No. 25A269

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.

ON APPLICATION FOR A PARTIAL STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE IN OPPOSITION TO APPLICATION FOR PARTIAL STAY

LAUREN E. BATEMAN
Counsel of Record
NICOLAS A. SANSONE
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
lbateman@citizen.org

Counsel for Respondents AIDS Vaccine Advocacy Coalition, et al.

DANIEL F. JACOBSON
Counsel of Record
JOHN ROBINSON
BRIAN C. ROSEN-SHAUD*
NINA C. CAHILL
JACOBSON LAWYERS GROUP PLLC
1629 K Street NW, Suite 300
Washington, DC 20006
(301) 823-1148
dan@jacobsonlawyersgroup.com

WILLIAM C. PERDUE
SALLY L. PEI
STEPHEN K. WIRTH
SAMUEL F. CALLAHAN
DANIEL YABLON
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000

* *Not admitted in the District of Columbia. Supervised by members of the D.C. bar.*

Counsel for Respondents Global Health Council, et al.

TABLE OF CONTENTS

INTRODUCTION

The government seeks an emergency stay of an injunction requiring it to obligate congressional appropriations by September 30, as mandated by duly enacted appropriations acts. Any emergency is of the government's own making, as it has been under an obligation to spend the appropriated funds for specified purposes since at least March 2024. The government now claims that enforcing its duty to obligate the funds would interfere with congressional deliberations and inter-branch dialogue related to the Executive's request to rescind the funds. That claim is irreconcilable with the government's own statements and actions, including the Executive's repeated representations that it does not matter what Congress does in response to the rescission proposal. And, critically, the government's stay application is based on an interpretation of the Impoundment Control Act (ICA) that lacks any grounding in the statutory text and would upend our constitutional structure.

Yet this Court need not even reach these weighty issues because the factual predicate of the government's application is incorrect. The government argues that, at the time the district court entered its injunction on September 3, Congress had received a special message from the President under the ICA proposing rescissions of foreign assistance funds, triggering Congress's 45-day review period and relieving USAID and the State Department of their legal duty to spend those funds. It has now come to light that, although the special message was sent to the House on August 28, it was not delivered to the Senate until September 8. That discrepancy is no mere technicality. The ICA requires that the special message be transmitted and delivered to the two chambers "on the same day," and the 45-day review period does not start until after the message is "received" by both

chambers. 2 U.S.C. §§ 682(3), 685(a). That means the congressional review period has not begun, and certainly had not begun when the district court entered its injunction.

In any event, the government's arguments are wrong even if their factual predicate were correct. The government does not seriously dispute that the appropriations acts required the agencies to obligate the relevant funds by September 30. Respondents' claims are based on violations of these appropriations acts, not the ICA. It is the government that raises the ICA as a defense, arguing that the ICA impliedly precludes respondents' cause of action under the Administrative Procedure Act (APA), and substantively relieves the agencies of their duty to obligate funds before expiration. But the government points to no statutory text that states either proposition, and the ICA expressly provides the opposite.

On the question of a cause of action, Congress enacted the ICA against the backdrop of a long history of private parties challenging unlawful refusals to spend appropriations, including under the APA. To make clear that the ICA did not displace those private causes of action, Congress provided that "[n]othing contained in [the ICA] … shall be construed as … affecting in any way the claims … of any party to litigation concerning any impoundment." 2 U.S.C. § 681(3). The government offers no meaningful textual response to this provision. On the proposition that the President's special message eliminates an agency's duty to obligate appropriated funds, the government quotes no statutory text saying that, and Congress again explicitly provided the opposite: "Nothing contained in [the ICA] … shall be construed as … superseding any provision of law which requires the obligation of budget authority." *Id.* § 681(4). The government has no text-based response to this provision at all.

Instead, the government's statutory arguments rely on methods of interpretation

that this Court has repudiated. They rely on strained inferences, fragments of legislative history, agency interpretations that purportedly should receive deference, and opinions of the Government Accountability Office (GAO) that GAO itself has since overturned. All of this is a far cry from the "clear congressional authority" needed for "assertions of extravagant statutory power over the national economy." *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (quotations omitted). And the upshot of the government's theory is that Congress's signature law meant to control impoundments actually provided the President vast new powers to impound funds, and made it virtually impossible to challenge impoundments in court. Congress would not have enacted such a self-defeating statute. If that were not enough, the government's theory would violate the separation of powers, transforming the ICA into a near replica of the unconstitutional Line-Item Veto Act by allowing the President to unilaterally change the law. Enacted legislation remains binding on the Executive Branch unless and until Congress enacts new legislation.

Finally, the central thrust of the government's stay application—that the injunction interferes with congressional deliberations and inter-branch dialogue—is wrong as a factual matter and impossible to square with the government's repeated statements that there is no dialogue to be had. The injunction does not require the agencies to obligate any funds while Congress is considering the rescission proposal. The last day Congress could consider the proposal is September 30 because the funds will expire after that date, and Congress cannot rescind expired funds. Under the district court's injunction, the agencies do not need to obligate the funds until that date. Moreover, the government has broadcast for months that it planned to impound the funds via a unilateral pocket rescission. Upon the President's

purported transmission of the special message, the White House announced that the appropriations had been cancelled and that Congress's response to the proposal did not matter. The harms the government asserts are not real or irreparable and, in any event, cannot overcome the plain text of the laws the Congress enacted.

STATEMENT

1. In Titles III and IV of the Further Consolidated Appropriations Act of 2024 (2024 Appropriations Act), Congress appropriated more than $30 billion in non-military foreign assistance funding to USAID and the State Department across fifteen broad categories of purposes. Pub. L. No. 118-47, div. F, tits. III-IV, 138 Stat. 460, 740-749 (2024). As relevant here, three of those categories are Development Assistance ($3.93 billion), Democracy Fund ($345 million), and Peacekeeping Operations ($410 million). *Id.*

Within these categories, the 2024 Appropriations Act further specified subcategories of purposes for which USAID and State must obligate specific or minimum amounts of funds. To start, in Section 7019(a), Congress provided that "funds appropriated by this Act under title III through V shall be made available in the amounts specifically designated in the respective tables included in the explanation statement." *Id.* § 7019(a), 138 Stat. at 771. Those tables include line items with specific amounts that must be obligated for defined purposes, including within the categories of Development Assistance and Peacekeeping Operations. See Further Consolidated Appropriations Act, 2024, Comm. Print of the H. Comm. on Appropriations, Legislative Text and Explanatory Statement (excerpts), ECF

125-11.[1] Congress further provided that, for most line items in the tables, the agencies "may only deviate up to 10 percent from the amounts specifically designated in the respective tables." 2024 Appropriations Act §§ 7019(b), 138 Stat. at 772.

In addition, Sections 7030 to 7061 of the 2024 Appropriations Act prescribe subcategories for which USAID and State must spend *minimum* amounts of funds. Those sections contain directives that "not less than" specific amounts of money "shall be made available" by USAID or State for particular purposes. For instance, the Act provides that "[o]f the funds appropriated by this Act … under the heading 'Democracy Fund', not less than $5,000,000 shall be made available for democracy and Internet freedom programs for Hong Kong." *Id.* §§ 7043(g)(2), 138 Stat. at 814.

Across Sections 7030 through 7061 and the tables made binding by Section 7019(a), the 2024 Appropriations Act contains roughly 240 subcategories of purposes for which Congress required specific amounts of funds—or "not less than" specific amounts of funds—that "shall be made available" by the agencies. These directives total nearly $25 billion.[2]

2. On his first day in office, the President issued an executive order purporting to immediately freeze all foreign assistance funding. Exec. Order No. 14,169 at § 3, 90 Fed. Reg. 8619 (Jan. 20, 2025). To implement the order, the Secretary of State and officials at USAID issued a series of agency memoranda immediately halting virtually all foreign assistance funding and ordering implementing partners, such as respondents, to stop work.

---

[1] References to ECF numbers throughout this brief refer to the docket in *Global Health Council* v. *Trump*, No. 25-cv-402 (D.D.C.), unless otherwise noted.

[2] Every annual appropriations act from 2019 through 2023 followed this same structure. Some of the funds from these prior appropriations act will expire on September 30, 2025 and are included in the President's recent special message.

In issuing an injunction in March, the district court in this case found, based on the government's official statements and actions, that the government had "no intent to spend" the full amounts of foreign assistance funds appropriated in the 2024 Appropriations Act and prior acts. ECF 60 at 31. After the district court made this finding, the government continued to make clear that it did not intend to spend the foreign assistance funds. See Appl. App. 196a-197a.

On June 3, 2025, the President submitted a rescission proposal to Congress regarding certain foreign-assistance funds appropriated in Fiscal Year 2025. That proposal did not include the funds appropriated in Fiscal Year 2024 and prior years that are at issue in this appeal. S. 2067, 119th Cong. (2025) (Rescissions Act of 2025) (proposed to Congress on June 3, 2025). Congress enacted some of the proposed rescissions but rejected others.

3. Nearly $12 billion in foreign assistance appropriations from the 2024 Appropriations Act, and an unidentified amount from prior years, will expire on September 30, 2025. See Appl. to Stay at 5, *Trump* v. *Global Health Council*, No. 25A227 (U.S. Aug. 26, 2025); ECF 127 at 11. Of those expiring funds, the government's stay application concerns more than $4 billion that the government is attempting to unilaterally rescind through a "pocket rescission."

Since at least May, the government has indicated that it planned to wait to submit a rescission proposal to Congress until fewer than 45 days before the funds expire and then allow the funds to lapse unspent if Congress did not act before that date. See Appl. 25; Defs. Br. 45-46, No. 25-5097 (D.C. Circ. May 9, 2025); Defs. Opp'n to Mot. to Enforce Prelim. Inj.

4-6, *AVAC*, No. 25-cv-400 (D.D.C. June 23, 2025).[3] OMB Director Russell Vought publicly stated in June, for instance, that "[t]he very Impoundment Control Act itself allows for a procedure called pocket rescissions, later in the year, to be able to bank some of these savings, without the bill actually being passed. … It's a provision that has been rarely used. But it is there. And we intend to use all of these tools."[4]

Just over two weeks ago, the Solicitor General asked this Court to stay the prior injunction specifically so that the government could carry out a pocket rescission. The government advised this Court that, "[a]bsent the injunction, the President would be able to propose rescissions for the funds that are set to expire on September 30, 2025, and allow those funds to expire without obligation if Congress does not act." Appl. to Stay at 33, *Trump* v. *Global Health Council*, No. 25A227 (U.S. Aug. 26, 2025).

On August 28, the government attempted to put this long-planned strategy into motion: the government told the district court that the President had submitted a special message to Congress proposing to rescind more than $4 billion in expiring foreign assistance funds. Appl. App. 153a-174a. The Office of Management and Budget (OMB) proclaimed on social media that the President "CANCELLED $4.9 billion in America Last foreign aid using a pocket rescission." @WHOMB, X, Aug. 29, 2025 (8:46 AM), https://perma.cc/L8YZ-WVMQ. The White House stated in an official press release that the President had acted

---

[3] Jennifer Scholtes et al., *Congress Finally Gets Trump's Request to Codify DOGE Cuts to NPR, PBS, Foreign Aid*, Politico (June 3, 2025), https://tinyurl.com/mrn6fefn.

[4] Jennifer Scholtes, *White House Floats a New Funding Trick — And GOP Lawmakers Grimace*, Politico (June 20, 2025), https://www.politico.com/news/2025/06/20/pocket-rescissions-whitehouse-funding-trick-00410444; see also Tony Romm, *White House Eyes Rarely Used Power to Override Congress on Spending*, N.Y. Times (June 17, 2025), https://perma.cc/C337-Y2YJ.

"to deploy a pocket rescission, cancelling $5 billion in foreign aid." White House, Historic Pocket Rescission Package Eliminates Woke, Weaponized, and Wasteful Spending, Aug. 29 2025, https://perma.cc/BV3F-P789 (emphasis in original). The White House told the press that same day that "it doesn't matter" what Congress does in response to the proposal.[5]

4. In fact, the President had not "deploy[ed] a pocket rescission" because the government did not deliver the President's special message to Congress "on the same day" as the ICA requires. 2 U.S.C. § 685(a); see *id.* § 682(3). The special message was received by the House on August 28, but not received by the Senate until September 8. U.S. Gov't Accountability Off., *Impoundment Control Act of 1974: Review of the President's Special Message of Aug. 28, 2025* (Sep. 12, 2025), https://perma.cc/FWF5-82SK. The Government Accountability Office has explained that the 45-day period for Congress to complete action on a rescission bill therefore had not begun on August 28. *Ibid.*

5. In early February, respondents brought these lawsuits to challenge, among other things, the government's refusal to obligate approximately $12 billion in funds that Congress appropriated for foreign assistance. ECF 1, 30-1. As relevant here, respondents alleged that the government's refusal to obligate appropriated funds violated constitutional separation of powers principles and was contrary to law under the APA because it "violated the appropriations statutes, including the 2024 Appropriations Act." ECF 4 at 31. Respondents sought a preliminary injunction on these claims.

---

[5] Jennifer Scholtes & Kyle Cheney, *White House declares $4.9B in foreign aid unilaterally canceled in end-run around Congress' funding power*, POLITICO (Aug. 29, 2025), https://bit.ly/4mLICwZ.

On March 10, 2025, the district court held that respondents were likely to succeed on their separation-of-powers claims and granted a preliminary injunction enjoining the government, as relevant, from "unlawfully impounding congressionally appropriated foreign aid funds." ECF 60 at 33. The court did not rule on respondents' APA claims grounded in the government's violations of the appropriations acts. See *id.* The government waited three weeks to appeal the injunction and did not seek a stay pending appeal. See ECF 65.

On April 28, the government sought expedition in the D.C. Circuit and requested a decision by August 15, which is 45 days before the fiscal year's end. On August 13, a divided panel of the D.C. Circuit issued a decision vacating the portion of the district court's preliminary injunction requiring the obligation of funds, reaching three holdings. Slip op., No. 25-5097 (D.C. Cir. Aug. 13, 2025). First, the panel majority held that respondents lacked a cause of action to bring their constitutional separation-of-powers claim because it derived from statutory violations. *Id.* at 16-24. Second, the majority concluded that respondents lacked an APA cause of action to challenge violations of the ICA and the 2024 Appropriations Act. *Id.* at 25-29. Finally, the panel majority held that respondents could not bring an ultra vires claim for violations of the 2024 Appropriations Act. *Id.* at 29-31. Judge Pan dissented.

Respondents petitioned for rehearing en banc. In opposing the petition for rehearing, the government declined to defend the panel majority's holding that the ICA precludes APA claims based on violations of appropriations laws. The government acknowledged that "a court could enjoin a refusal to spend appropriated funds where the relevant statutes require[] that the funds be spent," and that "[n]either the ICA, nor the panel's ruling … ,

affects any 'preexisting right' that 'injured private parties' may have to enforce statutory obligations through a suit under the APA." En Banc Resp. at 15-16, No. 25-5097 (Aug. 20, 2025). The government subsequently filed an application for a stay of the preliminary injunction in this Court. *Trump* v. *Global Health Council*, No. 25A227 (U.S. Aug. 26, 2025).

On August 28, the D.C. Circuit panel amended its opinion by withdrawing the holding that respondents could not bring APA claims for violations of appropriations acts. See Amended Op., Per Curiam Order to Amend, No. 25-5097 (D.C. Cir. Aug. 28, 2025). The en banc court then denied the petition for rehearing. See Per Curiam Order, En Banc, Denying Pet'n for Rehearing, No. 25-5097 (D.C. Cir. Aug. 28, 2025). Judge Pan's dissent from that denial emphasized that "the full court's decision is based, in large part, on the panel's revision of its original opinion to provide a pathway for the grantees in this case to pursue relief under the [APA]." *Id.* at 7. Judge Garcia, joined by Judge Millett, agreed in a statement that en banc review would have served "primarily to delay resolution of the plaintiffs' statutory [APA] claim," which could instead now be "litigated expeditiously in the district court." *Id.* at 8. Judge Katsas concurred in the denial of en banc review, explaining that, although the government had relied on the President's constitutional powers to defend against respondents' claims in the district court, "the government did not make that argument on appeal." *Id.* at 2.

6. The next day, on remand, *Global Health* respondents sought a new injunction from the district court, arguing that the government's refusal to spend the funds Congress appropriated for specific purposes in contravention of the appropriations acts violates § 706(1) and § 706(2) of the APA as well as the Mandamus Act, and that the decision not to

spend the funds was arbitrary and capricious even if the government were not mandated to do so. The *AIDS Vaccine Advocacy Coalition* respondents soon followed.

The district court granted respondents' motions for an injunction. The court determined that the record established that respondents will "be harmed by denial of the opportunity to compete" for foreign aid funds and that they "depend on appropriated foreign assistance funds to keep their organizations afloat." Appl. App. 188a. The district court held that respondents were likely to succeed on their APA claim that the agencies violated their duties under the 2024 Appropriations Act: "The language Congress used in the relevant categories of foreign assistance in the 2024 Appropriations Act does not give the agencies discretion to decline to spend the funds." *Id.* at 202a. The district court also held that, "even if one assumes the relevant appropriations are optional, Defendants' decision not to spend billions of dollars in foreign assistance funds and instead let them expire is arbitrary and capricious under the APA," because the government did not provide any explanation why it could not "obligate [the funds] in a manner that aligns with both Congress's stated purposes and the Executive's priorities." *Id.* at 205a. The court further held, in the alternative, that "[i]f … Plaintiffs do not have a cause of action under the APA, then [they] … are entitled to mandamus relief." *Id.* at 209a.

After determining that the balance of the equities and the public interest weighed in favor of an injunction, the district court entered a preliminary injunction requiring the agency defendants, in relevant part:

> to make available for obligation and obligate, by September 30, 2025, for the uses and purposes specified by Congress: (1) the expiring funds Congress appropriated for foreign assistance programs in the fifteen categories of appropriations specified in the *Global Health* Plaintiffs' motion from Title III

> and Title IV of the Further Consolidated Appropriations Act of 2024 and prior appropriations acts, unless Congress rescinds the relevant appropriation through duly enacted legislation; and (2) the minimum or specific expiring funds that Congress required the agency Defendants to obligate for particular uses and purposes in Section 7019(a) and Sections 7030-7061 of the Further Consolidated Appropriations Act of 2024 and prior appropriations acts, with the exception of the subcategories of funds for which no Plaintiffs would compete as identified in *Glob. Health*, ECF No. 133-2, unless Congress rescinds the relevant appropriation through duly enacted legislation.

Id. at 219a-220a.

The district court emphasized that "although the relief afforded requires Defendants to obligate the full amount of funds consistent with appropriations acts, it does not impact Defendants' discretion to determine how to spend those funds." The court further stated: "Defendants maintain all discretion the executive branch would ordinarily be afforded in determining how to spend the funds within the categories Congress has dictated." *Id.* at 218a. And "in the event Congress acts to rescind all or part of the appropriations at issue, the injunction will not impose on Defendants any duty to obligate the rescinded funds." *Id.* at 219a-220a.

The government sought a stay of the injunction pending appeal, which the district court denied. The D.C. Circuit then denied the government's request for a stay pending appeal. Order, No. 25-5317 (Sept. 5, 2025).

ARGUMENT

A. The Government Had Not Triggered the ICA's Review Period When the District Court Ruled and Still Has Not Done So

The government's application rests on a false factual premise. According to the government, at the time the district court entered its injunction on September 3, the President had submitted a special message to Congress proposing to rescind the relevant

appropriations. The government's legal theory rests on this premise: it argues that the President's submission of the special message on August 28 "triggered" the ICA's 45-day congressional review period, and that once Congress was "considering" the special message, USAID and the State Department no longer had a duty to obligate the relevant funds. Appl. 3, 4, 24, 25, 33, 39. Accordingly, in the government's view, the district court erred on September 3 when it ordered the agencies to spend funds that were the subject of the special message. In fact, Congress' 45-day review period did not even arguably begin until September 9, and, actually, has not been triggered at all.

The ICA provides that "[e]ach special message … shall be transmitted to the House of Representatives and the Senate on the same day." 2 U.S.C. § 685(a). On that day, the special message "shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session." *Id.* Same-day receipt by both chambers is essential to the ICA's functioning, because the 45-day period for Congress to take action begins on *receipt* of the proposal. Under § 682(3), Congress must "complete[] action" on a rescission bill "before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress." For this provision to operate sensibly, there cannot be two different 45-day windows for the two chambers to act. Both chambers must therefore receive the special message "on the same day." *Id.* § 685(a).

In its stay application, the government represents that the President "triggered" the ICA's congressional review period by submitting a special message on August 28, and that "[t]he district court … *then* precipitated the present emergency by entering a

lightning-fast injunction," compelling the obligation of funds that Congress was "actively considering." Appl. 4-5, 34 (emphasis added); see also *id.* at 24-25, 34. The government has not offered any evidence that the special message was received by both houses of Congress on August 28, as §685(a) requires to trigger congressional review.

A report published by the U.S. Government Accountability Office (GAO) earlier today makes clear that it was not. GAO states that, although the President's special message was delivered to the House on August 28, 2025, 171 Cong. Rec. H3715, it was not delivered to the Senate that day. GAO, *Impoundment Control Act of 1974: Review of the President's Special Message of Aug. 28, 2025* (Sep. 12, 2025), https://perma.cc/FWF5-82SK.[6] The special message was not delivered to the Senate until September 8, five days *after* the district court entered the injunction, and the same day the government filed its application to this Court shortly after 8 AM. See 171 Cong. Rec. S6401 (daily ed. Sept. 8, 2025). And there is no indication that the President has redelivered the special message to the House on the same date it was delivered to the Senate.

Accordingly, as of the filing of this brief, the ICA's 45-day period has not been triggered: The government has not "transmitted" and "delivered" the special message to both houses of Congress "on the same day," 2 U.S.C. § 685(a), and the message has not been "received by the Congress" in the manner required for the chambers' simultaneous 45-day review periods to begin, *id.* § 682(3). Even if earlier submission to the House and later submission to the Senate could somehow satisfy the statute's "same day" requirement, the 45-

[6] Under § 685(b)(1), the Comptroller General "shall review each [special] message and inform the House of Representatives and the Senate as promptly as practicable" of "the facts surrounding the proposed rescission."

day period began at the very earliest on September 9, the day "after the date" on which the Senate received the message. *Id.*; see GAO, *supra*, at 1 n.1.

As a consequence, the government's theory that the agencies were no longer required to comply with the 2024 Appropriations Act's mandate to obligate funds when the district court entered its injunction on September 3—because the 45-day review period had been triggered before that date—is incorrect even under the government's own interpretation of the ICA.

Given that the central factual premise of the government's application is inaccurate, the application should be summarily denied and the administrative stay dissolved.

B. The Government Has Not Made a Strong Showing of Likelihood of Success on the Merits

Respondents have a meritorious cause of action to challenge the government's refusal to obligate funds consistent with the 2024 Appropriations Act and prior acts—either under the APA or the Mandamus Act. Respondents' APA claim asserts violations of the appropriations act, and nothing in the ICA impliedly precludes relief under the APA. If respondents' APA claim is *not* precluded, then the Court can deny a stay on the simple ground that the government has not disputed that its refusal to spend is arbitrary and capricious. If respondents' APA claim *is* precluded, then mandamus would be warranted. The appropriations acts impose a clear, nondiscretionary duty to obligate the funds, and the text, structure, and purpose of the ICA foreclose the government's extraordinary theory that the ICA gave the President license to impound at will.

1. Respondents may assert APA claims to challenge violations of the appropriations acts

Respondents' APA claims are not impliedly precluded by the ICA. Neither the ICA generally, nor the President's special message specifically, deprive respondents of a cause of action. The government's arguments to the contrary would foreclose all judicial review of unlawful impoundments without any indication that Congress intended such an outcome.

a. The ICA does not preclude respondents' APA claims

"[T]his Court has … long applied a strong presumption favoring judicial review of administrative action," including under the APA, "for one suffering legal wrong because of agency action." *Weyerhaeuser Co.* v. *U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 22 (2018) (quotations omitted) "[J]udicial review of a final agency action by an aggrieved person will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 140 (1967). Courts may "find an intent to preclude such review only if presented with 'clear and convincing evidence.'" *Reno* v. *Cath. Soc. Servs., Inc.*, 509 U.S. 43, 64 (1993) (quoting *Abbott*, 387 U.S. at 141). The government has fallen short of meeting that high standard.

i. Respondents' APA claims rest on violations of the 2024 Appropriations Act and prior appropriations acts—not the ICA. The appropriations acts mandate that the government obligate specific amounts of money, for specific purposes, by a specific date: September 30, 2025. The appropriations acts use express, mandatory language enumerating specific amounts of funds that "shall be made available" by USAID and the State Department for stated purposes. *Infra* pp. 26-28. The agencies' duty to comply with these laws remains unless and until Congress amends or repeals them.

Contrary to the government's assertions (at 21), these claims neither "arise under" the ICA nor seek to enforce any requirements imposed by the ICA. Respondents' APA claims are based on the plain textual commands of the appropriations acts. The ICA is relevant only insofar as *the government* raises it as a *defense* to the alleged violations of these appropriations acts, on the theory that the ICA impliedly precludes respondents' APA claims and relieves the agencies of their duties to spend under the appropriations acts. But respondents' APA causes of action would be the same if the government had not raised its ICA defenses and the President had never submitted a special message. Just as a federal defense does not transform a state law claim into a federal cause of action, *Louisville & Nashville R.R. Co.* v. *Mottley*, 211 U.S. 149 (1908), Defendants' ICA defenses do not convert respondents' claims for violations of the appropriations acts into ICA claims.

ii. No evidence supports the government's theory that Congress intended the ICA to override the APA's strong presumption of judicial review. On the contrary, the ICA itself makes clear that it does not displace the right of private parties to bring APA suits for appropriations act violations. The ICA provides: "Nothing contained in this Act … shall be construed as … affecting in any way the claims … of any party to litigation concerning any impoundment." 2 U.S.C. § 681(3).

This textual command was enacted against a long history of private plaintiffs successfully challenging the Executive Branch's refusal to comply with an appropriation act's directive to spend money, including under the APA. Almost 200 years ago, this Court approved a writ of mandamus compelling an agency to release appropriated funds in an action brought by a private party. See *Kendall* v. *United States ex rel. Stokes*, 37 U.S. (12 Pet.)

524 (1838). Nearly 150 years later, in *Train* v. *City of New York*, 420 U.S. 35 (1975), this Court reaffirmed the ability of a private party to compel an agency to comply with a congressional spending mandate, this time through an APA claim. In *Train*, private plaintiffs brought an APA claim challenging an agency's refusal to spend the full amount of money that Congress directed "shall be allotted" under an appropriations statute. See *City of New York* v. *Ruckelshaus*, 358 F. Supp. 669, 673 (D.D.C. 1973), *aff'd sub nom. City of New York* v. *Train*, 494 F.2d 1033 (D.C. Cir. 1974) (noting that the plaintiffs brought an APA claim). This Court affirmed the district court's injunction compelling the agency to spend the full amounts Congress required.

Train was one of a series of cases during the Nixon administration where private litigants successfully challenged agencies' refusal to spend appropriations. See, *e.g.*, *State Highway Comm'n of Mo.* v. *Volpe*, 347 F. Supp. 950, 954 (W.D. Mo. 1972), aff'd as modified, 479 F.2d 1099 (8th Cir. 1973) (granting relief under 5 U.S.C. § 706)*; Guadamuz* v. *Ash*, 368 F. Supp. 1233 (D.D.C. 1973); *Louisiana.* v. *Weinberger*, 369 F. Supp. 856 (E.D. La. 1973); *Nat'l Council of Cmty. Mental Health Ctrs.* v. *Weinberger*, 361 F. Supp. 897 (D.D.C. 1973).[7]

It was against this long history of private parties bringing successful claims to compel the spending of appropriations that Congress made clear that "nothing contained" in the ICA "shall be construed" as "affecting in any way" such claims. 2 U.S.C. § 681(3).

iii. The government asserts that § 681(3) does not apply because "[t]his case … does not concern an unlawful 'impoundment,' but rather a rescission proposal that comports

[7] Courts have continued to uphold private parties' ability to compel agencies to spend money as directed by Congress. *In re Aiken Cnty.*, 725 F.3d 255, 261 (D.C. Cir. 2013) (Kavanaugh, J.) (issuing writ of mandamus compelling agency to spend appropriated funds).

with the ICA." Appl. 22. But that reasoning is circular. The government cannot assume its impoundment is lawful to argue that respondents lack a cause of action to challenge the impoundment as unlawful. And respondents' allegations do "concern[] an impoundment"—the decisions by USAID and the State Department to let appropriated funds expire, irrespective of whether there is a pending rescission proposal.

The government also quotes the D.C. Circuit's statement that § 681(3) "disclaims any effect on the claims … of any party that *may bring litigation*." Appl. 22. But that is respondents' point: precedent establishes that respondents "may bring" APA claims for violations of appropriations acts, and "nothing contained" in the ICA "affect[s] in any way" those claims. 2 U.S.C. § 681(3). Indeed, just three weeks ago, the government declined to defend the D.C. Circuit panel majority's original holding that the ICA precludes APA claims based on commands in appropriations law. In the government's own words, nothing in "the ICA … affects any 'preexisting right' that 'injured private parties' may have to enforce statutory obligations through a suit under the APA." En Banc Resp. at 15-16, No. 25-5097 (Aug. 20, 2025). The government was correct then.

The government alternatively suggests that § 681(3) means only that the "ICA had no retroactive effect." Appl. 22. But Congress uses clear language when specifying that legislation does not affect pending cases. See, *e.g.*, Department of Transportation Act of 1966, Pub. L. No. 89-670, § 12(c)(1)(A), 80 Stat. 931, 949 ("[T]he provisions of this Act shall not affect suits commenced prior to the date this section takes effect[.]"); Clean Air Act Amendments of 1977, Pub. L. No. 95-95, § 406(a), 91 Stat. 685, 795 ("No suit, action, or other proceeding lawfully commenced … shall abate by reason of the taking effect of the

amendments made by this Act ….”). Section 681(3)’s text states no such limitation. It applies to “any party to litigation.”

This Court has made clear that “[o]nly the written word is the law,” and that atextual assumptions and inferences cannot override a statute’s plain meaning. *Bostock* v. *Clayton Cnty., Georgia*, 590 U.S. 644, 653 (2020). The government cannot reconcile its implied preclusion theory with § 681(3)’s plain text. In any event, here, statutory text and purpose align. As its name suggests, the Impoundment Control Act’s overriding purpose was to “control” impoundments. “[T]he ICA was passed at a time when Congress was united in its furor over presidential impoundments.” *City of New Haven* v. *United States*, 809 F.2d 900, 906 (D.C. Cir. 1987). The government’s argument—that Congress in the ICA made it impossible for impoundments to be challenged by private parties—contravenes both the ICA’s text and the principle that this Court “should not lightly conclude that Congress enacted a self-defeating statute.” *Borden* v. *United States*, 593 U.S. 420, 460 (2021) (quotations omitted).

iv. The government nevertheless contends that Congress’ creation of a right of action for the Comptroller General impliedly precluded private enforcement suits. Appl. 21. That argument fails at the threshold because the statutory authorization for Comptroller General suits cannot override the express language of § 681(3), which preserves “the claims … of any party to litigation concerning any impoundment.” Congress’s use of the phrase “*any*” party “suggests an intent to cover more than one party.” *FDA* v. *R. J. Reynolds Vapor Co.*, 145 S. Ct. 1984, 1994 (2025) (citation omitted).

This Court’s decision in *Block* v. *Community Nutrition Institute*, 467 U.S. 340 (1984), is not to the contrary. There, the Court held that where a marketing-order statute

sought to ensure "the protection of the producers of milk and milk products" and authorized judicial review at their behest, it impliedly precluded consumer suits. *Id.* at 352. But the mere fact that Congress has authorized suits by the Comptroller General to enforce the ICA does not constitute "clear and convincing evidence" of Congress's "intent to preclude such review" of claims brought by private parties to enforce their rights under other statutes. *Reno*, 509 U.S. at 64. Other features of the marketing-order statute in *Block*, moreover, demonstrated that consumer suits would frustrate the "cooperative venture among the Secretary, producers, and handlers," 467 U.S. at 352, because producers and consumers "have 'generally antagonistic' interests," *Koretoff* v. *Vilsack*, 614 F.3d 532, 537 (D.C. Cir. 2010) (Kavanaugh, J.) (quoting Gov't Br. at 31, *Block*, 467 U.S. 340). Here, private beneficiaries of an appropriations law have interests *aligned* with the Comptroller General's—not antagonistic to those interests—in the President making funds available for obligation as required.[8]

b. The President's submission of a rescission proposal does not eliminate respondents' cause of action

Putting aside the fact that the President did not deliver a special message to both houses of Congress "on the same day," 2 U.S.C. § 685(a), such a delivery would not, as the government contends, deprive respondents of a cause of action. See Appl. 23. Respondents'

[8] Indeed, on matters of justiciability, including in the congressional spending context specifically, this Court has made clear that private enforcement actions are preferable to interbranch suits. Compare *Clinton* v. *City of New York*, 524 U.S. 417, 429-436 (1998), with *Raines* v. *Byrd*, 521 U.S. 811, 828 (1997). As Justice Souter explained, the judiciary's involvement in an "interbranch controversy" regarding spending would "risk damaging the public confidence … [in] the Judicial Branch," and there would be far "lesser risk" with a "private suit" brought "by a party from outside the Federal Government." 521 U.S. at 833-834 (Souter, J., concurring in judgment).

claim with respect to the funds proposed for rescission is the same as for other expiring funds: The text of the relevant appropriations acts require the agencies to obligate specific amounts of funds for specific purposes by September 30, 2025. Again, the government conflates the question of whether respondents have a cause of action with the merits of its ICA defense.

Regardless, the text of § 681(3) refutes the government's position: "Nothing contained in [the ICA]"—including its provisions governing rescission proposals—"shall be construed as … affecting in any way [Plaintiffs'] claims … concerning any impoundment." The government's arguments rest on speculation about a private lawsuit's impact on inter-branch relations. See Appl. 20, 23, 28. But the government's policy concerns "cannot override the text of the statute and the traditional presumption in favor of judicial review of administrative action." *Am. Hosp. Ass'n* v. *Becerra*, 596 U.S. 724, 733 (2022).

Here, it would be particularly perverse to hold that the submission of a special message precludes private claims because of its purported impact on inter-branch deliberations, when the Executive Branch has spent months avoiding the "dialogue" that a special message would trigger. If the government wanted to allow Congress 45 days to consider rescinding the appropriations at issue, it could have submitted a rescission proposal at any time—including as part of the rescission package submitted in May. Instead, the government publicly stated for months that it intended to wait to propose a rescission until within 45 days of the end of the fiscal year and to rely on congressional *inaction* to allow the funds to expire. See *supra* pp. 6-8.

In any event, the injunction does not disrupt "interbranch dialogue." The district

court made clear that "nothing in the injunction precludes Congress from reviewing the proposed rescission," and nothing in the injunction requires the government to obligate any funds until the close of September 30. Appl. App. 219a, 225a. The injunction requires obligation by September 30 only *if* Congress has not enacted rescission legislation by that point. See *id.* at 219a-220a. And at that point, Congress will no longer be "considering the special message," Appl. 25, because Congress cannot rescind the funds after they expire on September 30.

c. The government's position would foreclose judicial review of unlawful impoundments

"Congress rarely intends to prevent courts from enforcing its directives to federal agencies" altogether. *Mach Mining, LLC* v. *EEOC*, 575 U.S. 480, 486 (2015). This Court therefore generally "presume[s] that Congress does not intend to limit jurisdiction if 'a finding of preclusion could foreclose all meaningful judicial review.'" *Free Enter. Fund* v. *PCAOB*, 561 U.S. 477, 489 (2010) (quoting *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 212-213 (1994)). The government's position would do exactly that.

The government would deprive all private litigants of a cause of action. If a party sues before 45 days prior to the expiration of funds, the government will argue, as it did to this Court a few weeks ago, that judicial intervention is improper because it "jump[s] ahead" of the "political process" that could unfold if the President later seeks rescission. Stay Appl. 27, No. 25A227 (Aug. 26, 2025); see also Gov't C.A. Reply 11, No. 25-5097 (arguing that respondents' claims were "premature"). But if the party waits to file suit until after "the ICA's procedures have been engaged," the government will argue, as it does now, that the ICA forecloses review. Appl. 29. In other words, it will always be either too early or too

late for a private party to enforce appropriations laws.

Moreover, for all of the government's focus on the Comptroller General's ability to bring suit, the application makes no secret that the Executive Branch would likely take the position that the Comptroller lacks Article III standing. See Appl. 8-9 n.1, 21. Indeed, the Solicitor General has previously taken that position in litigation brought by the Comptroller General. See *Walker* v. *Cheney*, No. 02-cv-340 (D.D.C. May 21, 2002), ECF 12 at 11. Thus, the government's position is at bottom that its violation of the law cannot be challenged or remedied by anyone.

2. The government has not disputed the district court's holding that its failure to obligate funds was arbitrary and capricious

If the Court agrees that respondents maintain the right to sue under the APA, this Court may affirm for the simple reason that the government has not disputed that its failure to obligate funds was arbitrary and capricious, which was an independent basis for the injunction. The district court held that, even if the government were correct that the agencies are no longer required to spend the funds following the President's special message, USAID and the State Department failed to provide a reasoned explanation and to consider reliance interests in deciding not to spend the money. Appl. App. 204a. The government's only response (at 32) is that APA review is not available where a statute places a final decision with the President. But the President's special message to Congress does not legally *prohibit* the agencies from spending the funds. The agencies decided not to do so, and the government has waived any argument that those decisions met the APA's reasoned decisionmaking requirements.

3. Respondents are alternatively entitled to a writ of mandamus

Alternatively, if APA relief were not available, respondents would be entitled to a writ of mandamus, which was another independent basis for the district court's injunction compelling the agencies to obligate funds as required by the 2024 Appropriations Act and prior acts. The district court recognized the government's "clear, long-recognized duty to spend the funds Congress appropriates for specific purposes," and found a "sufficiently egregious" delay "to warrant mandamus." Appl. App. 208a; 28 U.S.C. § 1361.

The government rightly does not dispute that mandamus is available to challenge violations of the appropriations laws. See Appl. 24. For almost two hundred years, courts have granted writs of mandamus to compel agencies to release appropriated funds. See, *e.g.*, *Kendall*, 37 U.S. (12 Pet.) at 608-609, 626; *Aiken*, 725 F.3d at 257-261 & n.1. Nonetheless, the government contends, on the merits of respondents' claim that the government is violating spending mandates in appropriations statutes, that it is not clearly unlawful for the government "to withhold … appropriated funds during a period when the ICA allows such withholding." Appl. 24. That is wrong, as explained below.

Critically, because the government has abandoned any threshold argument that mandamus is unavailable as a cause of action, the Court cannot grant the government's stay application without reaching the merits.

4. The appropriations acts require the government to obligate the full amounts specified, and the ICA does not eliminate that duty

On the merits, respondents are likely to prevail. The text of the 2024 Appropriations Act and prior appropriations acts requires the government to spend specified amounts for specified purposes by September 30, 2025. Nothing in the ICA relieves the government of

that mandatory duty. Construing the ICA to grant the government the extraordinary power it asserts would be inconsistent with the major questions doctrine and would transform the ICA into an unconstitutional replica of the Line-Item Veto Act.

a. The text of the appropriations acts is clear

The government does not seriously dispute that the 2024 Appropriations Acts and prior appropriations acts mandate that USAID and the State Department spend the full amounts of relevant appropriations, for the specific purposes prescribed by Congress, by September 30, 2025. And for good reason.

It is long settled that, absent an express indication to the contrary, an appropriation is a mandate that the Executive Branch spend "the full amount appropriated by Congress for a particular project or program." *Aiken*, 725 F.3d at 261 n.1. Neither the President nor any agency has "unilateral authority to refuse to spend the funds." *Id.* When Congress intends for this basic rule not to apply, and to instead give agencies discretion to spend less than the full appropriated amount, it uses hallmark permissive language—such as appropriating "up to," "not more than," or "sums not exceeding" specific amounts. Examples of such language "abound in our history." *CFPB* v. *Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 442 (2024) (Kagan, J., concurring) (cleaned up); see also *id.* at 432-33 (majority op.); see 2 GAO, Principles of Federal Appropriations Law, 6-28 (3d ed. 2004).

Here, although Congress used the hallmark "not to exceed" language over 200 times in the 2024 Appropriations Act, Congress did *not* use any discretionary language in the relevant foreign-assistance appropriations. See 138 Stat. at 740-49. Instead, Congress appropriated specific amounts for Development Assistance, Democracy Promotion, and

Peacekeeping Operations, and provided no discretion to spend less than those amounts. 138 Stat. at 742-43, 748-49. That triggers the basic appropriations-law presumption that the government must obligate all of these funds before they expire.

In fact, for the appropriations at issue, Congress employed particularly clear language mandating the obligation of specific amounts of funds for specific purposes. Congress required that the Development Assistance and Peacekeeping Operations funds "shall be made available in the amounts specifically designated" in certain tables appended to the act. *Id.* § 7019(a), 138 Stat. at 771. The tables prescribe line-by-line allocations of specific amounts of funds that must be spent for specific purposes. ECF 125-11 at 1172-1178. Congress provided that USAID and the State Department "may only deviate up to 10 percent" from these specifically designated amounts. 2024 Appropriations Act, §§ 7019(b), 138 Stat. at 772. For the democracy promotion funds, Congress provided that the $205 million provided to the State Department "shall be made available" for the agency's Human Rights and Democracy Fund, and that another $140 million "shall be made available" for USAID's Bureau of Democracy, Human Rights, and Governance. 138 Stat. at 743. What is more, in Sections 7030 to 7061, Congress directed that "not less than" specific amounts of money from the top-line appropriations "shall be made available" for certain purposes. See, *e.g.*, *id.* § 7045(i), 138 Stat. at 823 (mandating that "not less than $15,000,000 shall be made available for democracy and religious freedom programs for Nicaragua"). Many other directives in Sections 7030 to 7061 require obligation of minimum amounts for particular purposes.

The government's only response reflects a citation error. The government misquotes the GAO Redbook in asserting that "'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." Appl. 30 (purporting to quote 2 GAO, *Principles of Federal Appropriations Law* 6-31 (3d ed. 2006)). The Redbook actually says that where Congress makes a lump-sum appropriation and then designates a subset that "shall *be* available" for a purpose, that phrase can carry different meanings depending on context. 2 GAO, *Principles of Federal Appropriations Law* 6-31. Here, the statutory language states that the amounts "shall be *made* available," and in "amounts specifically designated" or "not less than" specific amounts. That language unambiguously mandates spending the specific or minimum amounts for the purposes that Congress prescribed.

b. The ICA does not relieve the government of its duty to obligate the full amounts appropriated

The government's main defense on the merits is that, even if the appropriations acts required USAID and the State Department to obligate the full amount of appropriated funds by September 30, 2025, the President's rescission proposal eliminates that statutory mandate. Nothing in the ICA says that. In fact, it says the opposite.

i. In § 681(4), Congress made clear: "Nothing contained in this Act … shall be construed as … superseding any provision of law which requires the obligation of budget authority." The 2024 Appropriations Act and prior acts "require[] the obligation of budget authority" before the funds expire on September 30, 2025. Congress thus expressly provided that nothing in the ICA—including its provisions permitting the President to propose a rescission—"supersedes" these "provisions of law." 2 U.S.C. § 681(4).

The government offers no response that is grounded in the statutory text. The government asserts that § 681(4) applies only to pre-ICA "specific anti-impoundment statutes,"

but its only supporting authority is a fragment of a floor statement by a Senator. Appl. 31. "Relying on the statement of a single Member of Congress … to expand a statute beyond the limits its text suggests is always a dubious enterprise." *Flores-Figueroa* v. *United States*, 556 U.S. 646, 658 (2009) (Scalia, J., concurring). More broadly, "legislative history is not the law," and "once [Congress] enacts a statute," this Court does "not inquire what the legislature meant." *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 519-520 (2018) (quotations omitted).

The government also cites a 1982 letter from the OMB Director, taking the view that § 681(4) "was a temporary provision of no lasting effect." Appl. 31 (quoting Letter of David Stockman to Chairman Norman Y. Mineta, Encl. C (Apr. 6, 1982)). But the text of § 681(4) contains no sunset date. And "agencies have no special competence" in interpreting statutes. *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 400-401 (2024). Similarly, the government cites a 1977 GAO opinion that described § 681(4) as a "transitional provision." Appl. 31-32 (quoting *Review of the Impoundment Control Act of 1974 After 2 Years*, B-115398 (OGC-77-20), at 10-11 (Comp. Gen. June 3, 1977)). But again, the word "transitional" does not appear in the text. And GAO itself later repudiated this opinion. See Appl. 32. In any event, a GAO opinion is "not … entitled to deference" where "it is inconsistent with the statutory language." *Bowsher* v. *Merck & Co.*, 460 U.S. 824, 837 (1983).

The government incorrectly asserts that § 681(4) has "long been understood" by courts to "preclude[] withholding under the ICA only where a provision of law affirmatively and specifically prohibits the withholding." Appl. 30. The single case the government cites, *West Cent. Mo. Rural Dev. Corp.* v. *Donovan*, 659 F.2d 199 (D.C. Cir. 1981), does not say

that. The court there held that § 681(4) was inapplicable because the statute there, unlike the appropriations acts here, did not "require a particular level of spending." *Id.* at 201. The few other judicial decisions that have interpreted § 681(4) have rejected the same atextual arguments that the government makes now. See *Maine* v. *Goldschmidt*, 494 F. Supp. 93, 98-100 (D. Me. 1980); *Dabney* v. *Reagan*, 542 F. Supp. 756, 767 n.3 (S.D.N.Y. 1982).

ii. The government's statutory theory would fail even if § 681(4) did not affirmatively refute it. That theory rests on § 683(b), which supposedly "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," even where "the President transmits a special message to Congress fewer than 45 days before the covered funds are scheduled to expire." Appl. 24-25. But the statute does not say anything like that.

Section 683(b) reads:

> Any amount of budget authority proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period, the Congress has completed action on a rescission bill rescinding all or part of the amount proposed to be rescinded or that is to be reserved.

The "prescribed 45-day period," in turn, derives from the definition of a "rescission bill," which is "a bill … which only rescinds … budget authority proposed to be rescinded …, and upon which the Congress completes action before the end of the first period of 45 calendar days of continuous session of the Congress after the date on which the President's message is received by the Congress." 2 U.S.C. § 682(3). This definition makes clear that "the prescribed 45-day period" in § 683(b) refers to the maximum amount of time that *Congress* has to "complete[] action" on a rescission bill, if Congress wishes to utilize the ICA's special

procedures. It does not refer to a period of time that the ICA authorizes *the Executive Branch* to withhold funds, including beyond their expiration date.

That reading accords with the rest of § 683(b), which provides that appropriations "shall be made available for obligation *unless*" "the Congress has completed action on a rescission bill" "within the prescribed 45-day period." 2 U.S.C. § 683(b) (emphasis added). The government's argument transforms § 683(b) from a provision that confirms funds must be spent *unless* Congress rescinds them, into one that states the Executive only has to spend funds if Congress "does not complete" action within 45 days. As the district court explained, the government "creatively rearrange[s] the text to omit ['unless'] and imply the opposite presumption." ECF 146 at 2-3.

The government insists that Congress must be allowed to "deliberate[] for up to 45 days," and that the agencies cannot be compelled to obligate funds which "Congress is actively considering" to rescind. Appl. 24-25, 39. But after funds expire, there is nothing for Congress to deliberate on or consider. Expired funds cannot be rescinded, so the rescission proposal will be moot.

Another ICA provision further undermines the government's reading of § 683(b). Under the ICA's fast-track congressional procedures, a House member or Senator *opposing* a rescission proposal cannot force a vote on the proposal through a motion to discharge. Rather, "only … an individual *favoring* the [rescission] bill or resolution" may do so. 2 U.S.C. § 688(b)(2) (emphasis added). If Congress intended to require that Congress vote *against* a pocket rescission proposal to require the funds be spent, it would not have given only members favoring the rescission the power to force a vote. The asymmetry in

§ 688(b)(2) reflects that the statute allows rescission only through congressional action, not inaction. Members opposing rescission are not authorized to force a vote because they do not need to do so to prevent the rescission from taking effect.

iii. The government looks to § 684 to support its reading of § 683(b). That provision concerns temporary deferrals (*i.e.*, delays) in spending money, not permanent rescissions. It provides that deferrals "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." *Id.* § 684(a). The government asserts that "Congress could have provided similar language for rescissions." Appl. 26. But Congress did not have to; deferrals and rescissions are fundamentally different. The ICA permits unilateral deferrals to delay spending (in certain circumstances), so Congress made clear that the Executive may not delay spending beyond the expiration of funds. In contrast, the ICA does not permit unilateral rescissions. There was therefore no need to specify that the President could not unilaterally rescind funds beyond a certain date. Regardless, "a mere negative inference does not … suffice to establish a disposition that has no basis in the [operative] text." *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 363 (2011).

The government relies heavily on "GAO's contemporary understanding," as expressed in "overruled" opinions from the 1970s. Appl. 27. The government claims that these opinions are "indicative of the ICA's meaning." *Id.* What is *more* indicative of the ICA's meaning is the statutory text, and, again, GAO opinions that are "inconsistent with the statutory language" are "not … entitled to deference." *Bowsher*, 460 U.S. at 837. Deference is especially unwarranted where GAO has reversed the prior opinion. GAO, *Impoundment*

Control Act—Withholding of Funds through Their Date of Expiration, B-330330 (Dec. 10, 2018).

iv. Further, the government's statutory reading runs headlong into this Court's major questions doctrine. This Court has repeatedly admonished that, in interpreting statutes, the Court "'typically greet[s]' assertions of 'extravagant statutory power over the national economy' with 'skepticism.'" *West Virginia* v. *EPA*, 597 U.S. 697, 721 (2022) (quoting *Util. Air Regul. Grp.* v. *EPA*, 573 U.S. 302, 324 (2014)). When confronted with novel assertions of such power, this Court requires "clear congressional authorization for the power [the Executive] claims." *Id.* at 723.

Congress has not provided clear authorization in the ICA for the President to unilaterally impound billions in appropriations that Congress enacted to provide for the general welfare. The government's reliance on negative inferences, fragments of legislative history, and overruled GAO opinions, to support a theory that Congress via statute relinquished the power of the purse to the President, is precisely the type of Executive overreach that the major questions doctrine is designed to prevent.

Indeed, the government's theory here warrants particular "skepticism," because it conflicts with the ICA's manifest purpose: to stop the President from unilaterally impounding money. See *City of New Haven*, 809 F.2d at 906. Yet, taken to its logical conclusion, the government's theory means that the ICA empowers the President to wait as long as he wants to propose a rescission—a day, an hour, or a minute before funds expire—thereby permanently impounding funds before Congress even has a chance to consider the proposal.

In practice, the government's theory would provide the President unchecked power

to rescind funds. Consider the options for Congress that the government puts forward: Congress may 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." Appl. 24. "Enacting a rescission bill" is not a way for Congress to stop the President from impounding. "[E]xtending the period of availability for funds" would require passing legislation that the President could simply veto. "[P]ressuring the President to obligate some or all of the funds" is not a legal mechanism for Congress to block an impoundment. Needless to say, "choosing inaction" would not stop the impoundment. And, notably, the government's application does not concede the President would have to spend the funds in the special message if one or both chambers voted down the rescission proposal. It is the government's theory, not respondents', that "would gut the ICA." Appl. 17.

c. The government's reading would render the ICA unconstitutional

"There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes"—appropriations laws or otherwise. *Clinton* v. *City of New York*, 524 U.S. 417, 438 (1998). Instead, there is only one way to amend or repeal a spending mandate that Congress has enacted: "bicameral passage followed by presentment to the President." *INS* v. *Chadha*, 462 U.S. 919, 954-55 (1983). Yet the government's theory that the President may unilaterally impound funds by proposing a rescission sufficiently close in time to their expiration ignores these principles, resurrecting a near-replica of the Line-Item Veto Act of 1996 struck down in *Clinton*.

The Line-Item Veto Act allowed the President to send a special message to Congress providing notice that he was cancelling appropriations, and the cancellation would be

effective unless Congress affirmatively passed a disapproval bill. *Id.* at 436-437. Similarly, under the government's interpretation of the ICA, the President may amend existing appropriations laws by submitting a special message to Congress, refusing to spend those funds unless Congress affirmatively overrides the President's decision. The government's theory that the President may render appropriations laws inoperative through mere notification to Congress, without Congress enacting new legislation amending the existing laws, violates the Presentment Clause for the same reasons as did the Line-Item Veto Act. See *id.* at 438.

C. The Government Will Suffer No Irreparable Harm

The government contends (at 34) that the injunction "thwart[s] the ICA's interbranch process" and intrudes on the President's foreign-policy decisions.[9] Those purported harms are not real, much less irreparable.

1. The government's claims that the injunction interferes with the "interbranch process" and deprives the political branches of the opportunity to "resolve any disputes over the proposed rescissions" have no basis. Appl. 34. "[N]othing in the injunction precludes Congress from reviewing the proposed rescission," and the district court made clear that the injunction would not require obligation of funds if "Congress rescinds the relevant

[9] The government also suggests in passing that that it might not recoup any funds obligated or disbursed now, even if it ultimately prevails. Appl. 34. But the injunction requires the government only to obligate the funds by September 30, not disburse them. And the government has indicated that, if required, it will obligate funds primarily through inter-agency and bilateral (international) agreements, not directly to businesses and non-profits like respondent. The government has not substantiated any concern that funds obligated through such mechanisms would be irretrievable. There certainly cannot be concerns that money the government obligates to itself through an inter-agency agreement will be lost.

appropriation through duly enacted legislation." Appl. App. 219a-220a. And contrary to the government's suggestions (at 28), nothing in the injunction requires the government to obligate any funds until the close of September 30. At that point, Congress will have had the maximum amount of time possible to consider and act on the rescissions proposal, because Congress cannot "rescind" funds after they have already expired. In other words, after September 30, there will be no rescission proposal for Congress to consider, and any "interbranch dialogue" will have ended.

Moreover, the fact that the government faces a deadline to obligate funds that it proposes to rescind is by the government's own design. The government has openly stated in this case and in public statements that it always intended to wait until fewer than 45 days remained to obligate the expiring funds to propose a rescission. See *supra* pp. 6-8. And the day the special message was sent to the House of Representatives, OMB touted on social media that the appropriations had been "CANCELLED … using a pocket rescission." @WHOMB, X, (Aug. 29, 8:46 AM), https://perma.cc/2Q3E-ZVLA. That statement is irreconcilable with the notion that the injunction interferes with a "give-and-take" with Congress. Appl. 20.

Had the government wished to avoid an imminent deadline to obligate at the time Congress had a rescission proposal before it, the President could have submitted a rescission proposal sooner. The government cannot explain away the President's failure to do so by highlighting (at 37) the district court's suggestion in July that a "pocket rescission"—*i.e.*, one submitted less than 45 days before the funds expire—would violate the court's original injunction. Nothing prevented the President from submitting a rescission proposal for

the expiring funds in July, or any other time more than 45 days before the funds' expiration date. See Appl. App. 210a-211a. Similarly, the government cannot credibly assert injury from a "rush" to obligate funds by September 30. Appl. 28. The government has been subject to the requirements of the 2024 Appropriations Act to obligate funds for particular purposes since March 2024, and even longer for funds from prior appropriations acts. The government suffers no harm from taking steps to ensure that it will be able to comply with the law unless and until Congress amends it.

2. The government's contention that the injunction disrupts U.S. foreign policy and prevents the Executive Branch from "speaking with one voice in foreign affairs" is equally unfounded. Appl. 35. The government's argument is built on the premise that obligating the funds will require "diplomatic negotiations" with foreign states or international organizations. *Ibid.* If true, that is only because the government chose to obligate the relevant funds through bilateral agreements with foreign states. Appl. App. 142a-143a. Neither the injunction nor the appropriations acts require the Executive Branch to obligate funds through such agreements.

Regardless, the government has not explained how beginning negotiations would constitute irreparable harm. The government expresses concern (at 35) about "reneg[ing]" on commitments to negotiating partners if the government ultimately obtains relief or Congress rescinds the funds. But negotiations by their nature are subject to judicial and legislative developments, and the United States could inform its negotiating partners of those contingencies here. And while the government objects to being forced to "send competing signals" by engaging in diplomatic negotiations to award funds even though the President

has proposed rescission of those very funds for foreign policy reasons, *ibid.*, that situation is, again, a consequence of the government's strategic choice to attempt a pocket rescission. So, too, is the fact that the government finds itself in the position of having to engage in negotiations with only weeks remaining before the funds expire.

3. The government blames the district court and respondents' "litigation tactics" for its current predicament. Appl. 36. In reality, the procedural history shows that the "impossible position" in which the government finds itself is a consequence of its own refusal to take steps to comply with its legal obligations under the appropriations acts earlier.

The government faults respondents for purportedly "shift[ing] theories months into this case and weeks before September 30." Appl. 3, 36. Respondents did not "shift theories." From the outset of this litigation, Respondents sought relief based on the same APA claim underlying the injunction now—that the government "violated the appropriations statutes, including the 2024 Appropriations Act." ECF 4 at 31; see also *AVAC* ECF 13-1 at 17. The district court chose to rule on constitutional rather than statutory grounds, and respondents defended that ruling on appeal, but respondents advanced the claims underlying the injunction from the very start.

The government omits that—although it opted not to seek a stay of that March injunction pending appeal, leaving the injunction in effect for more than five months—the government took no steps toward compliance with its legal obligations. Instead, it repeatedly represented to the district court that the six-week period between August 15 (the date by which it requested a ruling from the D.C. Circuit) and September 30 would be sufficient time for it to obligate the expiring funds, even accounting for further judicial review. See

ECF 126 at 3.

The government also claims (at 35) that the district court has made its task "immeasurably more difficult" by issuing a new injunction on September 3, after the D.C. Circuit issued its mandate vacating the prior injunction on August 28. According to the government, work to obligate the expiring funds had to start no later than September 2. See Appl. 36; see also Appl. App. 143a. But *Global Health* respondents moved for a preliminary injunction on August 29, placing the government on notice of the prospect of new relief from the district court, and *AIDS Vaccine Advocacy Coalition* respondents joined shortly thereafter. The government may have failed to "contemplate" that possibility when proposing its previous timetable. See Appl. 37. Nonetheless, it was the government's choice to take no precautionary steps during the five-day window between August 29 and September 3 to ensure that it could obligate the expiring funds by September 30 if necessary. That the government now finds itself in "an impossible position" is, once again, the result of its own failure to take timely action to comply with its legal obligations under the appropriations acts—obligations that have been in force for many months.

D. The Balance of the Equities and Public Interest Strongly Weigh Against a Stay

Whereas the government cannot show that it will suffer any irreparable harm absent a stay, *granting* a stay would severely harm respondents. As the district court recognized, respondents "have submitted unrebutted declarations attesting that they compete for funds across nearly all the categories of foreign assistance funds at issue in the relevant appropriations laws." Appl. App. 217a. Losing the opportunity to compete for these funds would inflict irreparable injury.

Respondent Democracy International illustrates the existential harm respondents face from the failure to spend the funds proposed for rescission. Roughly 98% of Democracy International's $42 million in revenues in 2024 came from USAID awards. ECF 133-7 at 2. Accordingly, "[i]f the expiring appropriations are not spent, Democracy International expects to miss out on nearly all of the revenues [it] had previously projected for 2025 and 2026," and "[s]uch a significant loss of revenue poses an existential threat to the Company and will put the Company at risk of bankruptcy." *Id.* at 14. The special message directly presents this threat, as the President has proposed to rescind nearly all appropriations for the Democracy Funds of USAID and State Department. ECF 129-3 at 3-6. The government's supposed intention to spend *other* expiring appropriations therefore does not "cast[] … doubt on the idea that the funds covered by the President's rescission proposal are existentially necessary to any individual plaintiff in this case." Appl. 4. The pocket rescission of democracy promotion funds is an existential threat to Democracy International.[10]

For that matter, no part of the injunction is overbroad as the government contends. Appl. 38. The district court tailored the preliminary injunction to redress only the irreparable harms that respondents would suffer from the inability to compete for funds in the specific categories for which they do compete; the court excluded the categories of funding

[10] Other respondents demonstrated severe injury from the impoundment of funds in the special message as well. Approximately 80% of Plaintiff DAI's 2024 revenues of $750 million came from foreign assistance funds, and DAI would compete for many categories of Development Assistance and Democracy Fund awards. See ECF 133-6 at 1-2. Respondent Chemonics is one of the largest recipients of foreign aid funds, and approximately 88% of its revenues come from USAID, and it would compete for Peacekeeping Operations, Development Assistance, and Democracy Fund awards. ECF 133-5. Other respondents and their members compete for these funds as well. See, *e.g.*, ECF 133-9 at 1-2; *AVAC* ECF 113.

for which no respondents compete. Appl. App. 219a-220a. For the expiring funds for which respondents would compete, the district court's injunction remedies their irreparable harm from being permanently "walled off from an entire category of projects" for which they are not only "qualified, prepared, and eager to compete," but on which their businesses depend. *Coal. of MISO Transmission Customers* v. *FERC*, 45 F.4th 1004, 1016 (D.C. Cir. 2022). The injunction is "no broader than necessary to provide complete relief to each plaintiff with standing to sue." Appl. App. 217a (quoting *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2562-2563 (2025)).

The public interest also disfavors a stay. There is "generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). And here, respondents' inability to compete for future awards "will ultimately cause direct harm to some of the most vulnerable people around the world." Appl. App. 215a. A stay of the injunction pending appeal would be inequitable and disserve the public interest.

CONCLUSION

The Court should deny the government's application for a partial stay of the injunction.

Respectfully submitted.

LAUREN E. BATEMAN
Counsel of Record
NICOLAS A. SANSONE
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
lbateman@citizen.org

Counsel for Respondents AIDS Vaccine Advocacy Coalition, et al.

DANIEL F. JACOBSON
Counsel of Record
JOHN ROBINSON
BRIAN C. ROSEN-SHAUD*
NINA C. CAHILL
JACOBSON LAWYERS GROUP PLLC
1629 K Street NW, Suite 300
Washington, DC 20006
(301) 823-1148
dan@jacobsonlawyersgroup.com

WILLIAM C. PERDUE
SALLY L. PEI
STEPHEN K. WIRTH
SAMUEL F. CALLAHAN
DANIEL YABLON
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
(202) 942-5000

* *Not admitted in the District of Columbia. Supervised by members of the D.C. bar.*

Counsel for Respondents Global Health Council, et al.

SEPTEMBER 2025