No. 23-343

# In the Supreme Court of the United States

DONALD MARTIN, JR., ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA

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

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## QUESTION PRESENTED

During two periods in 2013 and 2018-2019, the federal government experienced a lapse in appropriations. Petitioners were "excepted" federal government employees who were required to work during those lapses. Petitioners were paid for their work after appropriations were restored. The question presented is:

Whether the court of appeals erred in holding that the government is not liable for liquidated damages for violating an implicit prompt-payment requirement of the Fair Labor Standards Act of 1938, ch. 276, 52 Stat. 1060 (29 U.S.C. 201 *et seq.*), for failing to pay excepted employees on their regularly scheduled pay dates, where doing so would have violated the Anti-Deficiency Act, 31 U.S.C. 1341 *et seq.*

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**BRIEF FOR THE RESPONDENT IN OPPOSITION**

## OPINIONS BELOW

The opinions of the court of appeals (Pet. App. 1a-16a, 17a-46a) are reported at 54 F.4th 1325 and 54 F.4th 1343. The opinions of the Court of Federal Claims (Pet. App. 59a-76a, 77a-94a, 95a-122a, 123a-146a, 147a-164a, 165a-183a, 184a-202a, 203a-222a, 223a-247a, 248a-289a, 290a-308a, 309a-326a, 327a-345a, 346a-364a, 365a-384a) are reported at 151 Fed. Cl. 372, 151 Fed. Cl. 504, 151 Fed. Cl. 380, 151 Fed. Cl. 478, 151 Fed. Cl. 148, 151 Fed. Cl. 156, 135 Fed. Cl. 155, 130 Fed. Cl. 578, 117 Fed. Cl. 611, 151 Fed. Cl. 132, 152 Fed. Cl. 618, 151 Fed. Cl. 163, 151 Fed. Cl. 268, and 151 Fed. Cl. 318.

## JURISDICTION

The judgments of the court of appeals were entered on November 30, 2022. The court of appeals denied timely petitions for rehearing on March 10, 2023 (Pet.

App. 47a-49a, 50a-58a). On May 31, 2023, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including August 7, 2023, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

1. This case concerns the interaction between two federal statutes, the Anti-Deficiency Act, 31 U.S.C. 1341 *et seq.*, and the Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.*, as applied to certain federal employees during two lapses of appropriations by Congress.

a. The basic provisions of the Anti-Deficiency Act, 31 U.S.C. 1341 *et seq.*, date to the late 19th century. See Pet. App. 25a. In its current form, the statute provides that, with certain exceptions not relevant here, no officer or employee of the United States may "make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation." 31 U.S.C. 1341(a)(1)(A). The Anti-Deficiency Act further states that an officer or employee of the United States "may not accept voluntary services * * * or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. 1342. Violations of either provision may give rise to administrative discipline. 31 U.S.C. 1349(a). And an officer or employee who "knowingly and willfully" violates the provisions commits a felony, and "shall be fined not more than $5,000, imprisoned for not more than 2 years, or both." 31 U.S.C. 1350.

Although the Anti-Deficiency Act generally prohibits its employees from continuing to work (and agencies from allowing their employees to work) during a lapse

in appropriations, that prohibition does not extend to so-called "excepted employees." Those employees may continue to perform work in certain circumstances, including during "emergencies involving the safety of human life or the protection of property." 31 U.S.C. 1342.

During a lapse in appropriations that occurred between December 20, 2018, and January 25, 2019, Congress amended the Anti-Deficiency Act to confirm that employees may not be paid during a lapse in appropriations. As relevant here, the amendment provides: "[E]ach excepted employee who is required to perform work during a covered lapse in appropriations shall be paid for such work, at the employee's standard rate of pay, at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates, and subject to the enactment of appropriations Acts ending the lapse." 31 U.S.C. 1341(c)(2); see Government Employee Fair Treatment Act of 2019, Pub. L. No. 116-1, § 2, 133 Stat. 3-4; see also Further Additional Continuing Appropriations Act, 2019, Pub. L. No. 116-5, § 103, 133 Stat. 11 (collectively, the 2019 Amendments).

b. Since 1974, the FLSA has applied to certain federal government employees. See Fair Labors Standards Amendments of 1974, Pub. L. No. 93-259, § 6, 88 Stat. 58-60; 29 U.S.C. 203(d) (defining "[e]mployer" to "include[] a public agency"); 29 U.S.C. 203(e)(2)(A) and (B) (defining "employee" to include certain "individual[s] employed by the Government of the United States" and the U.S. Postal Service or the Postal Regulatory Commission). With exceptions not relevant here, the FLSA requires that every employee who works "in any workweek" receive a minimum wage for that workweek, 29 U.S.C. 206(a), and that certain employees receive additional overtime wages if their workweek

exceeds 40 hours, 29 U.S.C. 207(a)(1). An employer who violates either of those provisions is liable for the unpaid wages and for "an additional equal amount as liquidated damages," as well as for reasonable attorney's fees. 29 U.S.C. 216(b). If, however, "the employer shows to the satisfaction of the court that [its] act or omission" in failing to pay minimum wages or overtime "was in good faith and that [the employer] had reasonable grounds for believing" that its action was not a violation of the FLSA, "the court may, in its sound discretion, award no" or reduced "liquidated damages." 29 U.S.C. 260.

The FLSA does not specify when wages must be paid. But Department of Labor guidance—which is not directly applicable to federal employees—recognizes that minimum and overtime wages should "ordinarily" be paid on the employee's "regular payday for the period in which the particular workweek ends." Wage & Hour Div., U.S. Dep't of Labor, *Field Operations Handbook* § 30b04 (2016), https://go.usa.gov/xFeA4; see 29 U.S.C. 204(f) (providing that the Office of Personnel Management implements the FLSA with respect to federal employees); 5 C.F.R. Pt. 551.

The Department of Labor guidance is consistent with this Court's decision in *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697 (1945). In that case, the Court held that a plaintiff's FLSA claim with respect to overtime compensation withheld for more than two years could not be waived. The Court stated that the FLSA's liquidated-damages provision "constitutes a Congressional recognition that failure to pay the statutory minimum on time may be so detrimental to maintenance of the minimum standard of living * * * that double payment must be made in the event of delay." *Id.* at 707. In light of

*Brooklyn Savings Bank*, lower courts have held that an employer may be held liable for delayed payments. See, *e.g.*, *Rigopoulos* v. *Kervan*, 140 F.2d 506 (2d Cir. 1943) (holding an employer liable when it paid accrued overtime wages in monthly installments between six months and three years late); *Calderon* v. *Witvoet*, 999 F.2d 1101, 1107-1108 (7th Cir. 1993) (concluding an employer violated the FLSA when it withheld a portion of each agricultural employee's minimum wage until the employee left employment, often at the end of the harvest season).

At the same time, the implicit prompt-payment requirement has never been considered absolute. Rather, this Court has recognized that it is sometimes infeasible for an employer to make payments on an employee's regularly scheduled payday. In *Walling* v. *Harnischfeger Corp.*, 325 U.S. 427 (1945), the Court observed that the employer was unable to calculate the payments due by the regularly scheduled payday and explained that the FLSA "does not require the impossible." *Id.* at 432. Instead, it requires that payment be made "as soon as convenient or practicable under the circumstances." *Id.* at 433; cf. 29 C.F.R. 778.106 (similar).

Even when a delayed payment is properly deemed a violation of an implicit prompt-payment requirement, it does not automatically follow that an award of liquidated damages is appropriate. Instead, as noted above, a court may withhold or reduce liquidated damages if the employer demonstrates that it acted in "good faith" and with "reasonable grounds" to believe it was not violating the FLSA. 29 U.S.C. 260.

2. The petition for a writ of certiorari seeks review of two Federal Circuit decisions, each of which resolved multiple consolidated appeals.

a. The *Martin* decision (Pet. App. 1a-16a) arose out of a lapse in appropriations that affected several government agencies between October 1 and October 16, 2013. Pursuant to the Anti-Deficiency Act provisions described above, excepted employees at those agencies continued to work during the lapse. Plaintiffs (now petitioners) are two groups of excepted employees—the *Martin* and *Marrs* petitioners—who performed work during the lapse and received their accrued wages on the "next scheduled payday" after appropriations were restored. *Id.* at 249a. Both groups of employees sued the United States seeking liquidated damages under the FLSA in the amount of any minimum and overtime wages that had accrued but were paid after the petitioners' regularly scheduled paydays due to the lapse.

In *Martin*, the Court of Federal Claims granted summary judgment to petitioners on liability, concluding that the government's failure to pay their wages during the lapse in appropriations violated the FLSA and that they were entitled to liquidated damages in the amount of the minimum and overtime wages that were paid after their regularly scheduled paydays. Pet. App. 223a-247a. The court then entered partial final judgment under Rule 54(b) of the Rules of the United States Court of Federal Claims, pursuant to the parties' stipulation regarding the first 157 plaintiffs whose damages the parties were able to calculate. See C.A. App. 1-11. The government appealed that partial final judgment.

In a separate decision, the Court of Federal Claims dismissed the *Marrs* petitioners' claims as untimely. Pet. App. 203a-222a. Unlike the petitioners in *Martin*, who brought their claims within two years of the alleged delayed payments, petitioners in *Marrs* brought their suit between two and three years after the alleged

delayed payments. See *id.* at 2a-3a. The FLSA provides that a suit commenced more than two but less than three years after a cause of action accrues can proceed only if the suit arises out of a willful violation. 29 U.S.C. 255(a). Although the court concluded that the government's deferred payment violated the FLSA for the reasons stated in *Martin*, the court determined that the violation was not "willful." Pet. App. 205a; see *id.* at 203a-222a. The *Marrs* petitioners appealed the dismissal of their claims, and the court of appeals consolidated that appeal with the government's appeal in *Martin*.

b. The other Federal Circuit decision at issue here, *Avalos*, arose out of a lapse in appropriations that affected several agencies between December 22, 2018, and January 25, 2019. Pursuant to the statutory provisions described above, including the 2019 Amendments, the excepted employees at those agencies continued to work during the lapse and generally received their accrued wages "at the earliest date possible after the lapse" ended. 31 U.S.C. 1341(c)(2). The *Avalos* plaintiffs (now petitioners) include 12 groups of excepted employees who performed work during the lapse in appropriations and who subsequently sued the United States under the FLSA. As in *Martin* and *Marrs*, the *Avalos* petitioners sought liquidated damages under the FLSA in the amount of any minimum and overtime wages that had accrued but were not paid on their regularly scheduled paydays during the lapse. See Pet. App. 22a-24a.

The government moved to dismiss each of the 12 suits. In each case, the Court of Federal Claims, relying on its earlier decision in *Martin*, denied the government's motion. See Pet. App. 24a. The court then certified each of those denials for interlocutory appeal. See 28 U.S.C. 1292(d)(2). The court of appeals accepted the

interlocutory appeal in each case and consolidated the appeals under the lead case, *Avalos*.

3. In the consolidated *Avalos* cases and in *Martin*, the court of appeals reversed. In *Marrs*, the court of appeals affirmed. Pet. App. 1a-16a (*Martin* and *Marrs*); *id.* at 17a-46a (*Avalos*).

a. In *Avalos*, the court of appeals held that the FLSA's timely payment obligation must account for "the circumstances of payment," and that "as a matter of law, the government does not violate this obligation when it complies with the Anti-Deficiency Act by withholding payment during a lapse in appropriations." Pet. App. 29a.

The court of appeals explained that "the text of the FLSA" does "not specify at all when an employer must pay wages to its employees." Pet. App. 29a. But, the court observed, this Court has recognized that the FLSA reflects an implicit timely-payment requirement, which lower courts generally have interpreted as "ordinarily" requiring payment on an employee's regularly scheduled payday. *Id.* at 30a (quoting *Brooklyn Sav. Bank*, 324 U.S. at 707).

The court of appeals further explained, however, that "there are exceptions to this general rule." Pet. App. 30a. Citing this Court's decision in *Walling*, the court of appeals explained that "failing to pay [overtime] on a regular pay date is not a per se violation of the FLSA" and that the FLSA "requires payment only 'as soon as convenient or practicable under the circumstances.'" *Id.* at 30a-31a (quoting *Walling*, 325 U.S. at 432-433).

The court of appeals then reviewed the interaction between the FLSA's implied prompt-payment requirement and the Anti-Deficiency Act's express prohibition

on making payments during a lapse in appropriations. The court determined that "Congress intended for the two statutes to coexist." Pet. App. 34a. The court continued: "The FLSA requires employers to pay their employees as soon as practicable under the circumstances." *Ibid.* But "[p]aying federal government wages during a lapse in appropriations is not practicable" because it would require violating the Anti-Deficiency Act. *Id.* at 34a; see *id.* at 35a. "Therefore, the federal government timely pays wages, per the FLSA, when it pays its employees at the earliest date possible after the lapse in appropriations ends." *Id.* at 35a.

That understanding, the court of appeals explained, comports with the longstanding construction of the FLSA's implicit timeliness requirement and is also supported by every relevant canon of statutory construction. It "give[s] effect to both" statutes rather than "creat[ing] a conflict between" them. Pet. App. 32a (citation omitted). It allows the "more specific" and "explicit[]" provisions of the Anti-Deficiency Act, rather than the FLSA's "implie[d]," "general payment requirements for all employers," to control the government's obligations in the circumstances addressed by the specific statute. *Id.* at 33a. And it recognizes that the FLSA did not implicitly "overturn, conflict with, or supersede the Anti-Deficiency Act's prohibition on making expenditures during a lapse in appropriations"—a prohibition that had existed in "some form" for "over 100 years" when Congress "extended the FLSA's protections to federal government employees." *Id.* at 33a-34a.

Judge Reyna dissented. He would have held that, by complying with the Anti-Deficiency Act, the government

violated the FLSA's implied prompt-payment requirement and so is liable for liquidated damages. See Pet. App. 38a-46a.

b. In the consolidated *Martin* and *Marrs* cases, the court of appeals applied its decision in *Avalos* to hold that "the government did not violate the FLSA's timely payment obligation." Pet. App. 6a. And because the court of appeals found no FLSA violation, it had no need to "reach the trial court's subsequent willfulness determination in *Marrs*." *Ibid.* Judge Reyna again dissented, repeating his arguments from *Avalos*. *Id.* at 7a-16a.

4. The court of appeals denied petitions for rehearing and rehearing en banc of both decisions, with no noted dissents. See Pet. App. 49a, 58a.

**ARGUMENT**

Petitioners renew the contention (Pet. 21-38) that the FLSA implicitly imposes an obligation on the United States to pay minimum and overtime wages on an employee's ordinary payday even when the Anti-Deficiency Act expressly bars such payments, and that the failure to do so subjects the United States to liquidated damages. The court of appeals correctly rejected those arguments, and its decision does not conflict with any decision of this Court or of another court of appeals. The petition for a writ of certiorari should be denied.

1. The court of appeals correctly rejected petitioners' core claim that the government's failure to pay their wages on regularly scheduled pay dates during a lapse in appropriations violated Section 216(b) of the FLSA and that they are entitled to liquidated damages.

As an initial matter, there is no dispute that, in deferring petitioners' wages, government officials complied with the dictates of the Anti-Deficiency Act—and

that paying wages on petitioners' regular paydays would have exposed government officials to civil and criminal sanctions. The Anti-Deficiency Act prohibits officials from "mak[ing] or authoriz[ing] an expenditure," 31 U.S.C. 1341(a)(1), in the absence of a supporting appropriation. And since 2019, the statute has further made clear when payments shall be made: "at the earliest date possible after the lapse in appropriations ends, regardless of scheduled pay dates, and subject to the enactment of appropriations Acts ending the lapse." 31 U.S.C. 1341(c)(2). With respect to the claims at issue in the court of appeals' decision, petitioners do not dispute that they were paid in accordance with that requirement.

The court of appeals correctly held that the FLSA does not implicitly require government officials to violate the Anti-Deficiency Act. See, *e.g.*, *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1018 (1984) ("[W]here two statutes are 'capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.'") (citation omitted); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252 (2012) (discussing the related-statutes canon, under which "laws dealing with the same subject * * * should if possible be interpreted harmoniously"). As the court recognized, the FLSA does not expressly address the timing of wage payments "at all." Pet. App. 29a. And while this Court and lower courts have recognized an implicit prompt-payment requirement—which means that payments ordinarily should be made on an employee's regularly scheduled pay date—this Court also has held that the statute "does not require the impossible." *Walling* v. *Harnischfeger Corp.*, 325 U.S. 427, 432

(1945). Thus, when it is infeasible to make payments on an employee's regularly scheduled payday, employers comply with the FLSA by making the required payments "as soon as convenient or practicable under the circumstances." *Id.* at 433; cf. 29 C.F.R. 778.106 (similar).

That rule resolves this case. As the court of appeals recognized, it would not be "practicable" for federal officials to pay employees on their regularly scheduled paydays during a lapse in appropriations—and thus subject themselves to administrative and potentially criminal penalties. Indeed, the government is unaware of any case finding a violation of the FLSA when another federal statute required the delay in payment. And it would be remarkable if Congress, in enacting the FLSA, implicitly exposed the U.S. Treasury to liquidated damages based on officials' compliance with the long-established principles codified in the Anti-Deficiency Act, which was first enacted more than a century before Congress extended the FLSA to cover federal government employers. See, *e.g.*, Act of July 12, 1870, ch. 251, § 7, 16 Stat. 230, 251; Act of Mar. 3, 1905, ch. 1484, § 4, 33 Stat. 1214, 1257-1258.

As the court of appeals correctly explained, other principles of statutory construction confirm that result. For example, it is axiomatic that an explicit textual requirement cannot be altered by court-created requirements based on statutory purpose. See, *e.g.*, *Kloeckner* v. *Solis*, 568 U.S. 41, 55 n.4 (2012) ("[E]ven the most formidable argument concerning [a] statute's purposes could not overcome" a clear requirement found "in the statute's text."). Although that canon usually applies in interpreting a single statute, it has significant force

here in discerning the proper interaction between two statutes addressing the government's payment of wages.

In addition, as this Court has often explained, a more specific statute usually governs a more general one; that is, where a "general" statutory requirement "is contradicted by a specific prohibition," the "specific provision is construed as an exception to the general one." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012). That rule ensures that "a statute dealing with a narrow, precise, and specific subject"—which reflects Congress's solution to "particularized problems"—"is not submerged" by a different "statute covering a more generalized spectrum." *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 153 (1976). Here, the Anti-Deficiency Act's specific provisions addressing the precise question of payments during and after a lapse in appropriations would prevail even if the FLSA made failure to pay on a regularly scheduled pay date a statutory violation.

2. Petitioners do not address this Court's long-held understanding of the FLSA's implicit promptness requirement; in fact, petitioners do not even cite *Walling*. Instead, petitioners contend (Pet. 21-31) that the court of appeals' decision conflicts with other decisions of this Court and other courts of appeals. Those contentions lack merit, and no further review is warranted.

a. Petitioners first contend (Pet. 21-29) that the decision in this case conflicts with a line of this Court's precedents holding "that the absence or insufficiency of an appropriation does not alter the government's [pre-existing] obligations." Pet. 21-22; see *Maine Cmty. Health Options* v. *United States*, 140 S. Ct. 1308 (2020); *Salazar* v. *Ramah Navajo Chapter*, 567 U.S. 182 (2012); *United States* v. *Langston*, 118 U.S. 389 (1886).

That contention rests on a misunderstanding of the court of appeals' reasoning. The decisions petitioners cite state that Congress's failure to appropriate sufficient funds to cover an obligation already incurred by the government generally does not cancel the underlying obligation. See, *e.g.*, *Maine Cmty. Health*, 140 S. Ct. at 1321 (stating that the failure to appropriate sufficient funds did not "cancel" the "obligations" that the government has already incurred (quoting *Ramah Navajo Chapter*, 567 U.S. at 197)). But the government does not argue that the Anti-Deficiency Act cancels the United States' obligation to pay the minimum wages and overtime pay for the work performed by excepted employees during a lapse in appropriations. Only the timing of those payments and the availability of *additional* payments as liquidated damages are at issue.

In nevertheless contending that those decisions apply here, petitioners assume that the FLSA inflexibly requires timely payments on regularly scheduled paydays during appropriations lapses. But as already explained, nothing in the text of the FLSA contains such a requirement, and such payments were explicitly barred by the Anti-Deficiency Act long before Congress made the FLSA applicable to the federal government. As the court of appeals correctly held, the FLSA does not establish an underlying obligation that wages must be paid at a time that would violate the Anti-Deficiency Act.

This case thus bears no resemblance to the cases on which petitioners rely, where the Court found it clear that the government had expressly incurred the underlying obligation by statute or contract. In *Maine Community Health Options*, the Court explained that the relevant statute's "express terms" created an obligation

to make payments by providing that the government "shall pay" insurers "according to a precise statutory formula." 140 S. Ct. 1320-1321 (citation omitted). In *Ramah Navajo Chapter*, the Court recounted the government's "contractual promise to pay each tribal contractor the 'full amount of funds to which the contractor was entitled.'" 567 U.S. at 193 (brackets and citation omitted). And in *Langston*, the Court explained that the relevant statute created an express obligation to pay the claimant by "fixing his annual salary" at a specific amount. 118 U.S. at 393. By contrast, here, nothing in the text of the FLSA includes an inflexible requirement that pay be made on a worker's regularly scheduled payday, particularly when that payment would violate another federal statute.*

b. For similar reasons, petitioners err in suggesting (Pet. 29) that the court of appeals' decision in this case conflicts with decisions of "[s]even circuits" "hold[ing] that limitations in an appropriation do not affect the pre-existing obligations of the United States, absent a clear intent to repeal or modify those obligations." See Pet. 29-31. As already explained, the court did not hold

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* Petitioners suggest (Pet. 27) that the court of appeals contravened this Court's precedents and "misread[]" the Anti-Deficiency Act by referring to the statute's limitations on "what 'the government' can do," Pet. 27, when the Anti-Deficiency Act instead applies to the actions that government officers or employees may take. See 31 U.S.C. 1341(a)(1)(A). But petitioners do not explain why that distinction makes a difference in this case. The United States acts through its officers and employees, and Executive Branch officials were bound to comply with the terms of the Anti-Deficiency Act. Petitioners do not suggest that any officer or employee lawfully could have made wage payments during the lapse in appropriations, nor have they otherwise explained how the United States itself might have made such payments.

that a lapse in appropriations alters the preexisting obligations of the United States. Rather, it determined, consistent with this Court's decision in *Walling* and other authority, that "the FLSA's timely payment obligation considers the circumstances of payment," Pet. App. 29a, *i.e.*, it "does not require the impossible," but rather "requires payment only 'as soon as convenient or practicable under the circumstances.'" *Id.* at 31a (quoting *Walling*, 325 U.S. at 432-433). Because the court of appeals determined that the FLSA does not contain an absolute regular-payday requirement, its decision does not conflict with decisions of other courts holding that a lack of appropriations does not implicitly repeal a preexisting, "substantive obligation[]." Pet. 31.

c. Petitioners fare no better in briefly suggesting (Pet. 12-13) that the court of appeals' decision conflicts with the Ninth Circuit's decision in *Biggs* v. *Wilson*, 1 F.3d 1537 (1993), cert. denied, 510 U.S. 1081 (1994), and two state supreme court decisions following *Biggs*'s reasoning, see *Council 13, Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO* v. *Rendell*, 604 Pa. 352, 376-379 (2009); *White* v. *Davis*, 30 Cal. 4th 528, 579 (2003). The courts in those cases held that a State would violate the FLSA if it failed to timely pay wages during a state budget impasse. But the Ninth Circuit's decision in *Biggs* did not discuss—or even cite—*Walling*, and the Second Circuit has explained that *Biggs* is an outlier. See *Rogers* v. *City of Troy*, 148 F.3d 52, 56 n.3 (1998).

More fundamentally, *Biggs* and the state cases petitioners cite applied the FLSA's implicit prompt-payment requirement to state budget impasses. Even assuming the courts in those cases resolved the issue before them correctly, they concerned the interaction of federal law and state budget processes. They did not

concern the interaction of the FLSA and the Anti-Deficiency Act, which enforces the federal constitutional prohibition that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. Art. I, § 9, Cl. 7. Those decisions thus did not hold—as petitioners contend here—that in applying the FLSA and its implicit prompt-payment requirement to the federal government, Congress required federal officials to violate the express provisions of the Anti-Deficiency Act.

Moreover, much of *Biggs*' logic has been superseded by the 2019 Amendments. As the court of appeals here explained, the *Biggs* court's analysis rested in part on a concern that permitting payments on a date other than the regular payday would "create a 'moving target' as to 'when the employee actually gets paid.'" Pet. App. 35a (quoting *Biggs*, 1 F.3d at 1540). But that reasoning does not apply under the 2019 Amendments, which revised "the Anti-Deficiency Act [to] expressly address[] when payment should be made following a lapse in appropriations." *Ibid.*

d. Contrary to petitioners' assertion (*e.g.*, Pet. 32-38), the controversy at issue here also does not raise issues of broad importance warranting this Court's review. As explained, petitioners do not dispute that they have received all the wages that were due for the periods they worked during the relevant lapses in appropriations. Thus, unlike in many FLSA cases, the only question remaining in this case is whether petitioners are additionally owed liquidated damages.

In addition, the decision of the court of appeals rests on the interaction between the Anti-Deficiency Act and the FLSA. For that reason, and contrary to petitioners' suggestion (*e.g.*, Pet. 32-33), it is unlikely to have effects

beyond the very narrow circumstance present here, where a lapse in appropriations results in the deferral of federal employees' wages. And even in that circumstance, Congress enacted the 2019 Amendments to make clear that compensation will be paid promptly following the end of any future lapse. Petitioners thus err in suggesting (Pet. 32) that the decision below will create "uncertainty" going forward.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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