and held that it was unlawful because Congress had directed the expenditure of the funds, *not* because it had specifically prohibited impoundment. 420 U.S. at 45-47. Likewise, in *Harmon*, there was no "specific prohibition" that was "clear and mandatory," *Leedom*, 358 U.S. at 188, barring the Secretary of the Army from issuing other-than-honorable discharge certificates based on pre-induction conduct. *See Harmon*, 355 U.S. at 582-83. In *Chamber of Commerce*, too, there was no specific statutory prohibition barring the President's Executive Order. 74 F.3d at 1333-34. Had these cases assessed whether the actions were *ultra vires* under the *Leedom* standard instead of the *McAnnulty* standard as they did, these decisions likely would have come out the

other way.

Indeed, *McAnnulty* itself likely would have come out differently had the Supreme Court required the Postmaster General's action to be contrary to a specific statutory prohibition. The statute at issue in that case expressly authorized the Postmaster General to withhold mail "upon evidence satisfactory to him." *McAnnulty*, 187 U.S. at 100 n.†. If the Court had applied the "painstakingly delineated procedural boundaries of [*Leedom v.*] *Kyne*," it likely would have upheld the Postmaster General's decision on the ground that it did not violate a "specific prohibition" in the statute. *Nuclear Regul. Comm'n*, 605 U.S. at 681 (citations omitted). That result would defy common sense and improperly hamper courts' ability to review executive action for compliance with federal law.

This Court's clarification of when each standard—*McAnnulty* or *Leedom*—applies will assist lower courts in assessing *ultra vires* claims in two ways. First, it will help deter any blurring of the standard based on potentially ambiguous dicta in this Court's cases. For instance, *Federal Express* characterized the decision in *Aid Association for Lutherans v. U.S. Postal Service*, 321 F.3d 1166 (D.C. Cir. 2003), as "point[ing] to a demanding standard of review by drawing heavily on *McAnnulty*, [*Leedom v.*] *Kyne*, and their progeny when determining the availability of *ultra vires* relief." 39 F.4th at 765. As illustrated above and demonstrated by the cases *Federal Express* cites, the genesis for the "demanding standard of review" for *ultra vires*

claims is *Leedom* alone. Moreover, *Aid Ass'n for Lutherans* in fact did not credit *McAnnulty* for a demanding standard at all—it merely cited *McAnnulty* for the proposition that "judicial review is available when an agency acts *ultra vires*." 321 F.3d at 1173. Nor would reading *McAnnulty* as establishing a demanding standard like *Leedom*'s be plausible. *See supra* p. 11. The discussion in *Federal Express* appears to have been shaped by the plaintiff's curious argument that the Court's analysis should be guided not by *McAnnulty* or *Leedom* but instead by *Chevron*. *See* 39 F.4th at 764.[2]

Second, this Court should make clear that the *Leedom* standard applies *only* where there is a statutory limitation on judicial review to encourage the district court to first determine whether there is such a limitation before applying the heightened standard, which the district court does not always do, *see, e.g.*, *Dreamland Baby Co. v. Consumer Prod. Safety Comm'n*, 2025 WL 2758476, at *9 (D.D.C. Sept. 26, 2025) (court applied *Leedom* standard to plaintiffs' *ultra vires* claim without first finding

[2] Another example of dicta that could mislead parties and the district court is the statement that "*ultra vires* review imposes the same demanding standard in all cases, including those where only APA review is foreclosed." *Fed. Express Corp.*, 39 F.4th at 766. This statement also appears to have been prompted by an incorrect argument plaintiff advanced—specifically, that *Leedom* "applies only when Congress is understood generally to have precluded *all* statutory judicial review," *id.* at 764 (emphasis added), as opposed to just one form of review. Of course, where Congress is "clear and convincing" in precluding all review, the result is not *Leedom* review, but no review at all. *Bd. of Governors of Fed. Rsrv. Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 44 (1991).

there was a statutory limitation on judicial review); *Vera Inst. of Just. v. U.S. Dep't of Just.*, 2025 WL 1865160, at *17 (D.D.C. July 7, 2025) (same), and to dispel confusion resulting in the blurring of the standards, *see New Mexico v. Musk*, 784 F. Supp. 3d 174, 205-06 (D.D.C. 2025) (court "agree[d] that [the *Leedom*] test applies" to the plaintiffs' *ultra vires* claim but held that there was no statutory preclusion of judicial review and that the plaintiffs stated an *ultra vires* claim because they adequately alleged the defendants acted without statutory authority—*i.e.*, the *McAnnulty* standard).

Clear delineation of the boundary that this Court and the Supreme Court have applied between the *McAnnulty* and *Leedom* standards will provide guidance to the district court and help ensure that federal courts' ability to enforce statutory limits on Executive Branch authority is not unduly diluted.

IV. This Court Should Apply the Ordinary *McAnnulty* Standard to Plaintiffs' *Ultra Vires* Claim if the FSLMRS Does Not Limit Judicial Review of the President's Exclusion Decision.

The government's position in this case would have the Court "squeeze" Plaintiffs' "typical statutory-authority argument . . . into the *Leedom v. Kyne* box," *Nuclear Regul. Comm'n*, 605 U.S. at 682, regardless of whether their claim belongs in that box. As the cases above make clear, *Leedom* applies only when Congress has limited judicial review—not whenever a plaintiff invokes equity to challenge a government official's violation of a federal statute.

In order for the *Leedom* standard of review to apply to Plaintiffs' *ultra vires* claim, this Court would need to hold that the FSLMRS limits judicial review of the President's decision to exclude Plaintiffs from the statute's coverage. The archetypal example is where Congress provided a reticulated statutory judicial review scheme for the challenged act at issue, such as the NLRA in *Leedom* or the Hobbs Act in *Nuclear Regulatory Commission*. Here, however, the district court concluded that the FSLMRS's "administrative review scheme . . . is not available to challenge the Executive Order's exclusions of the agencies and subdivisions subject to the Executive Order for the simple reason that those agencies and subdivisions have been excluded from the FSLMRS's coverage by the very Executive Order at issue here." J.A. 714 (citation omitted). The heightened *Leedom* standard would only apply to Plaintiffs' *ultra vires* claim if this Court concludes that the FSLMRS indeed limits judicial review of the President's exclusion decision.

Assuming it does not, the ordinary, default standard of review under *McAnnulty* should apply to Plaintiffs' *ultra vires* claim. Such an analysis would take into account whether the "presumption of regularity" is rebutted and consider, as Plaintiffs argue and as the district court assessed, whether the President's Executive Order was beyond the authority conferred to the President by the FSLMRS. This includes whether the Executive Order "should be viewed in its entirety," J.A. 732, and if so, whether the Executive Order complies with the FSLMRS's limitations on

when the President can exclude certain agencies and subdivisions for national security reasons, Pls. Br. at 48-51. This Court should not apply the standard the government uses—whether the Executive Order "contravenes [an] express statutory prohibition," Defs. Br. at 50, unless it first concludes that there is a statutory limitation on judicial review. In other words, the Court would need to determine that Plaintiffs' challenge indeed is an "end-run around the limitations of . . . [a] judicial-review statute[]," *Nuclear Regul. Comm'n*, 605 U.S. at 681, before requiring Plaintiffs to demonstrate that the President's decision was contrary to a specific statutory prohibition as the government argues.

CONCLUSION

For the foregoing reasons, the Court should reject the government's argument that the heightened *Leedom* standard applies to *ultra vires* claims even in the absence of a statutory limitation on judicial review, and apply the same analysis performed by Plaintiffs and the district court if the Court determines that the FSLMRS does not limit judicial review of the President's exclusion decision.

Respectfully submitted,

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[3] Counsel wish to acknowledge the assistance of paralegal Ameerah Adetoro in the preparation of this brief.

CERTIFICATE OF COMPLIANCE

I hereby certify that my word processing program, Microsoft Word, counted 6,486 words of the foregoing brief, excluding the items exempted by Federal Rule of Appellate Procedure 32(f) and that this complies with the word limit set forth in Federal Rule of Appellate Procedure 29(a)(5).

/s/ Aditi Shah
Aditi Shah

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, I electronically filed the foregoing brief in support of Plaintiffs-Appellees with the Clerk of the Court of the U.S. Court of Appeals for the D.C. Circuit by using the Appellate CM/ECF system, which will send notice to all counsel who are registered CM/ECF users.

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