

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued April 27, 2026

Decided September 25, 2026

No. 25-5456

ALSTOM TRANSPORTATION, INC.,
APPELLANT

v.

FEDERAL RAILROAD ADMINISTRATION, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:24-cv-02098)

Vincent Levy argued the cause for appellant. With him on the briefs were *Jack Millman*, *Jessica Marder-Spiro*, *Daniel Fahrenthold*, and *Nicholas H. Hallock*.

Gabriel I. Schonfeld, Attorney, U.S. Department of Justice, argued the cause for federal appellees. With him on the brief were *Brett A. Shumate*, Assistant Attorney General, *August Flentje*, Attorney, and *Charles E. Enloe*, Assistant General Counsel, U.S. Department of Transportation.

Alice E. Loughran argued the cause for intervenor-appellee DesertXpress Enterprises, LLC. With her on the brief

were *Eugene E. Stearns*, *Matthew W. Buttrick*, *Veronica L. De Zayas*, and *Paul Hurst*.

Andrew D. Prins argued the cause for intervenor-appellee Siemens Mobility, Inc. With him on the brief were *Nicholas L. Schlossman*, *Philip J. Perry*, and *Lia Rose Barrett*.

Before: KATSAS, WALKER, and GARCIA, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* KATSAS.

Opinion dissenting in part filed by *Circuit Judge* WALKER.

KATSAS, *Circuit Judge*: The Federal Railroad Administration awarded Brightline West \$3 billion to support construction of a high-speed railroad between Southern California and Las Vegas. The agency waived a statutory requirement that Brightline buy only goods produced in the United States. Brightline then chose to buy trains manufactured abroad by Siemens Mobility, Inc., rather than trains manufactured domestically by Alstom Transportation, Inc. Alstom now challenges the waiver. We hold that Alstom has standing to do so, but its claims fail on the merits.

I

The Infrastructure Investment and Jobs Act authorizes the Secretary of Transportation to award grants to support intercity passenger railroads. 49 U.S.C. § 24911. The Secretary has delegated responsibility for administering this program to the Federal Railroad Administration (FRA). 49 C.F.R. § 1.89(a).

The Act subjects grants to the “Buy America” requirement set forth in section 22905 of title 49. *See* 49 U.S.C. § 24911(i). That provision permits federal funding of a project “only if the steel, iron, and manufactured goods used in the project are

produced in the United States.” *Id.* § 22905(a)(1). However, the FRA may waive this requirement if it concludes that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality” for use in the project. *Id.* § 22905(a)(2)(B).

II

The Nevada Department of Transportation has engaged Brightline West, a privately owned railroad company, to build a high-speed passenger rail connection between Rancho Cucamonga, California, and Las Vegas, Nevada. In 2023, the Department and Brightline sought federal funding for this project under the Infrastructure Investment and Jobs Act. They estimated the total cost of this project at \$12 billion. On December 8, 2023, the FRA awarded some \$3 billion in federal funding to the project.

Brightline sought bids for ten trains capable of traveling at speeds exceeding 186 miles per hour. Only two companies submitted bids: Siemens Mobility, Inc., and Alstom Transportation, Inc. Siemens proposed to supply Brightline with its Velaro Novo trains, which travel in Europe at speeds of up to 220 miles per hour. Siemens proposed to build the first two trains at its headquarters in Germany, while training American workers in the process, and then to build the other eight trains at a new factory to be constructed in the United States. Alstom proposed to supply Brightline with ten trains built in the United States, using technology developed for its Avelia Liberty trains. Those trains have been selected for use in the Northeast Corridor under the Acela brand and presently have a maximum speed of 160 miles per hour. Apart from the trains themselves, both Siemens and Alstom proposed to build

abroad certain train components that no company produces domestically.

After approving federal funding, the FRA proposed to waive the Buy America requirements for both Siemens and Alstom. *Notice of Proposed Nonavailability Waiver of Buy America Requirements*, 88 Fed. Reg. 89,015 (Dec. 26, 2023). Because Brightline had not yet selected its preferred vendor for the trains, the agency planned to grant Brightline a waiver for either Siemens's or Alstom's proposal. *Id.* at 89,016–17. In the agency's tentative judgment, a waiver would be justified because the high-speed trains demanded by Brightline are not produced in the United States. *See id.*

The FRA reached a final decision on May 24, 2024. *Notice of Nonavailability Waiver of Buy America Requirements*, 89 Fed. Reg. 45,934 (May 24, 2024). By that time, Brightline had selected Siemens as its “preferred” vendor, so the FRA finalized the waiver only as to Siemens. *Id.* at 45,934; *see* J.A. 73 (notice from Brightline to FRA). In doing so, the agency found that “there are currently no domestic manufacturers of high-speed trainsets” able to travel at the speeds demanded by Brightline. 89 Fed. Reg. at 45,936.¹

One week after the waiver decision, Brightline contracted to buy the trains from Siemens. *See* Limited Remarketing Memorandum, Brightline West Passenger Rail Project Revenue Bonds Series 2020A-4, at 13 (July 25, 2024), *available at* bit.ly/40jiBg8 (“On May 31, 2024, the Company entered into a rolling stock purchase agreement with Siemens

¹ In its decision, the FRA stated that “high-speed trainsets” are those that can travel “in excess of 125 mph.” 89 Fed. Reg. at 45,936. The agency now describes that figure as a scrivener's error, and no party disputes this characterization. In fact, Brightline had demanded trains that could travel over 186 miles per hour.

to supply trainsets for the Project, after a multi-year global qualification process.”).

About six weeks later, Alstom sued to challenge the waiver under the Administrative Procedure Act. J.A. 14 (complaint). Brightline and Siemens intervened in support of the FRA, and all parties moved for summary judgment. The district court dismissed the complaint on the ground that Alstom lacked Article III standing. *Alstom Transp., Inc. v. FRA*, No. 24-cv-02098, 2025 WL 3640503 (D.D.C. Dec. 16, 2025). Alstom appealed.

III

A

Article III of the Constitution limits the federal courts to resolving “Cases” or “Controversies.” U.S. Const. Art. III, § 2. The case-or-controversy requirement is embodied in the doctrine of standing, which requires the plaintiff to show that it has suffered an injury that was caused by the defendant and likely would be redressed by a favorable judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

When a plaintiff seeks to challenge an agency’s grant of a benefit to a third party, “standing is not precluded, but it is ordinarily substantially more difficult to establish.” *Defs. of Wildlife*, 504 U.S. at 562 (cleaned up). In that circumstance, causation and redressability depend on the behavior of parties other than the plaintiff or the agency. To establish standing in such a case, the plaintiff must show two distinct causal chains connecting the challenged agency action to the plaintiff’s injury. First, it must show that granting the benefit caused the third party to harm the plaintiff. *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025). Second, it must show that a favorable judicial decision setting aside the benefit would

cause the third party to redress that harm. *Id.* Predictable causal chains establishing these elements can support standing, while speculative ones cannot. *Id.* In distinguishing predictable from speculative chains, “all we require” is a “substantial likelihood” that the plaintiff’s injury is traceable to the agency action under review and would be redressed by a favorable decision setting it aside. *Competitive Enter. Inst. v. FCC*, 970 F.3d 372, 384 (D.C. Cir. 2020) (*CEI*).

Each element of standing “must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Defs. of Wildlife*, 504 U.S. at 561. Here, the parties cross-moved for summary judgment on an administrative record including agency findings of fact. In this procedural posture, Alstom had to prove its standing, not merely allege it. *Viasat, Inc. v. FCC*, 47 F.4th 769, 781 (D.C. Cir. 2022).

“In considering the likely reaction of third parties, we may consider a variety of evidence, including the agency’s own factfinding, affidavits submitted by the parties, evidence in the administrative record, arguments firmly rooted in the basic laws of economics, and conclusions in other agency orders and rulemakings.” *CEI*, 970 F.3d at 382 (cleaned up). In particular, the standing analysis may recognize “commonsense economic realities” and draw “commonsense inferences” about how businesses are likely to respond to them. *Diamond Alt. Energy*, 606 U.S. at 116.

B

To establish its standing in this case, Alstom asserted three distinct theories of injury—lost profits, harm as a competitor, and procedural injury. We hold that the first theory suffices to establish its standing, so we do not address the other two.

Alstom contends that it lost profits from the waiver that the FRA granted for Siemens. Without that waiver, Alstom argues, Brightline likely would have bought trains from it rather than choose Siemens and thereby sacrifice \$3 billion in federal funding. Moreover, setting aside the waiver would likely redress its injury for essentially the same reason: Brightline likely would shift its business from Siemens to Alstom rather than lose \$3 billion in federal funding.

Alstom easily satisfies the requirement to show a concrete injury. When Brightline awarded the contract to Siemens, Alstom lost a valuable business opportunity and thus suffered a pocketbook injury, which is “a prototypical form of injury in fact.” *Collins v. Yellen*, 594 U.S. 220, 243 (2021).

As for traceability, Alstom has shown a substantial likelihood that the FRA’s grant of a waiver for Siemens caused Brightline to select Siemens, rather than Alstom, to build the trains at issue. This conclusion seems to us apparent from the sheer size of the \$3 billion federal grant. Absent the waiver, Brightline could not have chosen Siemens trains for the project without losing this funding. *See* 49 U.S.C. § 24911(i). Indeed, had Brightline agreed to purchase even one train from abroad without the waiver, it would have lost the entire \$3 billion. Under the Infrastructure Investment and Jobs Act, the FRA may obligate funds for a project “only if the steel, iron, and manufactured goods used in the project are produced in the United States.” *Id.* § 22905(a)(1). This means that “none of the funds made available” by the FRA may be obligated unless “all of” the steel, iron, and manufactured goods used in the project are produced in the United States. Pub. L. No. 117-58, div. G, tit. IX, § 70914, 135 Stat. 429, 1298 (2021). The procedural history of this case confirms the obvious economic reality that federal funding conditions would drive Brightline’s decision: Before selecting Siemens over Alstom to build the

trains, Brightline sought a waiver for each of the two bidders. *See* 88 Fed. Reg. at 89,017. And although Brightline did identify Siemens as its “preferred bidder” before receiving the waiver, J.A. 73, it made no contractual commitment to Siemens until after the FRA had granted the waiver.

We reach the same conclusion as to redressability. This should not be entirely surprising, as the two causation elements of standing are “usually flip sides of the same coin.” *Diamond Alt. Energy*, 606 U.S. at 111 (cleaned up). The same basic economic reality showing that the waiver likely caused Brightline to select Siemens over Alstom on the front end also shows that, if the waiver were set aside, Brightline would likely shift its business from Siemens to Alstom rather than lose \$3 billion in federal funding.

Resisting this conclusion, the FRA relies chiefly on this Court’s decision in *Hecate Energy LLC v. FERC*, 126 F.4th 660 (D.C. Cir. 2025). In that case, the Federal Energy Regulatory Commission approved a third party’s proposal to grant expedited review of certain transmission upgrades projected to cost \$5 million or less. *Id.* at 662. A company that had been denied expedited approval of its more expensive proposed upgrade challenged the approval for the less expensive upgrade. *Id.* at 665. The company argued that vacating FERC’s approval of the third party’s proposal would increase the prospects for quick approval of the more expensive upgrade. *Id.* Rejecting that theory of redressability, we reasoned that our prospective decision would not remove the third party’s “incentive or ability” to resist expedited approval of the more expensive project. *Id.* at 669. No such difficulty is present here, because vacating the waiver for Siemens would significantly alter Brightline’s incentive to buy trains from Siemens rather than Alstom.

The appellees also remind us that “redressability on the back end” might diverge from “traceability on the front end” if a “new status quo” is “held in place by other forces besides the government action at issue.” *CEI*, 970 F.3d at 385 (cleaned up). And they claim that things changed when, after the FRA granted the waiver, Brightline awarded the contract to Siemens. Perhaps that means Brightline would need to pay Siemens some money, in the form of a breakup fee or damages, to walk away from their deal. But the contract appears in neither the administrative nor the district-court record, and neither Brightline nor Siemens has told us anything about its terms. Had the contract posed any serious questions as to redressability, we suspect that one of those two intervenors would have put it in the record. Moreover, we have strong reason to doubt that the contract itself would cement the commercial arrangement between Brightline and Siemens. Brightline has projected the cost of all trains for the project to be \$750 million—a fraction of the \$3 billion in federal funding that Brightline would lose if we set aside the waiver and Brightline nonetheless maintained its contract with Siemens. So the prospect of some contractual liability to Siemens would not likely drive Brightline’s future purchasing decision.

Beyond formation of the contract, the appellees also speculate that facts on the ground have changed during the time this litigation has been pending. The FRA notes that Brightline has already invested two years and millions of dollars in its relationship with Siemens. Likewise, Brightline stresses that it would be loath to proceed with Alstom at this late date. But Brightline originally sought a waiver for Alstom as well as for Siemens, and it has conspicuously declined to file an affidavit swearing off any possibility of working with Alstom in the future, should that become necessary to preserve its federal funding. For standing purposes, we consider only the facts as they stood when this lawsuit was filed in July 2024. *See*

Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 191–92 (2000). Any later developments impairing our ability to provide relief to Alstom would bear on mootness, which the FRA would have to prove. *See West Virginia v. EPA*, 597 U.S. 697, 719 (2022). The FRA does not raise any mootness argument. And even if it did, vague references to working relationships and performance under an existing contract, in the shadow of \$3 billion in federal funding, fall short of satisfying its burden to prove mootness.

In sum, our setting aside the waiver would put Brightline to a stark choice: Shift business from Siemens to Alstom or else lose \$3 billion in federal funding. Commonsense economic inferences—indeed obvious ones—make it substantially likely that Brightline would shift its business to Alstom if put to that choice. We therefore conclude that Alstom’s lost-profits injury is redressable, and Alstom thus has Article III standing.²

² The dissent posits that Brightline might avoid this dilemma by renegotiating its contract with Siemens to provide for exclusively domestic manufacturing or by seeking a public-interest waiver to the Buy America requirement. *Post*, at 6. Neither possibility strikes us as likely. After a years-long procurement process stretching back to 2019, Siemens made its “best and final” offer in 2024. J.A. 133. The details are under seal, but suffice it to say that Siemens did not think it could safely or reliably build the first two trains in the United States without first having prospective American workers learn the expert manufacturing, assembly, inspection, and testing processes at its established manufacturing facility in Germany. Moreover, despite the stakes involved in locking down a \$12 billion project, Brightline never even raised the possibility of a public-interest waiver under 49 U.S.C. § 22905(a)(2)(A). And if this Court were to hold that a domestic-unavailability waiver under section 22905(a)(2)(B) is unavailable, the dissent does not say what other considerations might support the posited public-interest waiver.

Because the district court erred in dismissing this case on jurisdictional grounds, we must consider whether to remand or to resolve the merits. Although we ordinarily remand for the district court to consider the merits in the first instance, we have discretion to do so ourselves. *Mendoza v. Perez*, 754 F.3d 1002, 1020 (D.C. Cir. 2014). Factors bearing on our exercise of this discretion include whether (1) the parties have briefed the merits here, (2) they have requested a merits decision, (3) the merits involve purely legal questions, (4) an appeal from any district-court decision is likely, and (5) the merits are clear. *See id.*; *Nat’l Council for Adoption v. Blinken*, 4 F.4th 106, 113–14 (D.C. Cir. 2021).

These considerations support our reaching the merits. First, the parties fully briefed the merits in this Court. Second, Alstom has asked us to decide the merits, and neither the FRA nor Siemens objects. Brightline requests a remand, but that consideration is not dispositive. *See Mendoza*, 754 F.3d at 1020. Third, Alstom’s claims raise purely legal issues that we would consider *de novo*, with or without a district-court decision. Fourth, an appeal from any merits decision appears likely, given the financial stakes of this case. Fifth, the merits seem to us relatively straightforward, as explained below. And we add one final consideration: Two years into this \$12 billion infrastructure project, it is better for everyone to know sooner, rather than later, the basic rules governing the \$3 billion in federal funding.

In declining to reach the merits after reversing a jurisdictional dismissal, some courts have invoked the rule that an appellee may not enlarge a judgment in its favor without taking a cross-appeal. *See In re Breland*, 989 F.3d 919, 922–23 (11th Cir. 2021); *Remijas v. Neiman Marcus Grp., LLC*, 794

F.3d 688, 697 (7th Cir. 2015). Here, however, it is the *appellant*—Alstom—urging us to render a favorable merits judgment. Because the cross-appeal rule “is both informed by, and illustrative of, the party presentation principle,” *Greenlaw v. United States*, 554 U.S. 237, 244 (2008), and protects “institutional interests in fair notice and repose,” *El Paso Nat. Gas Co. v. Neztosie*, 526 U.S. 473, 480 (1999), it applies only when an appellee tries to surprise the appellant by attacking the judgment for the first time in its response brief. Thus, in an early case expounding the cross-appeal rule, Justice Story explained that an appellee “will be deemed to have waived” any attacks on a judgment that it did not cross appeal. *Canter v. Am. Ins. Co.*, 28 U.S. (3 Pet.) 307, 318–19 (1830). That concern is absent when the appellant seeks to convert a jurisdictional dismissal into a merits decision.

In any event, even if the cross-appeal rule did presumptively apply here, we have described it as a non-jurisdictional rule subject to judge-made exceptions. *Shatsky v. PLO*, 955 F.3d 1016, 1030 (D.C. Cir. 2020). Here, an exception would be warranted for the reasons ticked off above, including the desire to avoid extended uncertainty over the rules for a multi-billion-dollar infrastructure project. *See Ream v. U.S. Dep’t of Treasury*, 174 F.4th 480, 486 (6th Cir. 2026).

V

On the merits, Alstom argues that the waiver is both contrary to law and arbitrary. We review legal questions regarding the scope of the waiver provision *de novo*, without deference to the district court or the agency. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). To survive judicial review for arbitrariness, the waiver decision need only be reasonable and reasonably explained. *See* 5 U.S.C.

§ 706(2)(A); *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

A

The Infrastructure Investment and Jobs Act permits funding for Brightline’s project “only if the steel, iron, and manufactured goods used in the project are produced in the United States.” 49 U.S.C. § 22905(a)(1). But the FRA may waive this requirement if it finds that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality” for use in the project. *Id.* § 22905(a)(2)(B). The FRA granted a waiver permitting Brightline to buy two trains manufactured abroad after finding that “there are currently no domestic manufacturers of high-speed trainsets” able to travel at the speeds demanded by Brightline. 89 Fed. Reg. at 45,936. Alstom does not challenge this factual finding as unsupported by substantial evidence or otherwise arbitrary. On the contrary, Alstom has expressly disclaimed any such challenge. Reply in Supp. of Pl.’s Mot. for Prelim. Inj. at 12 n.19, *Alstom Transp., Inc. v. FRA*, No. 1:24-cv-02098 (D.D.C. filed Dec. 4, 2024), ECF Doc. 64 (“Alstom has never disputed the FRA’s conclusion that no manufacturer in the U.S. was yet producing trains operating above 186 miles per hour”).

Instead, Alstom contends that the availability of the waiver provision depends on *future* production of the relevant goods. When the FRA considers whether the relevant goods “are not produced” in the United States in sufficient quantity or satisfactory quality, 49 U.S.C. § 22905(a)(2)(B), Alstom would compel the agency to consider whether such goods *will be* produced in the future. But verb tense matters in statutory construction. See *United States v. Wilson*, 503 U.S. 329, 333 (1992). And in the waiver provision, Congress chose the

present tense to frame a question whether the relevant goods “are” produced domestically at the time of the waiver decision.

In arguing to the contrary, Alstom cites no textual features of the waiver provision itself. Instead, Alstom invokes the underlying Buy America requirement, which provides that the FRA “may obligate” federal funds for a project only if the “goods used in the project are produced” in the United States. 49 U.S.C. § 22905(a)(1). Alstom posits that the phrase “are produced,” as used in this requirement, refers to goods that will be produced in the future. Then, Alstom invokes the presumption of consistent usage to contend that, if the phrase “are produced” in the requirement refers to some future time, then so too must the phrase “are ... produced” in the waiver provision.

This argument is clever but ultimately unpersuasive. As a general matter, courts presume that a statutory term “bears a consistent meaning throughout” the statute. *USPS v. Konan*, 607 U.S. 391, 403 (2026). But this presumption “is particularly defeasible by context.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 171 (2012); see *Atl. Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932) (“It is not unusual for the same word to be used with different meanings in the same act.”). And we are skeptical that the presumption carries weight in determining the temporal scope of a participle like “produced,” which is often ambiguous as a matter of basic grammar. Participles may be used as part of a verb phrase carrying a tense or may be used as an adjectival passive. See R. Huddleston & G. Pullum, *The Cambridge Grammar of the English Language* 78–79, 1436–39 (2002). In the latter case, the adjective is “tenseless” and may refer to past, present, or future events. *Bernal v. NRA Grp., LLC*, 930 F.3d 891, 895 (7th Cir. 2019) (quoting Huddleston & Pullum, *supra*, at 162); see also *TQP Dev., LLC v. Intuit Inc.*, No. 2:12-cv-180,

2014 WL 2810016, at *1 (E.D. Tex. June 20, 2014) (Bryson, J., sitting by designation). In that instance, other parts of the sentence must determine the temporal scope of the participle. *See Bernal*, 930 F.3d at 895 (“Everything depends on the context.”).

We agree with Alstom that the phrase “are produced,” as used in the Buy America requirement, refers to future production. Again, that requirement provides that the FRA “may obligate” federal funds only if the “goods used in the project are produced in the United States.” 49 U.S.C. § 22905(a)(1). In this provision, the participial phrase “produced in the United States” plainly functions as an adjective modifying the noun “goods.” Replace the participial phrase with a synonymous, true adjective—say “domestic”—and the requirement retains its sense and coherence: The FRA may fund a project only if the “goods used in the project are *domestic*.” Or replace the participial phrase with a synonymous prepositional phrase (which can function adjectivally but not as a verb): The FRA may fund a project only if the “goods used in the project are *of United States origin*.” Again, the requirement retains its sense and coherence. Moreover, context makes clear that the participial phrase refers to goods produced in the future, for the Buy America requirement contemplates a sequence of events that begins with an FRA funding decision, to be followed by production and then use of the relevant goods in the future. This case illustrates that point; not surprisingly, Brightline sought federal funding of the high-speed trains for its project before the trains were either “produced” or “used.” 88 Fed. Reg. at 89,015; J.A. 131.

The waiver provision has a different grammatical structure. It applies if the “goods produced in the United States are not produced in a sufficient and reasonably available

amount or are not of a satisfactory quality.” 49 U.S.C. § 22905(a)(2)(B). In that provision, the second participle “produced” is *not* used tenselessly and adjectivally to modify the noun “goods.” Substitute a true adjective for the participle, and the sentence becomes garbled: Nobody would craft a waiver provision keyed to whether the relevant goods “are not *domestic* in a sufficient and reasonably available amount or are not of a satisfactory quality.” Instead, “produced” is used as part of a verbal passive—a “dynamic verb phrase that describes the act” of physically producing the goods. *TQP Dev.*, 2014 WL 2810016, at *2. And as explained above, this verb carries with it the present tense. So, nothing about the Buy America requirement supports an atextual reading of “are ... produced” in the waiver provision to mean “will be ... produced.” In the provisions at issue, different grammatical structures indicate different temporal frames of reference.

In short, the FRA correctly concluded that the waiver provision applied based on its uncontested finding that no domestic manufacturer, at the time of the waiver, was producing the kind of high-speed trains that Brightline demanded.

Alternatively, Alstom contends that the FRA defined the relevant “goods” too narrowly. Alstom urges that high-speed trains cannot be different goods just because their technologies differ. Otherwise, Alstom says, Brightline could obtain a waiver for Velaro Novo trains manufactured in Germany just because their technology differs slightly from the Avelia Liberty trains manufactured domestically. We agree with Alstom’s premise that, at some point, distinguishing goods based on immaterial technological or other differences might be arbitrary, but we do not read the FRA’s decision to rest on such immaterial differences. As explained above, the agency rested its waiver on a finding that “there are currently no

domestic manufacturers of high-speed trainsets” capable of traveling at the 186 miles per hour demanded by Brightline. 89 Fed. Reg. at 45,936. Alstom neither challenges that finding nor directly contends that the FRA, in assessing domestic availability, arbitrarily excluded trains capable of traveling at almost that speed. The passages in the FRA’s analysis highlighted by Alstom, where the agency stressed the technological differences between the Velaro Novo and Avelia Liberty trains, simply underscore that basic point.

B

Alstom argues that the waiver, even if not contrary to law, was nonetheless arbitrary. Alstom contends that the FRA did not reasonably explain its decision to issue the discretionary waiver. We disagree. As noted above, the FRA did highlight the significant technological differences—resulting in significant speed differences—between the two trains. 89 Fed. Reg. at 45,937. Moreover, the FRA explained that “[h]igh speed rail trainsets are highly specialized and require highly skilled labor and specific equipment, manufacturing, testing, and commissioning facilities to ensure safe and efficient operations.” *Id.* So, the agency could reasonably allow Brightline to work with a company that has already produced trains proven to travel safely at such high speeds, rather than hope a different company would manage to upgrade its existing technology to support substantially increased speed. Finally, the FRA stressed that the waiver, limited to two trains and certain components that all agreed were not domestically available, was “narrowly tailored and limited” as much as reasonably possible. *Id.* at 45,938. That was more than enough to avoid arbitrary decision-making.

For these reasons, we agree with the district court that Alstom is entitled to no relief. We convert the district court's jurisdictional judgment into a merits-based judgment, *see Fernandez v. Centerplate/NSBE*, 441 F.3d 1006, 1009–10 (D.C. Cir. 2006) (*per curiam*), which we affirm as so modified.

So ordered.

WALKER, *Circuit Judge*, dissenting in part:

Brightline West is building a high-speed rail system. Alstom Transportation wants to sell trains to Brightline. But Brightline instead chose to buy trains from Siemens Mobility.

An action by the Federal Railroad Administration made Brightline's choice easier. Alstom has sued to vacate that agency action. It thinks that Brightline will then choose to buy trains from Alstom.

That chain of events is possible. But Alstom has not shown that it is sufficiently predictable. So Alstom does not have standing to sue.

I. Brightline Prefers Siemens' (Proven) Trains to Alstom's (Unproven) Trains

Brightline is building a high-speed rail connecting Las Vegas with southern California.¹ The trains will reach speeds of at least 186 miles per hour.² To support the project, the Federal Railroad Administration provided \$3 billion.³

Siemens bid to build the trains that Brightline needs.⁴ So did Alstom.⁵

But Alstom had a problem. At that time, its American facilities were not making trains "service proven at speeds in

¹ The Nevada Department of Transportation partnered with Brightline, a privately owned railroad, to develop the project. *See* JA 31. Throughout this opinion, I refer to decisions on behalf of their partnership as Brightline's decisions.

² *See* JA 129.

³ *See* JA 129–32.

⁴ *See* JA 242.

⁵ *See id.*

excess of 125 mph.”⁶ So Alstom proposed a train it had *never before built* — a new version of its “Avelia” train modified to go 186 mph.⁷

In contrast, Siemens proposed its “Velaro NOVO.”⁸ That high-speed train was *already* operating in Europe.⁹ And it was *already* capable of going 186 mph.¹⁰

Brightline’s federal funding requires it to buy American-made trains unless it receives a Buy America waiver from the FRA.¹¹ Alstom and Siemens each proposed to use foreign-made train car shells.¹² So Brightline sought a “nonavailability waiver” broad enough to accommodate either Siemens’ or Alstom’s proposal.¹³

Before the FRA made a final decision about the requested waiver, Brightline chose not to contract with Alstom.¹⁴ Instead, Brightline selected Siemens — the company proposing to build trains already proven to be fast enough for Brightline’s project.¹⁵ After announcing that selection,

⁶ JA 41.

⁷ JA 41–42, 74.

⁸ JA 41–42.

⁹ See JA 32, 239.

¹⁰ JA 78, 242.

¹¹ See 49 U.S.C. § 22905.

¹² See JA 32.

¹³ See JA 32–33; 49 U.S.C. § 22905(a)(2)(B).

¹⁴ JA 239, 244. Cf. SEINFELD: *The Lip Reader* (NBC television broadcast, aired Oct. 28, 1993) (Gwen: “It’s not you. It’s me.” George: “You’re giving me the ‘it’s not you, it’s me’ routine? I invented ‘it’s not you, it’s me.’ Nobody tells me ‘it’s them not me.’ If it’s anybody, it’s me!” Gwen: “All right. George, it’s you.”).

¹⁵ JA 73.

Brightline requested and received a final Buy America waiver allowing Siemens to build its first two trains in Germany, with American workers there to learn the manufacturing process before production of the remaining eight trains shifted to a new facility in Nevada.¹⁶

II. Alstom Lacks Standing

To sue, a plaintiff must have standing. Standing requires an injury caused by the defendant and redressable by the court.¹⁷ Because the court cannot redress Alstom’s injury, Alstom lacks standing.

A. Alstom Cannot Satisfy Its Burden with Guesswork

When (as here) a plaintiff challenges government action directed toward third parties rather than toward the plaintiff, redressability “often depend[s] on how regulated third parties not before the court will act in response to the . . . judicial relief” requested.¹⁸ That requires courts to distinguish the requested relief’s “predictable” effects on third parties from its “speculative effects.”¹⁹

For that inquiry, courts must not blind themselves to “commonsense economic inferences.”²⁰ If those inferences

¹⁶ JA 39, 73, 242–43.

Brightline announced its selection of Siemens on May 1, 2024. JA 73. The FRA granted the final waiver on May 24. JA 39. Brightline and Siemens consummated the final agreement on May 31. JA 250.

¹⁷ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

¹⁸ *Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121, 2134 (2025).

¹⁹ *Id.* (cleaned up).

²⁰ *Id.* at 2138.

make a favorable outcome for the plaintiff “sufficiently predictable,” they can support redressability.²¹ For instance, it is “predictable” — if not certain — that invalidating regulations requiring automakers to make fewer gas-powered vehicles will result in more sales of gas.²² That is at least so when the inference is supported by record evidence.²³

But plaintiffs cannot rely on “guesswork as to how independent decisionmakers will exercise their judgment.”²⁴ They must instead show that the independent decisionmakers “will likely react in predictable ways.”²⁵ So when a disappointed bidder challenges government action that has eliminated a regulatory obstacle to the winning bidder’s contract with a third party, the disappointed bidder must show that the third-party would likely respond to the vacatur in a way that redresses the disappointed bidder’s injury. Sometimes “commonsense economic inferences” will make that response “sufficiently predictable,” but sometimes those inferences will make that response unlikely.²⁶ In other words, sometimes economic inferences will support the causal chain asserted by the plaintiffs, and sometimes they will undermine it.

In today’s case, Alstom must do more than show that one imaginable sequence of events begins with vacatur of the waiver, is followed by Brightline abandoning its relationship with Siemens, and ends with Brightline selecting Alstom. The

²¹ *Id.* (cleaned up).

²² *Id.* at 2141.

²³ *See id.* at 2138 n.5.

²⁴ *Murthy v. Missouri*, 144 S. Ct. 1972, 1986 (2024) (quoting *Clapper v. Amnesty International USA*, 568 U.S. 398, 413 (2013)).

²⁵ *Id.* (quoting *Department of Commerce v. New York*, 139 S. Ct. 2551, 2566 (2019)).

²⁶ *Diamond Alternative Energy*, 145 S. Ct. at 2138 (cleaned up).

question is instead whether “commonsense economic inferences” and Alstom’s evidence make that sequence “sufficiently predictable.”²⁷ If so, Alstom’s economic injury is redressable. If not, Alstom lacks standing.

B. Alstom Has Not Demonstrated Redressability Because a Brightline-Alstom Relationship Is Not “Sufficiently Predictable”

Alstom says it is “sufficiently predictable” that vacatur of the waiver will result in Brightline buying trains from Alstom because vacatur will impose a binary choice on Brightline.²⁸ Option One — keep Siemens, and lose \$3 billion in federal funding. Option Two — dump Siemens, switch to Alstom, and retain the \$3 billion in federal funding.²⁹ And that, according to Alstom, is an offer that Brightline can’t refuse.³⁰

If those were Brightline’s only two options, I might agree with Alstom. After all, though Brightline prefers Siemens’ (proven) trains to Alstom’s (unproven) trains, the benefit of three billion federal dollars probably outweighs the risks associated with selecting the unproven Alstom. Similarly, I’d prefer a first-row seat behind home plate at Wrigley Field to a seat in the outfield bleachers, but not if you paid me \$3 billion to sit with the Bleacher Bums.

The problem for Alstom is that the record provides little reason to assume that Brightline will face the binary choice that Alstom imagines. Rather, even after vacatur, Brightline might

²⁷ *Id.* (cleaned up).

²⁸ *Id.* (cleaned up).

²⁹ *See* Appellant Reply Br. 14–15.

³⁰ *See* Appellant Br. 34.

well be able to salvage its relationship with Siemens *and* keep the \$3 billion. For example:

- Brightline and Siemens might attempt to renegotiate the manufacturing plan so that all ten trains are built domestically, rather than two in Germany and eight in the United States;
- Brightline might reduce the order to eight American-made trains; or
- Brightline might seek a Buy America waiver on a different statutory ground, such as a waiver based on the public interest, rather than the challenged waiver based on nonavailability.³¹

To be clear, it's not certain which, if any, of those options Brightline would explore if the FRA's waiver is vacated. Perhaps Brightline actually would abandon a contractual partner it "spent more than five years picking" in favor of a suitor it previously rejected *before* it received the FRA's waiver.³² I cannot be sure. But that uncertainty is *Alstom's* problem because the burden is Alstom's.

Alstom has not satisfied that burden. It has not established that its predicted chain of events — Brightline breaching its contract with Siemens and choosing Alstom in its place — is sufficiently likely in light of Brightline's other possible paths.³³

³¹ See Oral Arg. Tr. 18–19 (other options available); 49 U.S.C. § 22905(a)(2)(A) (public-interest waiver).

³² Oral Arg. Tr. 19.

³³ Alstom notes that "no party present[s] any evidence to support" the notion that Brightline might re-negotiate with Siemens. Appellant Br. 36. But where both options follow from "predictable, commonsense inferences," *Diamond Alternative Energy*, 145 S. Ct.

In fact, there are three interrelated facts that make a Brightline-Alstom relationship pretty far-fetched.

First, before Brightline selected Siemens, Siemens had already built and introduced into service the train it proposed for Brightline — a train capable of meeting Brightline’s requirements.³⁴ By contrast, Alstom had not.³⁵

Second, before the FRA definitively approved the waiver for Siemens’ proposal, Brightline selected Siemens.³⁶ So even though Brightline and Siemens wanted the first two trains to be built in Germany, it appears that their relationship did not depend on it. And for good reason — again, unlike Alstom, Siemens had already proven it could build the train that Brightline wanted.

Third, before Alstom sued, Brightline and Siemens had already formed a contract.³⁷ And Siemens might, by then, have begun to perform on it.³⁸ Either way, “commonsense economic inferences”³⁹ would suggest that a company in Brightline’s position might be loath to abandon a “keystone supplier

at 2136, Alstom bears the burden of showing that Brightline is more likely to jump off the Siemens train and hop on the Alstom train.

³⁴ See JA 41, 241–43.

³⁵ See JA 23, 32, 48; Oral Arg. Tr. 32 (“All we have in the record . . . is that they would have to make substantial modifications to increase power capacity and traction to achieve the required speed and performance capacity for the project. . . . [A]nd they had never manufactured in their New York facilities any type of trainsets that could meet this requirement.”).

³⁶ See JA 24, 241–44.

³⁷ See JA 133, 250.

³⁸ See JA 133.

³⁹ *Diamond Alternative Energy*, 145 S. Ct. at 2138.

relationship” consummated by a contract and integral to “one of the largest infrastructure projects in the nation.”⁴⁰

III. Conclusion

In its attempt to show that vacatur of Brightline’s waiver will redress Alstom’s economic injury, Alstom says Brightline will choose billions in federal funding over Alstom’s competitor, Siemens.

But that is a false dichotomy.

Brightline might instead stick with Siemens *and* keep the federal funding — perhaps by making Siemens build all ten trains domestically, perhaps by purchasing only the eight trains Siemens already planned to build domestically, or perhaps by obtaining a public-interest waiver allowing Siemens to stick with its original plan.

Because Brightline is unlikely to swap the supplier it already chose for the supplier it already rejected if any of those options is feasible — and because Alstom has failed to sufficiently show that none is feasible — I respectfully dissent from the majority’s holding that Alstom has standing.⁴¹

⁴⁰ First quoting Oral Arg. Tr. 17; and then JA 130.

⁴¹ In addition to its theory of economic injury, Alstom proposes two other theories of injury — competitive injury, *see* Appellant Br. 19–28, and the deprivation of a lawful procurement process, *see id.* 28–32. In my view, those two theories fare no better than Alstom’s economic-injury theory because all three theories depend on the court’s ability to redress Alstom’s economic injury.

First, to the extent that Alstom’s theory of competitive injury survives *TransUnion*’s holding that an injury must have “a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts,” *TransUnion LLC v. Ramirez*, 141

S. Ct. 2190, 2204 (2021), its survival probably depends on a link between the competitive injury and an economic harm like lost profits, *see Air Excursions LLC v. Yellen*, 66 F.4th 272, 280 (D.C. Cir. 2023) (grounding competitive injury in the fact that a plaintiff’s “bottom line may be adversely affected by the challenged government action” (cleaned up)); *PSSI Global Services, LLC v. FCC*, 983 F.3d 1, 11 (D.C. Cir. 2020) (“a party asserting competitor standing must make a concrete showing that it is in fact likely to suffer financial injury as a result of the challenged action” (cleaned up)); *Mobile Relay Associates v. FCC*, 457 F.3d 1, 13–14 (D.C. Cir. 2006) (even a “‘direct’ and ‘current’ competitor” may “lack competitor standing” if they “failed to make a concrete showing that they are likely to suffer financial injury”); *cf. FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 477 (1940) (Congress “may have been of opinion that one likely to be financially injured by the issue of a license would be the only person having a sufficient interest to bring” suit). And because this court cannot redress Alstom’s economic injury — for the reasons explained above — Alstom’s theory of competitive injury fails.

Second, as to the alleged deprivation of a lawful procurement process, Alstom has not “identified a close historical or common-law analogue for” such an “asserted injury.” *TransUnion*, 141 S. Ct. at 2204. And because (absent the violation of a constitutional right) the concrete and traditional harm most likely experienced by those deprived of a lawful procurement process is their “lost profits,” *see DIRECTV, Inc. v. FCC*, 110 F.3d 816, 829 (D.C. Cir. 1997), that theory too depends on the court’s ability to redress Alstom’s economic injury.