No. 25A

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

GLOBAL HEALTH COUNCIL, ET AL.

UNITED STATES DEPARTMENT OF STATE, ET AL., APPLICANTS

v.

AIDS VACCINE ADVOCACY COALITION, ET AL.

APPLICATION FOR PARTIAL STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) in *Trump* v. *Global Health Council* are Donald J. Trump, in his official capacity as President of the United States; Marco Rubio, in his official capacity as Secretary of State; Russell T. Vought, in his official capacity as Director of the Office of Management and Budget (OMB) and Acting Administrator of the United States Agency for International Development (USAID); Jeremy Lewin in his official capacity as Under Secretary of Foreign Assistance, Humanitarian Affairs and Religious Freedom at the Department of State; the United States Department of State; USAID; and OMB.*

Applicants (defendants-appellants below) in *United States Department of State* v. *AIDS Vaccine Advocacy Coalition* are the United States Department of State; USAID; OMB; Marco Rubio, in his official capacity as Secretary of State; Russell T. Vought, in his official capacity as Director of OMB and Acting Administrator of USAID; and Donald J. Trump, in his official capacity as President of the United States.**

Respondents (plaintiffs-appellees below) in *Trump* v. *Global Health Council* are Global Health Council; Small Business Association for International Companies; HIAS; Management Sciences for Health, Inc.; Chemonics International, Inc.; DAI Global LLC; Democracy International, Inc.; and the American Bar Association.

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* The complaint named as a defendant Peter Marocco, in his official capacity as then-Acting Deputy Administrator for Policy and Planning of USAID, then-Acting Deputy Administrator for Management and Resources of USAID, and then-Director of Foreign Assistance of the Department of State. In their amended complaint, the *Global Health Council* respondents dropped Mr. Marocco as a defendant and substituted Acting Under Secretary Lewin pursuant to Federal Rule of Civil Procedure 25(d). See 25-cv-402 Am. Compl. 7 & n.2 (Apr. 22, 2025).

** In both cases, under this Court's Rule 35.3, Acting Administrator Vought is automatically substituted for his predecessor as Acting Administrator, Secretary Rubio.

Respondents (plaintiffs-appellees below) in *United States Department of State* v. *AIDS Vaccine Advocacy Coalition* are AIDS Vaccine Advocacy Coalition; Journalism Development Network, Inc.; and the Center for Victims of Torture.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-cv-400 (Feb. 13, 2025) (granting temporary restraining order)

Global Health Council v. *Trump*, No. 25-cv-402 (Feb. 13, 2025) (granting temporary restraining order)

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-cv-400 (Mar. 10, 2025) (granting preliminary injunction)

Global Health Council v. *Trump*, No. 25-cv-402 (Mar. 10, 2025) (granting preliminary injunction)

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-cv-400 (Aug. 26, 2025) (denying stay of preliminary injunction)

Global Health Council v. *Trump*, No. 25-cv-402 (Aug. 26, 2025) (denying stay of preliminary injunction)

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-cv-400 (Sept. 3, 2025) (granting preliminary injunction)

Global Health Council v. *Trump*, No. 25-cv-402 (Sept. 3, 2025) (granting preliminary injunction and leave to amend complaint)

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-cv-400 (Sept. 4, 2025) (denying stay of preliminary injunction)

Global Health Council v. *Trump*, No. 25-cv-402 (Sept. 4, 2025) (denying stay of preliminary injunction)

United States Court of Appeals (D.C. Cir.):

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-5046 (Feb. 26, 2025) (dismissing appeal for lack of jurisdiction)

Global Health Council v. *Trump*, No. 25-5047 (Feb. 26, 2025) (dismissing appeal for lack of jurisdiction)

Global Health Council v. *Trump*, No. 25-5097 (Aug. 13, 2025) (vacating preliminary injunction)

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-5098 (Aug. 13, 2025) (vacating preliminary injunction)

Global Health Council v. *Trump*, No. 25-5319 (Sept. 5, 2025) (denying administrative stay and stay)

AIDS Vaccine Advocacy Coalition v. *United States Department of State*, No. 25-5317 (Sept. 5, 2025) (denying administrative stay and stay)

Supreme Court of the United States:

Department of State v. *AIDS Vaccine Advocacy Coalition*, No. 24A831 (Mar. 5, 2025) (denying motion to vacate order)

Trump v. *Global Health Council*, No. 25A227 (withdrawn)

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APPLICATION FOR PARTIAL STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants President Donald J. Trump, et al.—respectfully files this application for a partial stay of the injunction issued by the United States District Court for the District of Columbia (App., *infra*, 179a-221a). In addition, the Solicitor General respectfully requests an immediate administrative stay pending the Court's consideration of this application, and resolution as soon as practicable given the unusual exigencies involved.

For the third time, the district court in this case has issued an unlawful injunction that precipitates an unnecessary emergency and needless interbranch conflict. In February, the court gave the government just 36 hours to pay some $2 billion

in invoices for past foreign-aid work—an impossible task, ordered without jurisdiction. This Court defused that crisis by granting an administrative stay; after the untenable deadline elapsed, the case was remanded, and the government paid virtually all of the contested amounts. Next, the district court issued a novel injunction requiring the government to obligate tens of billions of dollars in foreign-aid appropriations on the theory that failing to do so constituted an unlawful impoundment in violation of the Constitution and the Impoundment Control Act of 1974 (ICA), 2 U.S.C. 681 *et seq.* The D.C. Circuit vacated that injunction on August 13, correctly holding that the ICA's exclusive procedures foreclose respondents' asserted cause of action. The government asked that court to expeditiously release its mandate, citing otherwise irreversible compliance steps that would need to occur by September 2 absent relief. See App., *infra*, 139a-144a. That court then issued its mandate on August 28.

Now, with its original theory decisively rejected, the district court has precipitated a new emergency by issuing a version of the same injunction near midnight on September 3. Once again, that court is compelling the government to obligate some $10.5 billion in foreign-aid funds that otherwise expire on September 30—but now with even less time for further review or compliance, with even more deficient legal theories. The government had already planned to obligate $6.5 billion of those funds by September 30, so as to that tranche, the injunction is (as of now) merely an unnecessary nuisance.

As to the remaining $4 billion, however, the injunction raises a grave and urgent threat to the separation of powers. Once the prior injunction lifted, the President on August 28 proposed rescinding these $4 billion in funds as contrary to U.S. foreign policy pursuant to the ICA's procedures for engaging with Congress. App., *infra*, 156a, 158a. Under special fast-track procedures, that proposal gave Congress

45 days to consider rescinding all or a portion of the appropriated funds. 2 U.S.C. 683(b). And, under the ICA, while proposed rescissions are pending, Presidents do not spend the funds, for obvious reasons: it would be self-defeating and senseless for the Executive Branch to obligate the very funds that it is asking Congress to rescind. Yet the new injunction would force the Executive Branch to start obligating those funds at breakneck speed to meet the September 30 deadline, even as Congress is considering the rescission proposal and before its 45 days to do so elapse.

To have any hope of complying in time, the Executive Branch would have to immediately commence diplomatic discussions with foreign nations about the use of those funds—discussions the President considers counterproductive to foreign policy—and notify Congress about planned obligations that the President is strongly opposing. The government previously explained that those steps had to be initiated by September 2, and it is untenable for the government to now try to scramble to comply as judicial review is rapidly unfolding and the foreign-relations and inter-branch costs of compliance are escalating rapidly. The President can hardly speak with one voice in foreign affairs or in dealings with Congress when the district court is forcing the Executive Branch to advocate against its own objectives. Yet a D.C. Circuit panel, in a 2-1 summary order, denied a stay on Friday night. App., *infra*, 227a. Given the imminence of extraordinary harms, the government respectfully asks this Court to stay or administratively stay the injunction as to the $4 billion subject to the proposed rescission as soon as practicable.

A stay of this late-breaking do-over injunction is abundantly warranted. As to the merits, the district court allowed respondents (organizations that compete for and have members that compete for foreign-aid funding) to shift theories months into this case and weeks before September 30, focusing now on Administrative Procedure Act

(APA) claims predicated on the notion that specific appropriations statutes require the government to spend the funds. But, for the same reasons that the D.C. Circuit vacated the district court's prior injunction, that is an impermissible end-run around the ICA, which reserves these disputes to the political branches and the ICA's reticulated procedures. Indeed, this injunction is even more obviously precluded; the President has since submitted proposed rescissions, triggering the ICA's procedures for facilitating political-branch resolution of cases like this one. Having enjoined the government earlier for purportedly failing to follow the ICA's procedures, it is particularly perverse for the district court to authorize APA suits to circumvent those same ICA procedures now that the President has expressly invoked them.

On the equities, the district court's last-ditch injunction self-evidently harms the government and the political process and vastly outweighs any harm to respondents. The injunction jams the Executive Branch with untenable compliance obligations that supplant and compromise the ICA's procedures just as Congress is considering the President's rescission package. By contrast, respondents would merely *compete* for some of the funds at issue if those funds are obligated; respondents are not entitled to them by statute, and it is speculative whether respondents will receive any. The fact that the government is already obligating $6.5 billion in foreign-aid funding casts further doubt on the idea that the funds covered by the President's rescission proposal are existentially necessary to any individual plaintiff in this case.

The district court faulted the government for the emergency posture here. But the government obtained expeditious appellate review after the previous injunction was issued; that injunction was then vacated; the President then triggered the ICA rescissions process for some of the funds at issue while committing to obligating the rest of the September 30 expiring funds. The district court, not the government, then

precipitated the present emergency by entering a lightning-fast injunction compelling the same relief as the injunction that the D.C. Circuit had just vacated, on a legal theory that should be foreclosed *a fortiori* by the D.C. Circuit's analysis. The district court, not the government, has created a new emergency with little time left on the clock by issuing a new injunction based on new theories that are even more flawed than their predecessors. This Court should reject such brinkmanship, avert further damage to the separation of powers, and stay this injunction as soon as practicable with respect to the funds covered by the President's rescission proposal.

STATEMENT

A. Legal Background

Since the Founding, Congress and the President have occasionally clashed over the use of appropriated funds. Congress, with the power of the purse, appropriates money for specific programs; the President, vested with exclusive authority to enforce the laws, has often disagreed about whether and how much of those funds should be spent. See Louis Fisher, *Presidential Spending Power* 147-152 (1975) (collecting examples). Congress and the President have long resolved disagreements through the give-and-take of the political process. See Nile Stanton, *History and Practice of Executive Impoundment of Appropriated Funds*, 53 Neb. L. Rev. 1, 5-7 (1974) (Stanton). In response to President Nixon's impoundments, Congress enacted the Impoundment Control Act of 1974 (ICA), 2 U.S.C. 681 *et seq*., which established statutory mechanisms for the political branches to work through such interbranch disputes. In the ICA, Congress recognized that the President might not wish to spend all of an appropriation and prescribed various notification procedures and mechanisms for resolving interbranch disagreements.

Of particular relevance here is the ICA's interbranch process for rescissions,

i.e., cancellations of budget authority previously provided by Congress. "Whenever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons," or "whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year," the President must "transmit to both Houses of Congress a special message." 2 U.S.C. 683(a). The message must contain information about the proposed rescission, including the "amount of budget authority" involved and "reasons why the budget authority should be rescinded." 2 U.S.C. 683(a)(1) and (3); see 2 U.S.C. 683(a)(1)-(5). Congress may consider a bill to rescind some or all of the funds, and the ICA sets up expedited procedures to do so. See 2 U.S.C. 688. If Congress does not "complete[] action on a rescission bill rescinding all or part of the amount proposed to be rescinded" within 45 days of continuous session after receiving the message, the ICA provides that the amount proposed to be rescinded "shall be made available for obligation." 2 U.S.C. 683(b); see 2 U.S.C. 682(3).

The ICA does not set deadlines within a fiscal year by which the President must send a special message proposing a rescission. After the ICA's enactment, Presidents proposed rescinding funds that would expire before the end of the 45-day period during which Congress would consider a rescission bill. The year after the ICA was enacted, President Ford sent a special message proposing to rescind funds that would lapse "nearly a month before expiration of the 45 days of continuous session the Congress normally has to review proposed rescissions." GAO B-115398 (ACG-76-5), Enclosure II (Aug. 12, 1975), https://www.gao.gov/assets/acg-76-5.pdf. President Carter similarly sent proposed rescissions for funds that would expire before the end of the 45-day period. See GAO B-115398 (OGC-78-2), at 2 (Oct. 26, 1977), https://

www.gao.gov/assets/ogc-78-2.pdf. In both cases, the President withheld the relevant funds—or at least most of them—from obligation during the 45-day period while Congress considered their proposals. And in both instances, funds lapsed during the 45-day period without being obligated. In response, the Comptroller General proposed that Congress consider "changing the [ICA] to prevent funds from lapsing where the 45-day period has not expired." GAO B-115398 (ACG-76-12), at 2 (Dec. 15, 1975), https://www.gao.gov/assets/acg-76-12.pdf. Congress has never done so.

The ICA also sets out its own enforcement mechanisms for challenging presidential actions that withhold or prevent the obligation of appropriated funds, including rescissions and deferrals of spending. As relevant here, if the Comptroller General concludes that "budget authority is required to be made available for obligation and such budget authority is not made available for obligation," the Act states that the Comptroller General may "bring a civil action" in district court. 2 U.S.C. 687. But the Act provides that such a suit may be brought only after the Comptroller General files with Congress an "explanatory statement" detailing the "circumstances giving rise to the action contemplated" and waits for "the expiration of 25 calendar days of continuous session of the Congress" after that filing. *Ibid.*; see 2. U.S.C. 686(a) (providing for other enforcement procedures through Comptroller General reports to Congress if the President fails to transmit special messages).[1]

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[1] The Executive Branch has long raised concerns about the lawfulness of limits on impoundment. See, *e.g.*, Stanton, *supra*, 6-7. The Office of Legal Counsel has previously reasoned that, should Congress direct spending so as to "interfere with the President's authority in an area confided by the Constitution to his substantive direction and control, such as his authority as Commander in Chief of the Armed Forces and his authority over foreign affairs," that direction may violate Article II. Memorandum from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools*, 1 Supp. Op. O.L.C. 303, 310-311 (Dec. 1, 1969). See App., *infra*, 35a n. 16. Those contentions, however, are not at issue in this application. Nor

B. Factual and Procedural Background

1. At this stage, this case centers on the President's proposed rescissions under the ICA of $4 billion in foreign-assistance funds that Congress appropriated and are set to expire on September 30, 2025. Many of those funds were appropriated in Titles III and IV of Division F of the Further Consolidated Appropriations Act, 2024 (2024 Appropriations Act), Pub. L. No. 118-47, 138 Stat. 740-750. The most sizeable proposed rescission is for "$3.2 billion of the $3.9 billion appropriated in FY 2024 for Development Assistance." App., *infra*, 174a. That proposed rescission corresponds to a specific appropriation in the 2024 Appropriations Act. See 138 Stat. 742 ("For necessary expenses to carry out [certain provisions] of the Foreign Assistance Act of 1961."). In some cases, Congress specified that those funds "shall be made available" in certain designated amounts, subject to deviations if the specified requirements are met. *Id.* at 771. For example, $95 million is allocated for development assistance in the Democratic Republic of the Congo, $7 million is allocated for assistance in Mongolia, and $77 million is allocated for such assistance in Colombia. See Staff of H. Comm. on Appropriations, 118th Cong., Report on H.R. 2882, at 1172-1174 (Comm. Print 2024). The President also proposed rescinding several hundred million dollars from the Democracy Fund appropriated in various years. See App., *infra*, 162a-165a; 138 Stat. 743. And he proposed rescinding over $110 million allocated to Peacekeeping Operations in the 2024 Appropriations Act; see App., *infra*, 166a; 138 Stat. 748-749.[2]

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does this case raise any issue about whether suits by the Comptroller General against the Executive Branch are cognizable under Article III.

[2] In addition to the $4 billion in foreign-aid funds expiring on September 30, the President proposed rescinding an additional $900 million in contributions to the United Nations and affiliated organizations, which are not at issue. App., *infra*, 160a-161a; see *id.* at 156a (special message proposing $4.9 billion in rescissions).

2. This suit arises from implementation of the President's January 20, 2025 Executive Order No. 14,169, *Reevaluating and Realigning United States Foreign Aid*. 90 Fed. Reg. 8619 (Jan. 30, 2025). That order stated that "[i]t is the policy of the United States that no further United States foreign assistance shall be disbursed in a manner that is not fully aligned with the foreign policy of the President of the United States." *Ibid*. Agencies were directed to review programs for consistency with foreign policy "within 90 days" and determine "whether to continue, modify, or cease each foreign assistance program" in consultation with the Director of the Office of Management and Budget and with the concurrence of the Secretary of State. *Ibid*.

The Secretary of State then issued a memorandum directing a pause on foreign-assistance programs funded by or through the State Department and the United States Agency for International Development (USAID), but approved some waivers. 25-cv-402 D. Ct. Doc. 34, at 37 (Feb. 21, 2025). The agencies decided to retain hundreds of USAID awards and thousands of State Department awards, but terminated the remaining awards. 25-cv-402 D. Ct. Doc. 42, at 16 (Feb. 26, 2025).

3. Respondents are organizations that have (or whose members have) previously competed for and received federal funds for foreign-assistance projects; they allege that they would compete for the funds at issue if they become available. See App., *infra*, 6a. They sued in the United States District Court for the District of Columbia, seeking to enjoin the relevant federal agencies and the President from implementing the Executive Order. They brought constitutional, Administrative Procedure Act (APA), and ultra vires challenges to the cancellation of existing foreign-assistance awards as well as to the pause on obligating appropriated funds to complete future awards, which respondents characterized as unlawful impoundments.

As to the terminated grants, on February 13, 2025, the district court granted

in part and denied in part a temporary restraining order that enjoined applicants (besides the President) from pausing the disbursement of funds for foreign-assistance awards in existence as of January 19, 2025. 25-cv-402 D. Ct. Doc. 21, at 13-14 (Feb. 13, 2025). The parties engaged in various disputes regarding compliance with that order. Those disputes culminated in a decision from this Court denying the government's application for vacatur of the order and remanding for the district court to clarify the government's compliance obligations and timelines. 145 S. Ct. 753 (No. 24A831). The government has now completed nearly all of those payments for past-due work, which are not at issue here. See 25-cv-402 D. Ct. Doc. 143 (Sept. 4, 2025).

Shortly after this Court's remand, the district court granted in part and denied in part respondents' motion for a preliminary injunction, which addressed the alleged impoundments and centered on the ICA. App., *infra*, 1a-48a. As relevant here, the court held that respondents were likely to succeed on their claims that the government was unlawfully "engaging in a unilateral rescission or deferral of congressionally appropriated funds in violation of Congress's spending power." *Id.* at 29a. The court reasoned that Congress had "appropriated foreign aid funds for specified purposes" in the 2024 Appropriations Act, including funds apportioned to USAID that would expire September 30, 2025, and that the ICA "explicitly prohibits the President from impounding appropriated funds without following certain procedures." *Id.* at 30a-31a. Because the court concluded that the government had failed to follow the ICA's procedures, the court reasoned that the government's actions likely constituted a statutory and constitutional violation. *Id.* at 31a-37a. The court enjoined the government "from unlawfully impounding congressionally appropriated foreign aid funds" and ordered the applicants to "make available for obligation the full amount of funds" appropriated in the 2024 Appropriations Act. *Id.* at 48a.

The government appealed and moved to expedite the appeal, but did not immediately seek emergency relief because of the timing for obligating funds. 25-5098 C.A. Doc. 2113162 (Apr. 28, 2025). The government explained that the earliest that any funds would expire was September 30, 2025; for those funds, the government would be required to "begin obligating and expending funds, potentially irretrievably, before that deadline." *Ibid.* Specifically, the government explained, it needed to receive a decision from the D.C. Circuit by August 15. That deadline would ensure that the government could receive effective relief, if it were to prevail on appeal. *Ibid.* The deadline was likewise critical if the government needed to seek review in this Court. The court of appeals granted expedition. 25-5098 C.A. Doc. 2114642 (May 6, 2025).

While the appeal was pending, respondents filed a motion to enforce the preliminary injunction, asking the district court, among other things, to "require [the government] * * * to immediately begin obligating expiring funds" and to "state that [respondents] cannot avoid obligating funds" by proposing to rescind funds that would expire during the 45-day ICA period for Congress to evaluate rescissions. 25-cv-402 D. Ct. Doc. 107, at 2 (July 21, 2025). The court declined to grant that relief, App., *infra*, 53a , but stated that "[i]t would be quite a thing" for the government to represent that it had a plan to obligate the funds pursuant to the injunction, only to "buy time" to propose a rescission that "would circumvent precisely what they are representing to the courts that they are prepared to do." *Id.* at 54a. Further, the injunction would have required the Executive Branch to continue to obligate and move to spend even funds subject to proposed rescissions. Against that backdrop, no rescission was proposed as to any of the September 30 funds while that injunction was in effect.

4. a. On August 13, 2025, the court of appeals vacated the district court's preliminary injunction in relevant part, over Judge Pan's dissent. App., *infra*,

58a-138a.[3] The court held that respondents' separation-of-powers claim necessarily turns on "alleged statutory violations" of the ICA and thus qualifies as a statutory claim that must adhere to statutory limits under *Dalton* v. *Specter*, 511 U.S. 462 (1994). App., *infra*, 77a n.11; see *id.* at 73a-81a.

The court of appeals next held that respondents could not sue under the APA to enforce ICA provisions that govern when the Executive Branch must make funds available for obligation. App., *infra*, 82a-86a. The court explained that no APA cause of action lies "to the extent the relevant statute 'precludes judicial review.'" *Id.* at 82a (quoting *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 345 (1984)). *Block* held that where Congress establishes a "complex and delicate" scheme that provides for judicial review for only some parties, "judicial review of those issues at the behest of other persons may be found to be impliedly precluded." *Id.* at 82a-83a (quoting *Block*, 467 U.S. at 349). The court concluded that the ICA created such a scheme by detailing complex requirements for notification, potential congressional action, and "suit by a specified legislative branch official"—the Comptroller General—after the President notifies Congress of proposed rescissions. *Id.* at 84a. The court reasoned that "it does not make sense that the Congress would craft a complex scheme of interbranch dialogue but *sub silentio* also provide a backdoor for citizen suits to enforce the ICA at any time and without notice to the Congress of the alleged violation." *Ibid.*

In light of that holding on the merits, the court of appeals held that the remaining factors did not warrant an injunction compelling the Executive Branch to obligate the appropriated funds. App., *infra*, 88a-90a. As to irreparable injury, the court held that respondents would inevitably suffer some injury from the termination

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[3] The panel opinion was amended for clarification after its initial issuance. See App., *infra*, 58a. This application quotes the amended opinion.

of pre-existing contracts with the government that the district court upheld as lawful. But respondents failed to develop a record differentiating that harm from whatever hardship they might suffer should the government choose not to expend funds for which respondents could compete but which they were not guaranteed to receive. *Id.* at 89a. And the court concluded that the public interest does not weigh in favor of injunctive relief, because respondents lack a cause of action and "it is not clear how to balance a public interest asserted on behalf of the Congress against the public interest asserted by the Executive." *Id.* at 90a.

b. Respondents petitioned for rehearing en banc, which the government opposed. The government also moved to stay the preliminary injunction or to issue the mandate expeditiously. 25-5098 C.A. Doc. 2131124 (Aug. 20, 2025); 25-5098 C.A. Doc. 2131127 (Aug. 20, 2025). Otherwise, the government explained, the preliminary injunction requiring it to obligate funds prevented the government from taking lawful actions, arguably including following statutory procedures for rescission set out in the ICA. 25-5098 C.A. Doc. 2131124, at 8-9. The government requested resolution of the motions and issuance of the mandate by Tuesday, August 26, and filed a declaration detailing steps that it would need to take to obligate funds expiring on September 30, 2025, including "close to irrevocable" steps which would need to begin no later than September 2, such as negotiating agreements with foreign partners to receive funds and making required congressional notifications about how particular appropriations would be obligated. App., *infra*, 140a, 143a; see *id.* at 139a-144a.

The D.C. Circuit did not rule on respondents' rehearing petition or issue the mandate by August 26, so the government applied to this Court for emergency relief. See Application for a Stay, *Trump* v. *Global Health Council*, No. 25A227 (Aug. 26, 2025). On August 28, before this Court had taken action on that application, the

court of appeals denied respondents' petition for rehearing en banc, App., *infra*, 145a, the panel issued its amended opinion, and the mandate was issued. The government then withdrew its application in this Court.

The initial panel opinion was unclear as to whether the court of appeals had held that the ICA precludes all APA suits to enforce statutory appropriations provisions, or only claims to enforce the ICA itself. The amended opinion, issued simultaneously with the denial of en banc review, clarified that the court held the latter: the ICA bars APA suits to enforce the ICA. App., *infra*, 86a. In a footnote, the amended opinion stated that "we need not and do not decide whether the ICA precludes suits under the APA to enforce appropriations acts." *Id.* at 86a n.17.

5. Once the court of appeals' vacatur of the preliminary injunction took effect, the President promptly transmitted to Congress a special message under the ICA proposing rescissions of approximately $4 billion in funds relevant to this application. See App., *infra*, 153a-174a. In accordance with the ICA, the President justified each proposed rescission. He explained, for example, that certain proposed rescissions involved funds related to programs that had "conflicted with American values" or been "contrary to American interests," had "bankrolled corrupt leader[s]" of foreign countries, or had "interfered with the sovereignty of other countries." *Ibid.* As to the remaining $6.5 billion or so in funds expiring September 30, the government told the district court that it was already taking steps to obligate those funds in accordance with relevant appropriations by September 30. *Id.* at 175a-178a.

6. a. Respondents immediately moved in the district court for preliminary relief to force the government to obligate all funds expiring September 30, and the GHC respondents moved to amend their complaint. See 25-cv-402 D. Ct. Doc. 133 (Aug. 29, 2025); 25-cv-400 D. Ct. Doc. 143 (Sept. 1, 2025). They now contended that

the appropriations statutes themselves required the government to obligate all of those funds, and that failing to do so violates the APA, notwithstanding the President's proposed rescissions of $4 billion of those funds pursuant to the ICA. 25-cv-402 D. Ct. Doc. 133-1, at 1-2 (Aug. 29, 2025). Respondents also sought to compel the government to obligate the remaining $6.5 billion in expiring funds consistent with the relevant appropriations. 25-cv-402 D. Ct. Doc. 133-13 (Aug. 29, 2025).

On September 3, the district court granted respondents' motions in relevant part. App., *infra*, 179a-221a. As to the $4 billion subject to the President's proposed rescissions, the court acknowledged that the D.C. Circuit had held that "violations of the ICA process cannot be enforced using the APA." *Id.* at 191a. The court concluded, however, that respondents are now bringing an APA claim "based on the appropriations acts" that is "completely independent of whether Defendants have complied or failed to comply with the ICA's requirements." *Id.* at 194a. The court interpreted those statutes to likely require the Executive Branch to obligate all of the funds appropriated. *Id.* at 199a-204a. Based on its reading of the ICA, the court held that the President's rescission proposal does not affect the government's supposed statutory duty to obligate the $4 billion that is the subject of the proposal. *Id.* at 209a-212a. As to the other $6.5 billion in funds expiring September 30, even though the government is committed to obligating the funds, the court determined that relief is warranted to compel the government to follow the terms of the appropriation statutes as to how to spend the funds. *Id.* at 197a & n.4; see *id.* at 199a-207a. The court further held that mandamus relief is independently warranted. *Id.* at 207a-209a.

The district court thus entered a new injunction ordering the relevant defendants to "make available for obligation and obligate, by September 30, 2025," the "expiring funds Congress appropriated for foreign assistance programs" in 15 specific

categories of appropriations "unless Congress rescinds the relevant appropriation through duly enacted legislation." App., *infra*, 219a-220a. The court added that, if the government has "concerns about the feasibility" of obligating all of those funds by September 30, the court is "willing to consider a request to extend the relevant expiration dates of the funds" on a motion from the government. *Id.* at 220a.

b. The government promptly filed a notice of appeal and moved to stay the injunction, first in the district court and then in the court of appeals. The district court denied a stay. App., *infra*, 222a-226a. Given the exigencies from the near-immediate need to take difficult-to-reverse steps to obligate the expiring funds, the government requested that the court of appeals rule by 5 p.m. on Friday, September 5. See 25-5319 C.A. Doc. 2133544, at 3 (Sept. 4, 2025). On Friday evening, the court issued a 2-1 order denying an administrative stay and a stay pending appeal. App., *infra*, 227a. Judge Walker would have granted a stay. *Ibid.*

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay a preliminary injunction entered by a federal district court. See, *e.g.*, *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer* v. *Landrigan*, 562 U.S. 996 (2010); *Brunner* v. *Ohio Republican Party*, 555 U.S. 5 (2008) (per curiam). To obtain such relief, an applicant must show a likelihood of success on the merits, a reasonable probability of obtaining certiorari, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.* Those factors strongly support a stay here.

A. The Government Is Likely To Succeed On The Merits

On August 13, the D.C. Circuit correctly held that respondents lacked a cause

of action under the APA to challenge alleged withholding of foreign-assistance funds as putative impoundments that supposedly violate the ICA's procedures, because the ICA is a statute that "precludes judicial review" of such claims under the APA. App., *infra*, 82a; see 5 U.S.C. 701(a)(1). Once the mandate issued and that injunction was no longer in force, the President followed the ICA's procedures and transmitted a "special message" proposing rescissions of $4 billion of the approximately $10.5 billion funds expiring September 30. See App., *infra*, 153a-174a. The district court has now reissued essentially the same injunction as to these funds, again requiring the government to obligate them all by September 30. That injunction rests on the perverse theory that, now that the President has invoked the ICA, the ICA is essentially irrelevant; respondents can purportedly bring APA claims to force the Executive Branch to obligate all the funds proposed for rescission because the underlying appropriations statutes are purportedly mandatory directives rather than mere authorizations. *Id.* at 189a-195a, 220a-221a. That new theory would gut the ICA and vitiate black-letter doctrine on preclusion of APA claims. Even worse, it would allow a single district court, unchastened by recent appellate reversal, to supplant Congress's and the President's lawful authority over appropriations.[4]

1. Respondents lack a cause of action under the APA to order the government to obligate funds subject to the ICA

a. Few disputes are less amenable to review under the APA than this one. A cause of action under the APA is not available if any other "statutes preclude judicial review." 5 U.S.C. 701(a)(1). Such preclusion can arise through "express lan-

[4] The injunction also orders the government to obligate $6.5 billion in foreign-aid funds that the government has already made clear that it intends to spend. As to that money, there is no "final agency action" within the meaning of the APA, there is no plausible violation of any statutory mandate, and respondents lack irreparable harm. The government's request for relief from this Court, however, is limited to the $4 billion that are the subject of the President's rescission proposal.

guage" in another statute, or through "the structure of the statutory scheme, its objectives, its legislative history, and the nature of the administrative action involved." *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 345 (1984). Congress may "preclude[] all judicial review" or may instead limit judicial review to a particular channel or type of case. *Ibid.* (citation omitted).

For instance, Congress may impliedly preclude some parties from seeking APA review by establishing a "complex and delicate" scheme that provides for judicial review only by others. *Block*, 467 U.S. at 347-348. Thus, in *Block*, this Court held that Congress had precluded an APA action brought by consumers seeking judicial review of milk market orders issued by the Secretary of Agriculture. *Id.* at 341. The relevant statute provided a mechanism for dairy handlers to seek judicial review after administrative exhaustion, and allowed for "[h]andlers and producers—but not consumers" to "participate in the adoption and retention of market orders." *Id.* at 346. By omitting consumers from those processes, the Court held that Congress similarly intended to foreclose them from seeking judicial review of market orders. *Id.* at 347. Otherwise, allowing consumers to sue would "effectively nullify" the administrative exhaustion that Congress had expressly required. *Id.* at 348.

The ICA's political-branch procedures and specific judicial-review mechanism even more straightforwardly preclude APA review of respondents' claims that the Executive Branch engaged in unlawful impoundments by failing to obligate the funds at issue. See, *e.g.*, 25-cv-402 D. Ct. Doc. 133-1, at 13 (Aug. 29, 2025). Throughout American history, the political branches have resolved their own disputes over appropriations. For instance, when President Grant informed Congress that he would not spend funds appropriated for harbor and river improvements based on his view of the national interest, some members of Congress expressed objections. See Stan-

ton, *supra*, 5-7. But Congress ultimately dropped the issue, and "no efforts were made to restrict presidential discretion over the appropriated money." *Id.* at 7. In keeping with that history, the ICA's procedures ensure that the political branches—not courts or private parties—remain in control of disputes over the President's failure to obligate or spend funds authorized by Congress for appropriation.

As the D.C. Circuit merits panel recognized, for any appropriations that fall within the ICA's scope, if the President wishes to rescind or delay those budget obligations, the ICA prescribes a "complex scheme of notification," potential "congressional action," and "suit by a specified legislative branch official" after notice to Congress. App., *infra*, 84a. The President must notify Congress when he proposes to defer or rescind the appropriated funds in a "special message" meeting particular statutory requirements. 2 U.S.C. 683(a), 684(a). Congress then determines how to respond: discussion and negotiation could ensue; Congress could disapprove the rescission or deferral; it could vote to rescind some parts of the package but not others; it could legislate further; it could decline to respond. See 2 U.S.C. 688.

Of particular importance, the ICA contemplates an express enforcement mechanism only at the end of that process, and only via suits by the Comptroller General. 2 U.S.C. 687. Congress contemplated that those suits would be capacious: they cover any instance in which, "under this chapter, budget authority is required to be made available for obligation and such budget authority is not made available for obligation." *Ibid.* Congress expressly limited venue to the U.S. District Court for the District of Columbia and vested that court with special powers specific to these suits: "[S]uch court is hereby expressly empowered to enter in such civil action * * * any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation." *Ibid.* The ICA also prescribes the timing

of such suits: they can happen only 25 in-session days after the Comptroller General provides Congress with a statement explaining the "circumstances giving rise to the action contemplated," so that Congress has a chance to avoid litigation. *Ibid.*

That reticulated scheme of give-and-take between the political branches and congressional notification before suit necessarily forecloses private parties from seeking judicial review, supplanting interbranch negotiations, and leapfrogging the Comptroller General. See *Block*, 467 U.S. at 347-348. Any disputes between the President and Congress are to be "hashed out in the hurly-burly, the give-and-take of the political process between the legislative and the executive," *Trump* v. *Mazars USA, LLP*, 591 U.S. 848, 859 (2020) (citation omitted)—not through private suits by potential downstream beneficiaries of appropriations. As the merits panel put it, "it does not make sense that the Congress would craft a complex scheme of interbranch dialogue but *sub silentio* also provide a backdoor for citizen suits at any time and without notice to the Congress of the alleged violation." App., *infra*, 84a. Thus, that panel held, respondents cannot bring APA claims to enforce the ICA. *Ibid.*

The district court, however, allowed respondents to skirt the ICA's preclusive effect by styling their claims as claims to enforce the underlying appropriations statutes rather than claims to enforce the ICA itself. App., *infra*, 189a-195a. But respondents' claims cannot be divorced from the ICA in that way. What determines whether any "statutes preclude judicial review" within the meaning of 5 U.S.C. 701(a)(1), is whether "[a]llowing" the plaintiff "to sue" the defendants "would severely disrupt [a] complex and delicate administrative scheme." *Block*, 467 U.S. at 348. The ICA's complex, reticulated scheme reflects Congress's view of when appropriations are mandatory and when they can be rescinded. In evaluating whether the government violated its obligations under the appropriations statutes, a court cannot simply

ignore the comprehensive statute that governs interbranch disputes about the expenditure of appropriated funds. And under that comprehensive statute, the Executive Branch can be relieved from the ICA's default obligation to spend appropriated funds. If the Executive Branch determines that funds are unnecessary for obligation, the ICA requires a special message from the President to Congress, gives Congress a chance to respond, contemplates an interbranch back-and-forth, and ultimately authorizes the Comptroller General to investigate and potentially litigate after prior notice to Congress. Respondents' suit to force the government to obligate those funds would thus "severely disrupt" the ICA's "complex and delicate administrative scheme." *Block*, 467 U.S. at 348.

The preclusion is especially clear because respondents' suit supplants the role that the ICA contemplates for the Comptroller General under Section 687. Respondents are suing to force the government to "ma[k]e available for obligation" appropriations that are purportedly "required to be made available" under the appropriations statutes but are "not made available for obligation" by the President. 2 U.S.C. 687. Nor is there any doubt that relevant requirements would arise "under this chapter," *ibid.*—*i.e.*, under the ICA. The ICA contemplates that if appropriations require the Executive Branch to obligate funds and the Executive Branch does not do so, the Comptroller General may bring a claim and seek extraordinary types of relief. Regardless of whether such a suit by the Comptroller would ultimately be cognizable, the fact that respondents are trying to bring a suit of the type that the ICA assigned to the Comptroller General is strong evidence that the ICA "preclude[s] judicial review" of their claims under the APA. 5 U.S.C. 701(a)(1).

Principles of APA preclusion thus prohibit private litigants from hijacking that reticulated process, displacing the Comptroller General, and bringing a suit that Con-

gress might not want to challenge the same underlying action—the refusal to obligate funds—through the simple expedient of pointing to the relevant appropriations statute, not the ICA. Otherwise, private litigants could circumvent the ICA as to virtually any appropriations, claiming that the underlying appropriations statutes require faster or different obligations of funds regardless of whether the political branches are poised to resolve those same disputes via the ICA's procedures.

b. Respondents' contrary arguments lack merit. In arguing that the ICA does not preclude their APA claims, respondents point to an ICA provision disclaiming that nothing in the ICA "shall be construed" as "affecting in any way the claims or defenses of any party to litigation concerning any impoundment." 2 U.S.C. 681(3). This case, however, does not concern an unlawful "impoundment," but rather a rescission proposal that comports with the ICA. See pp. 23-32, *infra*. Moreover, as the court of appeals explained, that provision simply "disclaims any effect on the claims or defenses of any party *that may bring litigation*," while also clarifying that the "ICA had no retroactive effect." App., *infra*, 84a-85a. This Court recognized the latter effect of that provision in holding that the ICA did not moot a suit concerning the allotment of certain appropriated funds that was pending at the time the ICA was enacted. See *Train* v. *City of New York*, 420 U.S. 35, 41 n.8 (1975). Nothing about that provision overcomes the plain implication from the ICA's structure that Congress did not intend for private parties to interfere in this process.

Nor would recognizing that respondents lack a cause of action require interpreting the ICA to preclude *all* private suits brought to enforce *all* appropriations statutes. Contra C.A. Resp. Opp. 9. Unlike the appropriations statutes in this case, certain appropriations statutes may mandate that specific payments be made to a specific entity by a specific date. As discussed below, the ICA expressly declines to

supersede those statutes. See 2 U.S.C. 681(4); pp. 30-32, *infra*. And statutes can fall outside the ICA's ambit for other reasons. Cf. *Train*, 420 U.S. at 41 n.8, 42-43 (enforcing appropriations statutes in pre-ICA case that the ICA did "not appear to affect"). Most importantly, as discussed below, respondents' claims fall in the heartland of what the ICA precludes, because they directly interfere with ongoing interbranch dialogue *over the very funds that the President proposed be rescinded under the ICA*.

2. Respondents cannot bring APA claims that directly conflict with the ICA

Whatever the scope of impoundment claims that the ICA's comprehensive scheme impliedly precludes, there can be no serious question that claims concerning the effect of *an ICA rescission proposal* are precluded, because they cannot be divorced from the ICA's reticulated procedures and limited remedial mechanisms. This Court has recognized that a statute precludes judicial review under the APA when APA suits would "severely disrupt" a "complex and delicate scheme." *Block*, 467 U.S. at 348. The ICA's scheme plainly fits that bill. Pursuant to the ICA, the President has notified Congress of his proposal to rescind $4 billion in funds expiring September 30 and his reasons for doing so. See App., *infra*, 153a-174a. Under ICA procedures, it is now Congress's turn to act, either by enacting a rescission bill, extending the period of availability for funds, pressuring the President to obligate some or all of the funds, or choosing inaction. 2 U.S.C. 683(a), 684(a), 688. And while Congress considers the proposal, the ICA allows the Executive Branch to pause obligating the funds.

Respondents' APA suit would "severely disrupt" the ICA's scheme. *Block*, 467 U.S. at 348. Respondents are replacing the political back-and-forth with a preemptive injunction. The injunction also supplants the ICA's pause in obligating funds while Congress considers rescissions with a mandate to rapidly obligate those same

funds before September 30. And respondents' suit superimposes a district court's view of impoundment obligations and the timing of rescissions proposals on the political branches, which have long understood the ICA differently. Those direct conflicts between the ICA framework and this injunction confirm that the ICA precludes respondents' APA claims. That conflict also dooms respondents' APA, mandamus, and other claims on the merits. It is not "contrary to law," let alone clearly and indisputably so, for the government to withhold these appropriated funds during a period when the ICA allows such withholding.

a. The ICA authorizes the Executive Branch to pause and withhold from obligating funds that the President has proposed for rescission while Congress deliberates for up to 45 days, so that the political branches can discuss, in light of the President's objections, whether the funds should be spent. The President's ability to withhold funds from obligation during that period is central to the statutory scheme. Under the ICA, once the President "determines" that certain appropriations should be "rescinded," he must transmit a "special message" to Congress. 2 U.S.C. 683(a). The statute further provides that the covered funds "shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill." 2 U.S.C. 683(b). That language gives Congress 45 legislative days (which could mean more than 45 calendar days in practice) to decide whether to pass a bill implementing the President's proposed rescission. But the statute does not require the President to make funds available for obligation while Congress is considering the special message. Doing so would undermine Congress's statutory prerogative to pass a bill under the ICA's fast-track procedures rescinding that budget authority by the end of the 45-day period. See *ibid.*; 2 U.S.C. 688; see also GAO, *Principles of Federal Appropriations Law* 2-48 (4th ed. 2016) ("The President

is authorized to withhold budget authority that is the subject of a rescission proposal for a period of 45 days of continuous session following receipt of the proposal.").

The same rule applies when the President transmits a special message to Congress fewer than 45 days before the covered funds are scheduled to expire: the President may still withhold the funds while Congress considers his proposal. The ICA does not set any deadline within a fiscal year by which the President must send a special message proposing a rescission. Nor does it require the President to obligate funds before the end of the fiscal year if Congress is still considering his rescission proposal at that time. On the contrary, as explained above, the ICA does not require the President to obligate funds until the end of the "prescribed 45-day period" for Congress to consider his proposal. 2 U.S.C. 683(a).

If the fiscal year ends before the conclusion of Congress's statutory 45-day window for considering the President's proposal, Congress of course still has the opportunity to ensure the funds are obligated by extending their period of availability. See 2 U.S.C. 683(a). But if Congress takes no action by the end of the fiscal year, then pursuant to the terms of the appropriations statute, the relevant budget authority may lapse without the funds being spent. See, *e.g.*, 138 Stat. 743 (appropriation for Democracy Fund "to remain available until September 30, 2025"). In that circumstance, congressional inaction triggers a different result than it usually does under the ICA. See 2 U.S.C. 683(b) (explaining that funds "shall be made available for obligation" unless Congress affirmatively acts to pass rescission bill at the end of 45 days). This type of rescission is accordingly sometimes called a "pocket rescission," and it is simply the consequence of the ICA's permitting the President to propose rescissions late in the fiscal year and Congress's decision to place a limit on the funds' period of availability in the underlying appropriation.

Congress was aware of the consequences of that choice and crafted the ICA to allow such rescissions. In a neighboring provision of the ICA, 2 U.S.C. 684, Congress provided that for deferrals (as opposed to rescissions), the President may delay the obligation or outlay of budget authority for certain reasons, but not beyond the end of the fiscal year. Section 684(a) provides: that a "deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate." 2 U.S.C. 684(a). Congress could have provided similar language for rescissions, but it did not. Instead, it clarified that the deferral requirements "do not apply to any budget authority proposed to be rescinded" under Section 683. 2 U.S.C. 684(c).

Contemporaneous practice of the Executive Branch and GAO confirms that the ICA permits such end-of-year rescission proposals without requiring the government to spend those funds while the proposals are before Congress. See *Edwards' Lessee* v. *Darby*, 25 U.S. (12 Wheat.) 206, 210 (1827) ("In the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law * * * is entitled to very great respect."). As noted above, Presidents Ford and Carter carried out pocket rescissions shortly after the ICA was enacted. Both Presidents proposed rescissions for funds that would expire before the end of the 45-day period. See pp. 6-7, *supra*. Records show that those funds largely were not obligated during that statutory period. Of the funds that President Ford proposed rescinding, some apparently "lapsed on September 30, 1975" without being obligated. 41 Fed. Reg 39,644, 39,652-39,653 n.24 (Sept. 15, 1976). President Carter also apparently did not obligate all of the funds that he proposed rescinding during the withholding period. See GAO B-115398 (OGC-78-2) (Oct. 26, 1977), https://www.gao.gov/assets/ogc-78-2.pdf.

Consistent with that practice, GAO explained shortly after the enactment of the ICA that if the President transmits a special message "concerning amounts that [a]re near their date of expiration," the "President may withhold the budget authority from obligation for the duration of the 45-day period," even if that means the funds expire. *Impoundment Control Act—Withholding of Funds through Their Date of Expiration*, B-330330.1, 2018 WL 6445177, at *9 (Comp. Gen. Dec. 10, 2018) (recounting various GAO opinions from 1975 and 1976). GAO explained that if Congress wishes for the funds to remain available, it "must take affirmative action to prevent the withheld funds from expiring." *Ibid.* GAO has more recently retreated from its contemporaneous understanding and overruled those opinions. *Ibid.*; see App., *infra*, 210a-211a (district court relying on more recent interpretation). But GAO's contemporary understanding is the one indicative of the ICA's meaning.

Against the backdrop of that historical practice, Congress has repeatedly rejected proposals to limit the President's authority to withhold funds late in the fiscal year, within the 45-day window for pocket rescissions. Congress declined to adopt a proposal by the Comptroller General to consider "changing the [ICA] to prevent funds from lapsing where the 45-day period has not expired." GAO B-115398 (ACG-76-12), at 2 (Dec. 15, 1975), https://www.gao.gov/assets/acg-76-12.pdf. More recent proposals in Congress have failed too. See, *e.g.*, Protecting Our Democracy Act, H.R. 5048, 118th Cong. § 501 (2023) (attempting to require OMB to release funding to agencies at least 90 days before the funding expires); Protecting Our Democracy Act, H.R. 5314, 117th Cong. § 501 (2021); Congressional Power of the Purse Act, H.R. 6628, 116th Cong. § 101 (2020). Instead, when Congress has sought to avoid expiration of time-limited funding, it has used other mechanisms, like extending the period of availability of expiring appropriations. See, *e.g.*, Continuing Appropriations Act,

2023, Pub. L. No. 117-180, Div. A., § 124, 136 Stat. 2120 (2022); Continuing Appropriations Act, 2020, Pub. L. No. 116-59, Div. A, § 124, 133 Stat. 1098 (2019).

b. The district court's injunction runs headlong into those longstanding conceptions of the President's obligations and authorities under the ICA. The injunction requires the Executive Branch to rush to obligate the same $4 billion that the President has just proposed rescinding between now and September 30, and thus puts the Executive Branch at war with itself. Just as the President is pressing for rescission and explaining to Congress that obligating these funds would harm U.S. foreign-policy interests, his subordinates are being forced to proceed to identify and even negotiate with potential recipients. That injunction also hampers interbranch dialogue by forcing the President to relay mixed messages. Just as the President is notifying Congress that it should rescind the appropriations, the injunction is forcing the Executive Branch to comply with mandatory 15-day notifications to Congress about how those same funds would be obligated and spent pursuant to the injunction. App., *infra*, 141a-142a. In other words, the injunction prevents the Executive Branch from speaking with one voice to Congress and prevents the government from speaking with one voice to foreign nations.

All of these conflicting obligations arise out of the district court's erroneous interpretation of the ICA. Although the court purported to enforce only the appropriations statutes, the injunction requires the government to obligate the $4 billion before expiration, and it dictates that the *only* event that could suspend that obligation would be for Congress to "rescind[] the relevant appropriation through duly enacted legislation" by September 30. App., *infra*, 219a-220a. The injunction thus conclusively holds that the ICA does not permit so called "pocket rescissions." The court was wrong about the ICA—and thus wrong that applicants are acting "contrary to

law" in declining to obligate the funds. At the very least, respondents' entitlement to relief is not so "clear and indisputable" as to warrant mandamus relief. *Cheney* v. *United States District Court*, 542 U.S. 367, 381 (2004) (citation omitted). But even setting aside the merits of the district court's theory, the key point is that these disputes should be left to the political branches, pursuant to the ICA's comprehensive scheme. The court's erroneous interpretation of the ICA only confirms that judicial review here "would severely disrupt [the ICA's] complex and delicate administrative scheme." *Block*, 467 U.S. at 348.

c. The district court and respondents cast respondents' claim as independent of the ICA now that they purport to be enforcing the underlying appropriations statutes rather than the ICA itself. But the President's rescission proposal focuses on concrete appropriations that he proposes rescinding. Respondents' ability to enforce those very provisions turns on whether, now that the ICA's procedures have been engaged, the Executive Branch can be required by injunction to obligate the funds before those procedures run their course. That is precisely the kind of question that the ICA reserves to the political branches. See pp. 17-23, *supra*. But, aggravating the conflict with the ICA's scheme, the district court instead preemptively ruled on the issue based on its own, incorrect understanding of the ICA. The court stated (for example) that "it is congressional action—not the President's transmission of a special message—that triggers rescission" under the ICA; that the government's contrary view "finds no support in the text of the ICA"; that such a result would "undermine the very purpose of the ICA"; and that, in these circumstances, the asserted obligation to make funds available "prevails over the privilege" granted by the ICA "to temporarily withhold the amounts." App., *infra*, 209a-211a (citation omitted). Respondents' asserted entitlement to relief is inextricably linked to the ICA's effect.

Taking another tack, respondents also defend the injunction as consistent with the ICA on the theory that the statute expressly forbids the use of ICA procedures to override expenditure deadlines in appropriations statutes. They rely on a provision of the statute known as the "fourth disclaimer," which provides: "Nothing contained in this Act * * * shall be construed as * * * superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder." 2 U.S.C. 681(4). They contend that the appropriations statutes at issue here "require[] the obligation of budget authority" by September 30 and thus cannot be "supersed[ed]" using ICA procedures.

That theory is difficult to square with the theory that respondents pursued for the past five months and that formed the basis of the prior injunction: that, by not obligating these appropriated funds, the government was purportedly *violating the ICA* because it should have used the ICA's procedures for rescissions. See, *e.g.*, 25-cv-402 D. Ct. Doc. 4, at 30-31 (Feb. 11, 2025). Respondents also mischaracterize the relevant appropriations statutes. Congress in the authorizing statutes recognized that the President may furnish foreign assistance "on such terms and conditions as he may determine." *See, e.g.*, 22 U.S.C. § 2151a(a)(1). And many of these appropriations statutes are extremely open-ended. For example, the Democracy Fund appropriation simply provides that large undifferentiated sums are appropriated for various activities. See, *e.g.*, Tit. III, 138 Stat. 744 ("[f]or necessary expenses to carry out the provisions of the Foreign Assistance Act of 1961 for the promotion of democracy globally, including to carry out the purposes of section 502(b)(3) and (5)"). The Peacekeeping Operations appropriation provides slightly more detail but remains quite general. Tit. III, 138 Stat. 748-749 (funds "to provide assistance to enhance the capacity of foreign civilian security forces"). The Development Assistance appropriation

is subject to a requirement that certain amounts requires that those funds "'shall be made available'" in amounts designated in an allocation table, 138 Stat. 771, but GAO recognizes that even such "shall be made available" language "contain[s] an element of ambiguity" as to whether Congress intended the amount to serve as a floor or ceiling or both. 2 GAO, *Principles of Federal Appropriations Law* 6-31 (3d ed. 2006). These sorts of statutes do not "require[] the obligation of budget authority" within the meaning of the fourth disclaimer. 2 U.S.C. 681(4).

Instead, the fourth disclaimer has long been understood to apply much more narrowly, precluding withholdings under the ICA only where a provision of law affirmatively and specifically prohibits the withholding of particular funds. See *West Cent. Mo. Rural Dev. Corp.* v. *Donovan*, 659 F.2d 199, 201 (D.C. Cir. 1981) (per curiam) (explaining that the provision focused on "mandatory spending statute[s]" that "imply an inflexible command to spend"). Historical context confirms as much. The fourth disclaimer arose out of 1970s-era clashes over impoundment, when Congress had passed several statutes expressly preventing specific executive-branch agencies from withholding funds. The fourth disclaimer was enacted to clarify that the ICA would not supersede those specific anti-impoundment statutes, which had "been enacted in response to the wholesale impoundment of funds appropriated for specific programs." 120 Cong. Rec. 20,465 (June 21, 1974) (remarks of Sen. Ervin).

At the time of the provision's enactment, both GAO and OMB understood the fourth disclaimer that way as well. See Letter of David Stockman to Chairman Norman Y. Mineta, Encl. C (Apr. 6, 1982) (noting that the fourth disclaimer "was a temporary provision of no lasting effect" and that the ICA "provides independent authority to impound unless the exercise of that authority would be inconsistent with specific statutory language to the contrary"); *Review of the Impoundment Control Act of*

1974 after 2 Years, B-115398 (OGC-77-20), at 10-11 (Comp. Gen. June 3, 1977), https://gao.gov/assets/ogc-77-20.pdf (referring to the fourth disclaimer as a "transitional provision whose objectives have been realized" and explaining that it applied only to laws enacted prior to the ICA in response to previous impoundments). Once again, GAO has since retreated from that understanding. See GAO B-205053 (OGC-82-9) (Mar. 10, 1982), https://www.gao.gov/assets/ogc-82-9.pdf. But its original interpretation was the correct one.

* * *

In sum, the ICA precludes respondents' APA claims. Further, the ICA does not permit the district court to enter such an injunction under the APA, the Mandamus Act, or any other authority that respondents have invoked. Nor may the court subject agencies' decisions to withhold funds included in such a message to arbitrary-and-capricious review. Contra App., *infra*, 204a-205a. The President has determined that the funds should be rescinded; any decision to withhold funds in the meantime flows naturally from the President's transmission of the message. Cf. *Dalton* v. *Specter*, 511 U.S. 462, 470-471 (1994) (where the "President, not [an executive agency], takes the final action" at issue, his decisions "are not reviewable under the APA"). Any other result would conflict with the ICA and upset its calibrated procedures.

B. The Other Factors Support A Stay

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant its review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Each of those factors overwhelmingly supports relief here.

1. The issues in this case warrant the Court's review

The district court's order directs the government to immediately "make avail-

able for obligation and obligate" billions of dollars in foreign-assistance funds in the next three weeks, including approximately $4 billion that the President has proposed rescinding under the ICA's procedures. The court did so even though the Executive Branch views that spending as detrimental to U.S. foreign-policy interests, that the political branches might disagree with the district court's view of what rescissions and processes are permissible and appropriate, and that the ICA envisions no role for judicial intervention at this stage.

The district court's interference with the President's ability to pursue the back-and-forth the ICA contemplates for rescissions would alone warrant this Court's intervention; this Court routinely intervenes in cases in which lower courts attempt to direct the functioning of the Executive Branch. See, *e.g.*, *National Inst. of Health* v. *American Public Health Ass'n*, No. 25A103, 2025 WL 2415669 (Aug. 21, 2025) (granting stay of district court order enjoining the government from terminating millions of dollars in research-related grants); *Department of Education* v. *California*, 145 S. Ct. 966 (2025) (granting stay of district court order enjoining the government from terminating millions of dollars in education grants); *Trump* v. *Sierra Club*, 140 S. Ct. 1 (2019) (granting stay of district court order enjoining the Department of Defense from undertaking any border-wall construction using funding the Acting Secretary transferred pursuant to statutory authority).

Here, this Court's intervention is particularly warranted because forcing the Executive Branch to obligate the funds at issue also countermands the President's sensitive foreign-policy judgments and usurps Congress's ability to fulfill its role of considering and (if it wishes) responding to the proposed rescissions. On top of that, as in *Sierra Club*, the government has made a strong showing "that the plaintiffs have no cause of action to obtain review" of the government's compliance with the

relevant statutes. 140 S. Ct. at 1.

2. The injunction irreparably harms the Executive Branch

a. This latest preliminary injunction presents an acute affront to the separation of powers. Now, immediately after the President has formally triggered the ICA's procedures for Congress to consider his rescission proposal, the district court's injunction is forcing the Executive Branch to undermine itself, confuse Congress, and thwart the ICA's interbranch process. The injunction destroys a central feature of the ICA process—authorizing the President to withhold the funds from obligation so that the political branches have an opportunity to resolve any disputes over the proposed rescissions. Not only did the district court inject itself into a political process where the Judiciary lacks comparative expertise, but it did so in the context of foreign-policy decisions that have "long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." *Chicago & S. Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948). Indeed, the injunction threatens to override the public interest in ensuring that tax dollars are not spent for foreign-assistance projects that "conflic[t] with American values," are "contrary to American interests," and undermine the President's foreign policy. App., *infra*, 160a-161a. And, if the government ultimately prevailed on appeal, there would be no guarantee that any funds that the government obligated or disbursed in the interim would be retrievable after the fact. See *Department of Educ.*, 145 S. Ct. at 968-969.

Worse, the timing of the injunction sows maximum disruption. Just as the President informed Congress of his reasons for concluding that obligating the $4 billion would undermine U.S. foreign-policy interests, the injunction will force the Executive Branch within the week to decide how to obligate those funds and begin notifying Congress of those plans, since many of the appropriations at issue require the

government to notify Congress of the details of the planned obligations at least 15 days in advance of actually obligating the funds. See App., *infra*, 141a. And to complete those self-defeating congressional notifications, the Executive Branch must have firmed up how the funds would actually be spent—requiring "direct negotiation" or consultation "with foreign states or international organizations" that would need to begin immediately. See *id.* at 140a-142. But it "would cause immense irreparable harm to the foreign policy of the United States to enter into negotiations to award a large sum of money to a foreign state or international organization" only "to renege at the last moment" if the government obtains relief or Congress rescinds the funds. *Ibid.* And, needless to say, engaging in diplomatic negotiations to award funds when the President has deemed that enterprise contrary to U.S. foreign policy and proposed those very funds for rescissions exacerbates the foreign-relations risks on both sides. Far from speaking with one voice in foreign affairs, the injunction is forcing the Executive Branch to undercut itself and send competing signals. The government previously explained that these steps needed to start by September 2 for any hope of obligating the funds by September 30. The district court's near-midnight injunction on September 3, after the D.C. Circuit issued its mandate vacating the prior injunction on August 28, has made that task immeasurably more difficult and puts the government in an impossible position.

Apparently recognizing that the timing of this new injunction might pose difficulties, the district court offered just one solution: the government could ask the court to "extend the relevant expiration dates of the funds" past September 30. App., *infra*, 220a. But the district court's offer to rewrite Congress's statutory deadline hardly alleviates the underlying separation-of-powers harms or the Catch-22 from having to obligate the very funds that the President's proposed rescissions should

have frozen for further consideration. Regardless, at least where, as here, respondents have no "right to an amount payable" from the funds at issue, 31 U.S.C. 1502(b), it is far from clear that a court has the authority to extend statutory appropriations deadlines, as the district court proposed doing. See *Goodluck* v. *Biden*, 104 F.4th 920, 927 (D.C. Cir. 2024). As the D.C. Circuit has explained, the cases on which the district court relied were "decided in the '*ancien regime*' when courts took a much more freewheeling approach to the law of remedies." *Id.* at 928. And this Court has already held in the context of appropriations disputes that courts in equity "cannot grant * * * a money remedy that Congress has not authorized." *OPM* v. *Richmond*, 496 U.S. 414, 426 (1990) (citing *INS* v. *Pangilinan*, 486 U.S. 875, 883 (1988)). The government cannot be forced to mitigate the harms from the district court's unlawful injunction by requesting the court to enter another potentially unlawful order.

b. The district court and respondents deem this emergency one of the government's own making. See App., *infra*, 216a n.9; C.A. Resp. Opp. 22-25. That is patently false: the district court's willingness to keep issuing injunctions to the brink of September 30, coupled with respondents' litigation tactics, are to blame. The district court entered an unlawful injunction in March, which respondents spent months defending. See App., *infra*, 1a-48a. Rather than generating needless emergency litigation in March, the government successfully moved to expedite the case in the D.C. Circuit to obtain a ruling by August 15. That deadline would have enabled the government to obtain further review if necessary and (if the government lost) take necessary steps to obligate funds by September 30, including near-irrevocable steps that needed to begin September 2. 25-5098 C.A. Doc. 2113162, at 3; see App., *infra*, 143a.

When the government prevailed, respondents sought rehearing en banc, delaying issuance of the mandate until August 28. Shortly thereafter, the President pro-

posed the $4 billion rescissions package, giving Congress a little over a month to respond until those funds lapse on September 30. See App., *infra*, 153a-174a. As a practical matter, it would have been self-defeating to propose rescissions while the prior injunction was in effect, since that injunction (like the current one) would have required the Executive Branch to take steps to obligate the funds even as the President's proposed rescission should have prompted a pause. *Id.* at 48a (ordering applicants to "make available for obligation the full amount of funds that Congress appropriated" in the 2024 Appropriations Acts). It is especially inappropriate for the district court to blame the President for not transmitting his proposed rescissions to Congress earlier, *id.* at 211a, when the district court in July made clear its view that a "pocket rescission" would not comply with its original injunction, and that any proposed rescissions that gave Congress less than 45 days to review the proposal would be inoperative unless Congress affirmatively passed legislation in that time. *Id.* at 54a (asserting "[i]t would be quite a thing" for the government to represent that it had a plan to obligate the funds, then propose a rescission that "would circumvent" obligation of those funds).

Understandably, the previous timetable did not contemplate that respondents—having lost on whether there is a cause of action to challenge purported noncompliance with the ICA—would get a do-over to attempt to use the APA to directly upend the ICA's procedures. Nor did the previous timetable contemplate that the district court would reward that gambit with another preliminary injunction near midnight on September 3. Equity should not indulge respondents with an extraordinarily expedited do-over after their original theory failed, particularly when the government has moved expeditiously at every stage of the litigation.

3. The balance of equities strongly favors the government

The balance of the equities also supports a stay. Respondents have asserted, and the district court credited, that they face severe financial threats without the ability to compete for the funds expiring on September 30. See, *e.g.*, 25-cv-402 D. Ct. Doc. 133-1, at 28-30 (citing declarations from member organizations). But, even accounting for respondents' latest declarations, respondents do not explain why the $4 billion at issue present an existential crisis for their operations, especially given that the government will obligate the remaining $6.5 billion of the expiring funds by September 30.

Even assuming that respondents have Article III standing, the injunction is not tailored to their purported irreparable injury. Respondents will only *compete* for potential foreign-assistance funding that may trickle to them in particular awards. They have no legal entitlement to any particular funds. Hence, the D.C. Circuit merits panel correctly held that they had not made a strong showing of irreparable harm. App., *infra*, 89a-90a. And their alleged injuries from not obtaining some portion of these funds is even weaker now that the short time remaining before September 30 makes it impossible for the funds to be obligated through a competitive process. If necessary for compliance, the funds would be obligated through mechanisms such as pre-existing instruments with already-established foreign partners or foreign states or other U.S. government agencies. App., *infra*, 177a-178a. Respondents cannot show they are likely to suffer irreparable injury "in the absence of" the preliminary injunction when they may well not receive any funds regardless. See *Winter* v. *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). All of this underscores the incongruity of allowing private parties with no legal entitlement to any funds to obtain a preliminary injunction that forces the Executive Branch to obligate all the relevant expiring funds—billions of dollars' worth of funds the President considers contrary to

foreign-affairs objectives—amidst the ongoing ICA process with Congress.

C. This Court Should Issue An Administrative Stay

The Solicitor General respectfully requests that this Court grant an administrative stay while it considers this application, and that the Court in all events either grant an administrative stay or stay the preliminary injunction in full as swiftly as practicable. The government has sought to expedite the proceedings on appeal at every stage in order to ensure adequate time for review and for obligating the funds, if required. The government now faces the prospect of contempt proceedings before the district court if the government misses statutory deadlines for congressional notifications for obligating funds that the President has proposed should be rescinded and that Congress is actively considering. At a minimum, the Court should enter an administrative stay to ensure that the irreparable harm that the preliminary injunction threatens does not occur during the Court's deliberations.

CONCLUSION

This Court should stay the district court's preliminary injunction as to the funds that are the subject of the President's rescission proposal currently pending before Congress. In addition, the Solicitor General respectfully requests an administrative stay of the district court's order pending the Court's consideration of this application and respectfully requests either an administrative stay or a decision on this application as soon as practicable.

Respectfully submitted.

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Solicitor General

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