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.

REPLY IN SUPPORT OF APPLICATION FOR PARTIAL STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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A stay is warranted to stop the district court's interference in a quintessentially political—and ongoing—interbranch process. Days after the D.C. Circuit vacated the prior, unlawful injunction, the district court issued a new injunction compelling the government to obligate nearly $11 billion in expiring foreign-aid funds by September 30. The dispute over the new injunction has narrowed to the $4 billion that the President designated to Congress for proposed rescission, thereby triggering the Impoundment Control Act of 1974 (ICA), 2 U.S.C. 681 *et seq.*, and freezing those funds while the interbranch process unfolds. The district court had no business responding to appellate reversal by issuing a new injunction weeks from September 30 that upsets the ICA process, forces the Executive Branch to take steps that undercut its own position, and ignores separation-of-powers and foreign-relations harms.

Neither the merits nor the equities are close. The ICA precludes respondents' effort to challenge supposedly unlawful impoundments via Administrative Procedure Act (APA) claims to enforce spending provisions that all agree must be read in concert with the ICA. The ICA controls disputes over such appropriations provisions and channels conflicts over alleged impoundments to the complex, specific process established by the ICA. Under black-letter administrative law, that reticulated scheme prevents private plaintiffs from using APA suits to displace Congress's judgments, upend the interbranch process, and obtain injunctions commanding the Executive Branch to obligate funds that the political branches are actively reconsidering.

It is especially clear that the ICA precludes APA claims where, as here, the President has triggered the ICA's congressional review process. Far from proceeding "unilaterally," Opp. 3, the Executive and Legislative Branches are now engaged in an ICA-prescribed negotiation where Congress has ample time and tools to respond. The district court's injunction disrupts that process. The ICA authorizes the President not to obligate the funds proposed for rescission during Congress's 45-day window for review, but the injunction forces the President to obligate the same funds by September 30. The ICA does not prohibit the lapse of the funds if they expire as a function of their underlying appropriations statute before the end of the 45-day window and Congress has not acted, but the injunction forbids that. That express conflict makes plain that *this* APA suit is precluded, regardless of how broadly the ICA precludes suits in other contexts. And while respondents inaccurately claim (Opp. 23-24) that the government's theory would preclude all APA suits to enforce specific appropriations, they ignore far worse problems with their theory. Any private plaintiff who claims to compete for appropriated funds could supplant the ICA's interbranch procedures by suing to force the Executive Branch to obligate funds, even if the President

plans to propose those same funds for rescission or (as here) has already done so.

Respondents barely defend the district court's justifications for its injunction. Instead, they offer a novel claim that the President did not, in fact, trigger the ICA's procedures for proposing rescissions before the district court's September 3 injunction. That claim is incorrect, as the President properly "transmit[ted]" the special message to both Houses of Congress—consistent with longstanding Executive practice—on August 28. See Supp. App., *infra*, 1a-3a. Respondents also rely heavily (Opp. 17-20, 22, 28-30) on two ICA disclaimer provisions—2 U.S.C. 681(3) and (4)—but they plainly misinterpret those provisions. See Appl. 22-23, 30-31. Respondents next invoke the major-questions doctrine, but this case involves core Presidential prerogatives, not an agency's regulatory authority, and that doctrine is particularly inapplicable to cases involving foreign relations in any event. Respondents compare the President's proposed rescissions to the Line-Item Veto Act, but the President's authority to decline to spend appropriated funds does not change the text of any duly enacted statute, as this Court recognized in invalidating that Act.

The equities overwhelmingly favor the government. The injunction supplants a complex interbranch process that Congress mandated for this very issue, forces the President to undercut himself in his relations with both Congress and foreign nations, and inflicts a grave wound on the separation of powers. Respondents, by contrast, suffer no injury from a stay because the injunction they obtained has too short a time frame to allow for them to compete for the funds at issue. The Court should partially stay the district court's latest unlawful injunction that has again provoked needless interbranch conflict on another emergency timeframe.

A. The Injunction Obstructs The Ongoing ICA Rescissions Process

Respondents lead (Opp. 1-2, 12-15) with the novel claim that the "central fac-

tual premise of the government's application is inaccurate." Relying on a GAO letter released mere hours before their filing, respondents assert that the President's proposed rescissions were delivered to the House on August 28 but not to the Senate until September 8. Opp. 14 (citing GAO B-337805, *Impoundment Control Act of 1974: Review of the President's Special Message of August 28, 2025* (Sept. 12, 2025), https://www.gao.gov/assets/890/881423.pdf (Sept. 12, 2025 GAO Letter)). Respondents thus claim (Opp. 13) that the ICA's procedures were not underway as of the district court's September 3 injunction, and that the ICA's 45-day review period for proposed recissions "actually, has not been triggered at all." That is incorrect. As the attached declaration from the Executive Clerk of the Executive Office of the President confirms, the President transmitted and delivered the special message by August 29, at the latest, thereby triggering the ICA before the September 3 injunction. Supp. App., *infra*, 2a. This Court should reject respondents' process-foul long shot.

1. To initiate the ICA's rescission procedures, the President must "transmit to both Houses of Congress a special message." 2 U.S.C. 683(a). The ICA then gives Congress a 45-day period "after the date on which the President's message is received by the Congress" to respond to the President's proposal. 2 U.S.C. 682(3); see 2 U.S.C. 683(b). Here, contrary to respondents' allegations, the President "transmit[ted]" the special message to both Houses on August 28 and 29 and both Houses of Congress "receive[d]" it by August 29. See Appl. App. 156a (August 28 letter to Speaker of the House); *id.* at 158a (August 28 letter to President of the Senate).

Specifically, as the Executive Clerk's declaration details, that Office transmitted to the Vice President, "in his capacity as President of the Senate," a copy of the President's special message via email at 10:23 p.m. on August 28, then delivered paper copies at 9:02 a.m. on August 29; and that Office followed the same process to

transmit a copy of the President's special message to the Speaker of the House (via the House Parliamentarian) on the same timeframe. Supp. App., *infra*, 1a-2a. Even the district court properly recognized that the President's submission of his special message triggered the ICA's interbranch procedures, see Appl. App. 185a, yet it indefensibly issued an injunction that grievously intrudes on that process.

2. Respondents appear to rely on the fact that the President's special message appeared in the Congressional Record for the Senate on September 8. Opp. 14 (citing 171 Cong. Rec. S6401 (daily ed. Sept. 8, 2025)); see Sept. 12, 2025 GAO Letter 1 (citing same source). But the date of appearance in the Congressional Record just reflects the day on which the message was "laid before the Senate" by the President pro tempore, 171 Cong. Rec. S6400, not when the message was "transmit[ted]" by the President or "received by the Congress" under the ICA. 2 U.S.C. 682(3), 683(a). As Senate procedure prescribes, "[o]n each legislative day after the Journal is read, the Presiding Officer * * * shall lay before the Senate messages from the President" and other communications "as may remain upon his table from any previous day's session undisposed of." Senate Standing R. VII.1. Many of the other communications "laid before the Senate" on September 8 state that they were "received in the Office of the President of the Senate on September 2, 2025"—confirming that receipt in the "Office of the President of the Senate" is the relevant form of receipt, and that such receipt can occur days before a message is actually laid before the Senate. 171 Cong. Rec. S6401. Here, the Executive Clerk confirms, the President's special message was physically "received" by the Office of the President of the Senate at 9:02 a.m. on August 29, following email transmittal on the evening of August 28.[1]

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[1] The President of the Senate was the appropriate recipient even though the ICA provides that a special message "shall be * * * delivered to the Secretary of the Senate if the Senate is not in session." 2 U.S.C. 685(a). Regardless whether the

Respondents' theory is also internally inconsistent. Respondents concede (as does GAO) that the special message "was delivered to the House on August 28, 2025." Opp. 14; see Sept. 12, 2025 GAO Letter 1. But delivery to the House and the Senate occurred in the same manner, on the same days, within the same hours. In the House, just as in the Senate, the President's special message appeared in the Congressional Record after August 28. See 171 Cong. Rec. H3715 (daily ed. Aug. 29, 2025) (noting that the President's special message was "taken from the Speaker's table and referred" on August 29).[2] Yet respondents and GAO acknowledge that the House received the special message on August 28—not August 29—and never explain the discrepancy between their House-receipt and Senate-no-receipt theories.

Respondents remarkably assert that, even now, the ICA's rescissions procedures have not been triggered, because the two chambers did not "receive the special message 'on the same day.'" Opp. 13 (quoting 2 U.S.C. 685(a)). The ICA requires only that the special message "be *transmitted*" to both Houses "on the same day," not

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Senate was "in session"—it held a pro forma 30-second session on August 29, see 171 Cong. Rec. S5537 (daily ed. Aug. 29, 2025)—the Executive Branch "does not recognize" the Secretary of the Senate "as the proper recipient[] for the President's messages to" the Senate due to "constitutional concerns" that allowing the Secretary to represent the Senate when not in session could compromise the President's constitutional authority to make "pocket vetoes and recess appointments." Supp. App., *infra*, 2a-3a. Thus, the Executive Branch's longstanding practice has been "to effect delivery via letters to the President of the Senate" even when Congress specifies a different agent. *Id.* at 3a; cf. *The Pocket Veto Case*, 279 U.S. 655, 683-684 (1929) (delivery of bill to Senate "officer or agent" when it was not in session was constitutionally inadequate). Further, the Senate own's procedures recognize that "the Vice President's Office" is the "final[]" destination for "[a]ll communications and messages to the Senate, to whomever they may be addressed (that is, to the Senate, the Vice President, the President pro tempore, or the Secretary of the Senate)." S. Doc. 101-28, *Riddick's Senate Procedure: Precedents and Practices* 430 (1992), https://perma.cc/6GDB-48W4.

[2] The message was sent to the Speaker of the House via the House Parliamentarian, not the "Clerk of the House of Representatives," to whom the ICA directs delivery "if the House is not in session," 2 U.S.C. 685(a), for the same reasons discussed. The identity of the recipient clearly did not affect the date of receipt in the House; the Senate should be no different. See p. 5-6 n.1, *supra*.

same-day *receipt*. 2 U.S.C. 685(a)). Even GAO does not view receipt on different days as negating the special message; GAO counts the later-in-time date as the operative date. Sept. 12, 2025 GAO Letter 1 n.1. This Court should reject respondents' last-ditch effort to insert this Court into hitherto unlitigated questions of interbranch procedure. If Congress disagrees with how the President delivers his messages, that is for Congress to raise and consider in deciding how to respond.

B. The Government Is Likely To Succeed On The Merits

Like the vacated prior injunction, the district court's new injunction wrongly recognizes an APA cause of action where none exists. The APA does not provide a cause of action where another statute "preclude[s] judicial review," 5 U.S.C. 701(a)(1), as the ICA does here. First, the ICA displaces respondents' APA suit by providing a comprehensive, reticulated interbranch process for resolving appropriations disputes with a specific judicial-review provision. See Appl. 17-23. Second, at a minimum, the ICA precludes *this* APA suit, which seeks to compel the Executive Branch to act inconsistently with ICA procedures. Appl. 23-32. That conflict also dooms respondents' APA claims on the merits and mandamus claims. Appl. 28-29.

1. Longstanding APA preclusion principles embodied in *Block* v. *Community Nutrition Institute*, 467 U.S. 340 (1984) resolve this case. See Appl. 28. *Block* held that a statute "preclude[s] judicial review" under 5 U.S.C. 701(a)(1) when "[a]llowing" a plaintiff "to sue" the defendants "would severely disrupt [a] complex and delicate administrative scheme." 467 U.S. at 348. The ICA is such a scheme: it covers the waterfront of disputes over rescissions, deferrals, and impoundments of all appropriations; prescribes interbranch procedures for resolving those disputes; and contemplates judicial review only via suits by the Comptroller General, with special remedial powers vested in a specified court. See 2 U.S.C. 687; Appl. 19, 21.

Respondents do not dispute that the ICA provides a "complex scheme of inter-branch dialogue," Appl. App. 84a; do not address the significance of its judicial-review scheme; and fail to explain why their suit would not disrupt that scheme. Instead, they would cabin *Block* to situations where parties seeking to sue had interests at odds with the interests of the parties that Congress had assigned to enforce the complex scheme. Opp. 21. In the appropriations context, they contend, "private beneficiaries of an appropriations law have interests *aligned* with the Comptroller General's" in "the President making funds available for obligation as required." *Ibid.* Respondents misread *Block*, which treated such alignment of interests as a consideration *favoring* preclusion. See 467 U.S. at 352 ("[P]reclusion of consumer suits will not threaten realization of the fundamental objectives of the statute" because "[h]andlers have interests similar to those of consumers" and "can therefore be expected to challenge unlawful agency action."). In all events, respondents' cavalier assumption that their interests align with Congress and the Comptroller General underscores the interference with the ICA: neither the Comptroller General nor Congress has spoken as to whether the proposed rescissions conflict with statutory obligations, let alone whether a suit over such a conflict would be appropriate. See 2 U.S.C. 687. Yet respondents would plow ahead and try to force the Executive Branch to obligate the proposed rescinded funds no matter how much Congress might disagree. Indeed, the Comptroller General in this case appears to disagree with respondents on key points, such as whether the President's proposed rescissions would "supersede any provision of law which requires the obligation of budget authority or the making of outlays thereunder." Sept. 12, 2025 GAO Letter 2-3; contra Opp. 28.

Respondents emphasize (Opp. 16-17) that—after the court of appeals rejected their APA suit to enforce the ICA itself—they restyled their APA claims as enforcing

only the underlying appropriations statutes, not the ICA. Now, they insist the ICA is part of this case only because "*the government* raises it as a *defense*," which they contend can no more turn this into a suit to enforce the ICA than a federal defense can turn a state-law claim into a federal claim. Opp. 17 (citing *Louisville & Nashville R.R. Co.* v. *Mottley*, 211 U.S. 149 (1908)). The analogy is inapt. For one thing, specific appropriations statutes cannot be divorced from the ICA, which comprehensively governs disputes over the obligation and expenditure of appropriated funds. To evaluate APA claims like respondents', courts must interpret the ICA and the relevant appropriations statutes together. See Appl. 20-21; cf. *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 510 (2018) ("When confronted with two Acts of Congress allegedly touching on the same topic, this Court * * * must * * * strive 'to give effect to both.'"). For another, the APA-preclusion inquiry is functional, centering on whether allowing suit "would severely disrupt [a] complex and delicate administrative scheme." *Block*, 467 U.S. at 348. It is clear that suits like respondents' would have that effect, labels aside.

Respondents next contend (Opp. 18-19) that the ICA cannot broadly preclude private suits to enforce appropriations statutes because of the ICA's "third disclaimer," which provides 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). Respondents would read that disclaimer to mean that the ICA can never "displace the right of private parties" to sue over "appropriations act violations." Opp. 17. But that disclaimer operates narrowly, primarily confirming that the statute had no retroactive effect when enacted. See Appl. 22. That is how the D.C. Circuit merits panel understood the provision—a conclusion that respondents largely ignore. See Appl. App. 84a-85a (explaining that the language "disclaims any effect on the claims or defenses of any party *that may bring litigation*" and "also

meant that" the "ICA had no retroactive effect"). That is also how GAO understood the provision when enacted. See *Review of the Impoundment Control Act of 1974 after 2 Years*, B-115398 (OGC-77-20), at 10 (Comp. Gen. June 3, 1977), https://gao.gov/assets/ogc-77-20.pdf (describing the provision as "mak[ing] clear that passage of the act was not intended to affect * * * pending lawsuits challenging impoundments").

Against all this, respondents identify no authority supporting their interpretation, under which the ICA would implausibly never "affect[]" *any* litigation over an appropriations statute brought by *any* party. Opp. 17. It would be nonsensical to conclude that the ICA's effect should simply be ignored in suits concerning appropriations, even when the ICA might authorize the very action being challenged. That approach would nullify the ICA, rendering its scheme irrelevant even where, as here, the President has proposed a rescissions package that Congress is considering. Even the district court did not go that far, instead analyzing the ICA and (incorrectly) concluding that it did not authorize the Executive Branch to withhold funds during this period of congressional consideration. See Appl. App. 210a.

Nor would the government's preclusion argument necessarily foreclose all judicial review of federal duties relating to spending. Contra Opp. 19, 23-24. Though the question is not presented here, "certain appropriations statutes may mandate that specific payments be made to a specific entity by a specific date," and those statutes may fall outside the ICA's ambit under the statute's third and fourth disclaimers. Appl. 22-23; see 2 U.S.C. 681(3) and (4). Other statutes may not be precluded for other reasons. See, *e.g.*, *Train* v. *City of New York*, 420 U.S. 35, 41 n.8 (1975) (declining to apply the ICA retroactively to pre-ICA suit). None of this contradicts the government's earlier-stage en banc briefing. Contra Opp. 19. Then, as now, the government maintained that under certain circumstances, the APA "could provide a mech-

anism for the district court to order compliance with a specific statutory command"—just as the government acknowledged would be true with respect to the above-listed statutes. 25-5097 C.A. Doc. 2131127, at 15 (Aug. 20, 2025). The government also asserted that the ICA does not "affect[] any 'preexisting right' that 'injured private parties' may have to enforce statutory obligations through a suit under the APA," *id.* at 16, without identifying what qualified as a "preexisting right" to sue. Again, that is consistent with the above-listed examples. Meanwhile, respondents grasp at supposed inconsistencies even as they have pivoted to new theories from injunction to injunction and brief to brief, in a race to regenerate some injunction by September 30. Appl. 3, 5. The government's consistent, and modest, point has been that respondents' claims in this case can be rejected without issuing a sweeping and categorical ruling that any claim related to the expenditure of funds is barred by the ICA.

2. At a minimum, the ICA precludes respondents' APA claims now that the President has expressly triggered the ICA's procedures by proposing rescissions to Congress—and that flaw alone disposes of respondents' claims. The injunction directly supplants the ICA process by prescribing conflicting requirements. Most significantly, when the President sends Congress a proposal to rescind certain funds, the ICA authorizes him to withhold those funds from obligation while Congress considers his proposal. See Appl. 24-28. The injunction compels the opposite, forcing the President to obligate funds by September 30 (and, thus, to take necessary steps to do so in the interim). That interference resolves this case. See *Block*, 467 U.S. at 348.

Respondents deny (Opp. 30-31) that the ICA authorizes such pauses, noting that 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) (emphasis added). But the "unless" exception for congressional action

within 45 days shows the opposite; that exception would be meaningless unless the President could withhold funds during that 45-day waiting period to see what Congress chooses to do. Section 684 (governing deferrals of budget authority) reinforces that the President's authority to withhold funds while a rescission package is pending before Congress does not depend on *when* during the fiscal year he proposes the rescission. See Appl. 26. Section 684 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 Congress. 2 U.S.C. 684(a). Respondents explain that difference (Opp. 32) by saying that the ICA "permits unilateral deferrals to delay spending," but not "unilateral rescissions," so Congress needed to clarify the timing of the former, but not the latter. That argument does not work given the history of rescission proposals under the ICA less than 45 days before the funds expire. Had Congress believed it self-evident that Presidents could not propose rescissions late in the fiscal year, Presidents Ford and Carter dispelled that notion soon after the ICA's enactment, by proposing such rescissions that resulted in the lapse of funds when Congress did not act. See Appl. 6-7. Rather than amend the ICA to comport with respondents' preferred interpretation, Congress has failed to enact many such proposals since the mid-1970s. See Appl. 27-28.

The President's understanding of the ICA also tracks GAO's contemporaneous understanding. See Appl. 27; *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 GAO opinions from 1975 and 1976). Respondents accuse (Opp. 29, 32-33) the government of improperly demanding "deference" to a GAO opinion. That is incorrect. GAO's contemporaneous views are relevant because "interpretations" involving "contemporaneous construction of a statute by the men charged

with the responsibility of setting its machinery in motion" provide an insight into the statute's original meaning. *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 549 (1940); see *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 394 (2024).

At bottom, respondents' arguments underscore just how much their suit depends on the interplay between the ICA and underlying appropriations provisions—and just how much their suit interferes with that scheme. The thrust of their position is that the injunction does not disrupt the ICA interbranch dialogue because the President is unilaterally imposing his rescission. That is incorrect. The President gave Congress over one month to consider his proposal; Congress may accept the rescission proposal, reject it, or extend the availability of funding. See Appl. 23. Presidents have historically engaged in a similar dialogue by conveying their views of their authority to rescind funds, prompting Congress to respond in varied ways. See Nile Stanton, *History and Practice of Executive Impoundment of Appropriated Funds*, 53 Neb. L. Rev. 1, 5-7 (1974); Louis Fisher, *Presidential Spending Power* 147-152 (1975).

Respondents add (Opp. 23) that the injunction does not disrupt the ICA's procedures because the government must obligate the funds "only *if* Congress has not enacted rescission legislation" by September 30. But that flips the ICA's default rule for late-term rescission proposals: when the President proposes a rescission less than 45 days before the appropriations lapse, congressional inaction means the President does *not* obligate the money. See p. 11-12, *supra*; Appl. 25. Nor can the Executive Branch do nothing until September 30; complying with the injunction requires a multitude of earlier steps. See p. 18, *infra*. And the injunction further interferes with the ICA's scheme by supplanting the Comptroller General as the statute's primary enforcer. Appl. 21. The ICA thus doubly precludes respondents' APA claims, includ-

ing contrary-to-law and arbitrary-and-capricious claims.[3]

3. Respondents counter (Opp. 25-33) that the underlying appropriations provisions unambiguously require the government to obligate funds by September 30, and that nothing in the ICA displaces those obligations. But the ICA authorizes the President to withhold funds while his rescission proposal is pending before Congress, regardless of when he sends that proposal. Although the ICA disclaims its application to certain appropriations statutes, the provisions at issue do not fall in that category. Respondents thus have no claim that the government has violated any law by withholding the funds during this period, let alone a sufficiently indisputable claim to warrant mandamus relief. And again, that argument simply leads back to the ICA—and thus destroys the supposed independence of respondents' APA claims.

Respondents primarily contend that the appropriations provisions at issue fall outside the ICA by pointing (Opp. 28-30) to 2 U.S.C. 681(4), the "fourth disclaimer," which provides that nothing in the ICA "shall be construed as * * * superseding any provision of law which requires the obligation of budget authority." 2 U.S.C. 681(4). Respondents say a "pocket rescission" would "supersed[e]" the underlying appropriations statutes, which they claim "require[s] the obligation of budget authority" for purposes of the fourth disclaimer. But the fourth disclaimer has long been understood to preclude withholdings under the ICA only where a provision of law affirmatively and specifically prohibits the withholding of particular funds. Appl. 31.

Though respondents deem that interpretation atextual, Opp. 29, it follows from

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[3] Respondents argue (Opp. 24) that "the government has waived any argument" that its withholding of funds "met the APA's reasoned decisionmaking requirements." But the government explained that the court may not "subject agencies' decisions to withhold funds included in [the President's special] message to arbitrary-and-capricious review," as those decisions flow "from the President's transmission of the message." Appl. 32. Respondents cannot seriously suggest it is arbitrary and capricious for agencies to follow the President's priorities instead of defying them.

the word "supersede," which means "[t]o annul, make void, or repeal by taking the place of." Black's Law Dictionary 1745 (12th ed. 2024). A rescission proposal late in the fiscal year does not "annul," "make void," or "repeal" an appropriations provision simply because its operation results in an appropriation lapsing without obligation. Instead, Section 681(4) carves out statutes that specifically precluded impoundment, which could easily have been interpreted to be "supersed[ed]" by the ICA absent the fourth disclaimer.[4] None of the appropriations provisions here does so. See Appl. 30-31. Indeed, the provisions that respondents invoke appropriated billions of dollars "[f]or necessary expenses to carry out" certain provisions of the Foreign Assistance Act. See, *e.g.*, Pub. L. No. 118-47, div. F, 138 Stat. 740, 742. On their own, those broad appropriations are *authorizations* to spend; they generally lack mandatory language directing expenditure of funds. See Appl. 30-31. The new GAO letter appears to agree, concluding that "none of the proposals" transmitted by the President "were inconsistent" with the fourth disclaimer. Sept. 12, 2025 GAO Letter 2-3.

Respondents note (Opp. 27) that other provisions require that certain funds "shall be made available in amounts specifically designated" by a set of tables. 138 Stat. 771. That language merely reflects Congress's desire to designate different portions of the top-line appropriations for specific purposes, not a direction to obligate everything. As explained, Appl. 31, GAO has recognized such language "contain[s] an element of ambiguity" as to whether Congress intended the amount to serve as a

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[4] See, *e.g.*, Pub. L. No 90-495, § 15, 82 Stat. 815, 822 (1968) ("It is the sense of Congress that under existing law no part of any sums authorized to be appropriated for expenditure upon any Federal-aid system which has been apportioned pursuant to the provisions of this title shall be impounded or withheld from obligation."); Pub. L. 95-28, § 202, 91 Stat. 116, 120-121 (1977) ("Notwithstanding the deferral and rescission provisions of [the ICA], all appropriations provided in Public Laws 94-355 and 94-351 for construction projects or for investigation, planning, or design related to construction projects shall be made available for obligation by the President.").

floor, ceiling, or both. 2 Government Accounting Office, *Principles of Federal Appropriations Law* 6-31 (3d ed. 2006). Respondents accuse the government of a "citation error" (Opp. 27-28) because the GAO Red Book says that the phrase "*shall be available*" contains ambiguity, not "shall be *made* available." But the government was not purporting to quote the Red Book when referring to the treatise's discussion of "such 'shall be made available' language." Appl. 31. The point was that GAO acknowledges that this very *type* of language is ambiguous, and respondents never explain the difference. Both types of provisions—ones that state that funds "shall be made available" or "shall be available" for designated purposes—mean that Congress has appropriated a certain amount of funds. Neither, standing alone, signals the type of specific, mandatory command that is covered by the fourth disclaimer.

Respondents argue (Opp. 5, 27-28) that some of the relevant appropriations provisions say that "not less than" a certain sum shall be made available. They never explain which, if any, of those provisions is relevant here, for instance by tying specific "not less than" provisions to funds that are the subject of the rescission proposal and for which they compete, or by identifying any requirements to obligate those funds to respondents specifically. Respondents have not come close to showing any entitlement to funds under the statute. Even if the ICA did not preclude their APA claims, they could not prevail on the merits, let alone under mandamus standards.

c. Respondents' remaining counterarguments are meritless. They argue (Opp. 31-32) that interpreting the ICA to allow "pocket rescissions" would conflict with statutory procedures for rescission bills, under which only those Members who favor a rescission may force a vote on a rescission bill. See 2 U.S.C. 688(b)(2). But a "rescission bill" is a bill that "rescinds, in whole or in part, budget authority proposed to be rescinded in a special message transmitted by the President." 2 U.S.C. 682(3).

Nothing in the ICA stops a Member opposed to the President's proposal from forcing a vote on a bill with the opposite effect between now and September 30.

Respondents also contend (Opp. 33) that the government's interpretation of the ICA flouts the major questions doctrine. But that doctrine counsels skepticism when an agency "claim[s] to discover in a long-extant statute an unheralded power" representing a "transformative expansion in its regulatory authority." *West Virginia* v. *EPA*, 597 U.S. 697, 724 (2022). This case involves core Presidential prerogatives, not an agency's "regulatory authority." It does not involve a "long-extant statute," but rather the comprehensive framework that governs all interbranch dialogue over spending disputes. And the President's power to propose so-called pocket rescissions is hardly "unheralded"; Presidents have proposed rescissions less than 45 days before appropriations expire since the 1970s. See Appl. 6-7, 26. The foreign-policy context here makes the major-questions doctrine especially inapt. See *FCC* v. *Consumers' Research*, 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring).

Respondents finally press (Opp. 34-35) constitutional avoidance, arguing that interpreting the ICA to allow so-called pocket rescissions would generate the same constitutional defects that prompted invalidation of the Line-Item Veto Act of 1996 in *Clinton* v. *City of New York*, 524 U.S. 417 (1998). That analogy fails. The Court held that Act unconstitutional because it let the President "change the text of duly enacted statutes" without following Article I, Section 7 procedures for lawmaking. *Id.* at 445. But the President does not "change the text" of any statute by invoking the ICA's rescission procedures less than 45 days before funds are set to expire under the terms of the relevant appropriations acts. Indeed, *Clinton* distinguished the President's unconstitutional line-item veto authority from his "traditional authority to decline to spend appropriated funds"—the precise power here. *Id.* at 446.

C. The Remaining Factors Strongly Favor A Stay

The injunction irreparably harms the government by trenching on the separation of powers and contravening core features of the ICA's process for rescissions. And the injunction does so at the most sensitive time—weeks before the funds lapse—and in the most sensitive context, where the President has determined that obligating these foreign-aid funds would undermine U.S. foreign policy. Appl. 34-36.

1. Respondents deny (Opp. 36) any harm because "nothing in the injunction requires the government to obligate any funds until the close of September 30." But obligating funds is no one-day exercise, as the government has laid out. See Appl. App. 141a (describing steps). Respondents previously recognized as much; their motion to enforce the original injunction asked the district court to "require [applicants] both to submit a detailed plan outlining how they intend to obligate all the expiring appropriated funds and to immediately begin obligating expiring funds." Appl. App. 50a. To comply with this injunction and obligate billions of dollars by September 30, the Executive Branch must, for instance, identify who will receive funds, negotiate with foreign-partner recipients or interagency partners or hold competitions for awards, and comply with requirements to notify Congress 15 days before certain funds are obligated. See Appl. 28; Appl. App. 141a-142a. The injunction forces the President to take steps to obligate the very funds that the ICA does not require to be obligated, on a timeline differing from the ICA's—all under threat of contempt.

Respondents also downplay irreparable foreign-policy harms from the injunction, which forces the Executive Branch "to undercut itself and send competing signals" to foreign counterparties. Appl. 35. Respondents call (Opp. 37) those harms self-inflicted because the Executive Branch is choosing to obligate funds via bilateral agreements with foreign states, not competitive awards to organizations like respond-

ents. But that choice arises from the injunction's timeline, which leaves insufficient time for the competitive process that respondents prefer. Appl. App. 177a. Respondents also wave away (Opp. 37) diplomatic consequences that would ensue if the United States were to negotiate awards with foreign partners to comply with the injunction, only to renege if this Court grants relief. Appl. 35. But their blithe advice (Opp. 37) that the United States "inform its negotiating partners of th[e] contingencies here" underscores why the Constitution vests the President, not private parties or courts, with the sensitive work of diplomacy, and why this injunction usurps that core prerogative. See *American Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 414 (2003).

Respondents call (Opp. 38-39) the government's injuries self-inflicted because the government did not take steps to obligate the money sooner—notwithstanding respondents' prior suggestion (Opp. 36) that the injunction requires nothing "until the close of September 30." Inconsistency aside, respondents omit that the whole point of the government's request for an expedited appellate ruling on the earlier injunction by August 15—a schedule that respondents agreed to—was to obtain a final judgment as to its unlawfulness *before* steps to obligate funds by September 30 became necessary, without generating unnecessary emergency stay requests. See Appl. 11. That strategy was vindicated: the court of appeals vacated the district court's initial injunction on August 13 and its mandate issued on August 28. See Appl. App. 58a-138a. Respondents then precipitated the present emergency through ensuing litigation tactics that produced a rushed new injunction.

Respondents also blame the government (Opp. 36) for not proposing rescissions sooner. But the President can hardly be faulted for not proposing rescissions to Congress under the prior injunction, which required the President to obligate and spend the very funds that the ICA would have otherwise allowed the President to not obli-

gate while Congress assessed his proposal. See p. 11-12, *supra*; Appl. 28-29.

Respondents also chastise (Opp. 39) the government for not foreseeing this new injunction even nearer to the brink of September 30, even arguing that the government should have preemptively started taking steps to obligate the funds as soon as the *Global Health* plaintiffs sought that relief. But plaintiffs do not get to fault defendants for noncompliance with proposed injunctions before they are even granted.

2. Meanwhile, respondents sidestep the fatal flaw with any countervailing harm to them: they are not entitled to any appropriated funds, but merely hope to compete for them. See Appl. 38. Because they have no legal entitlement to the funds, they cannot show likely irreparable injury "in the absence of" the injunction. *Winter* v. *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Their only answer (Opp. 40) is that individual members have received funds from the State Department and USAID in past years. But past results are no guarantee of future awards—not least because respondents' efforts have yielded a new injunction that the government could comply with only by obligating funds through pre-existing instruments with pre-established foreign and interagency partners, not through a competitive process that might benefit respondents. Appl. 38; see Appl. App. 177a-178a. In obtaining the latest last-minute injunction—whose timeframe is likely too short to benefit *them*—they became victims of their own success. By contrast, the injunction irreparably injures the government and forces the obligation of billions of dollars in funds that the President has determined are "contrary to American interests," Appl. App. 160a, all while the ICA rescissions process actively plays out. A partial stay is warranted.

* * * * *

For the foregoing reasons, applicants respectfully request that the Court stay the district court's preliminary injunction in relevant part.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

SEPTEMBER 2025

APPENDIX

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.,

No. 25A269

DECLARATION OF DAVID E. KALBAUGH

I, David E. Kalbaugh, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge and information provided to me in my official capacity by others.

2. I am currently the Executive Clerk of the White House. I have served in this role since 2012. Before that, I served as Deputy Executive Clerk in the same Office from 1994 to 2012, and I was an Assistant Executive Clerk from 1988 to 1994. This Office is responsible for managing the legal documents signed by the President, and for delivering reports and messages on the President's behalf to Congress. This Office also reviews and disseminates all of the President's official documents in conjunction with the White House Staff Secretary.

3. As part of my responsibilities, I oversaw the delivery to the House of Representatives and the Senate of President Donald J. Trump's August 28, 2025 special message proposing rescissions of budget authority pursuant to the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 683(a)).

4. With respect to delivery to the Senate, on August 28, 2025, at 10:23 p.m., Brian Pate, the Deputy Executive Clerk, submitted by email to the Vice President, in his capacity as President of

the Senate, a copy of a letter signed by President Trump earlier that evening that, in accordance with the Impoundment Control Act, reported 15 rescissions of budget authority, totaling $4.9 billion, along with the relevant enclosure. Mr. Pate indicated that the original signed version of the letter and its enclosure would also be physically delivered to the Office of the Vice President/President of the Senate the following morning.

5. The following morning, I confirmed that an original signed version of the letter and its enclosure was physically delivered to the Office of the Vice President/President of the Senate at 9:02 a.m.

6. With respect to delivery to the House of Representatives, on August 28, 2025, at 10:20 p.m., Brian Pate, the Deputy Executive Clerk, transmitted by email to the House Parliamentarian, Jason Smith, a copy of a letter signed by President Trump earlier that evening that, in accordance with the Impoundment Control Act, reported 15 rescissions of budget authority, totaling $4.9 billion, along with the relevant enclosure. Mr. Pate indicated that the original signed version of the letter and its enclosure would also be physically delivered to the House Parliamentarian the following morning.

7. The following morning, I confirmed that an original signed version of the letter and its enclosure was physically delivered to the Office of the Parliamentarian at 9:35 a.m.

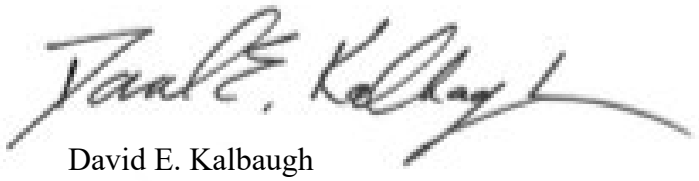
8. This procedure is standard practice for the Office of the Executive Clerk for delivering messages to either House of Congress when, as here, it is not in actual session. For my nearly-forty-year tenure in the Office of the Executive Clerk, the Office has employed that practice to preserve the President's constitutional prerogatives, including regarding pocket vetoes and recess appointments. Based on those constitutional concerns, even when either House identifies agents (such as the Secretary of the Senate or the Clerk of the House of Representatives) who may receive

on their behalf messages from the President, this Office does not recognize those agents as the proper recipients for the President's messages to either House. Instead, this Office has continued to effect delivery via letters to the President of the Senate and to the Speaker of the House via the House Parliamentarian.

9. It is therefore the position of the Office of the Executive Clerk that the President's special message of August 28, 2025 was delivered to both Houses of Congress by August 29, 2025.

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: September 13, 2025



David E. Kalbaugh
Executive Clerk
Executive Office of the President