No. 25A539

IN THE

Supreme Court of the United States

BROOKE ROLLINS, SECRETARY OF AGRICULTURE, *et al.*,

Applicants,

v.

RHODE ISLAND STATE COUNCIL OF CHURCHES, *et al.*,

Respondents.

RESPONSE TO APPLICATION TO STAY THE ORDERS ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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INTRODUCTION

More than forty million people—approximately one in eight Americans—depend on the Supplemental Nutrition Assistance Program (SNAP) to feed themselves and their families. This includes 16 million children, 8 million elderly people, and 1.2 million veterans who live in households that receive SNAP benefits. Those people and families have now gone ten days without the help they need to afford food. Any further stay would prolong that irreparable harm and add to the chaos the government has unleashed, with lasting impacts on the administration of SNAP. The government has offered no defensible justification for that result. The administrative stay should be terminated, and no further stay should be granted.

The government's application grossly distorts what the district court did, and did not, order below. To set the record straight: on October 24, the U.S. Department of Agriculture (USDA) announced at the last minute that it would completely suspend all November SNAP benefits due to the government shutdown—abruptly cutting off an essential lifeline for millions. It did this even though ample congressionally appropriated funds remained available for SNAP. Respondents sued, and the district court issued a temporary restraining order (the "First TRO"), concluding that USDA's decision to suspend November benefits was likely unlawful because Congress had appropriated contingency funds for SNAP that the statute obligated USDA to expend in the circumstances. The court further found that Respondents would suffer irreparable harm without emergency relief and that USDA therefore had to disburse the SNAP contingency funds expeditiously.

But that posed a problem: the SNAP contingency funds were insufficient to cover the cost of full SNAP benefits for November, and as USDA explained, readjusting the payment systems to make partial benefit payments would require overcoming logistical obstacles that USDA described as nearly insuperable. Given these obstacles, the district court identified two ways USDA could fulfill its obligation to expeditiously disburse the SNAP contingency funds. On the one hand, USDA could work quickly to resolve those logistical obstacles, clearing the way to make timely partial payments using the congressionally appropriated SNAP contingency funds. Alternatively, the court noted—and USDA conceded—that USDA could use its discretion to supplement the SNAP contingency funds by transferring funds from another USDA account, the Child Nutrition account, and make full benefit payments. Doing so would bypass the logistical problems attending partial payments and allow assistance to flow out to beneficiaries right away.

Contrary to the government's mischaracterization, the district court accepted that the decision whether to tap into the Child Nutrition account was within USDA's discretion. App. 5a; Resp. App. 11a. The district court accordingly ordered USDA either to (1) "use its discretion" to fully fund November SNAP benefits using a combination of SNAP contingency funds and funds from USDA's Child Nutrition account, App. 5a, or (2) deplete the SNAP contingency funds to provide at least partial payments, but only if it first "expeditiously resolved" the obstacles attending partial payments so as to ensure timely payments by November 5. Either course would have

fulfilled USDA's mandate to disburse the SNAP contingency funds promptly. The court reminded USDA that its discretionary choice could not be arbitrary or capricious.

In response, the government chose to make partial payments using only the SNAP contingency funds. But it failed to resolve the profound logistical issues that partial payments entail. That meant it would take weeks or even months before participants in some States would receive any benefits at all. Respondents accordingly moved the district court for an order enforcing the First TRO. In the alternative, Respondents sought a second TRO on the ground that USDA's decision to make only partial payments was arbitrary and capricious. The district court agreed that USDA had failed to comply with the First TRO. Although the court had given USDA two paths it could go by to expend the SNAP contingency funds promptly, "[t]he record [was] clear that the [government] did neither." App. 19a. The court also found USDA had acted arbitrarily and capriciously.

By that point, people had gone nearly a week without needed food assistance. The district court concluded that USDA's noncompliance in those circumstances left only one choice remaining to get the SNAP contingency funds out the door to beneficiaries and mitigate the ongoing irreparable harm: utilize the undisputedly available funds from the Child Nutrition account to make full November payments. The court accordingly entered two new orders: (1) an order granting Respondents' motion to enforce the First TRO (the "Enforcement Order"), App. 18a-21a, and (2) a

second TRO setting aside USDA's partial-funding decision as arbitrary and capricious (the "Second TRO"), App. 21a-33a. Each order independently imposed the same remedy: the court ordered USDA to make full November SNAP payments, using Child Nutrition funds in combination with the SNAP contingency funds, by November 7. App. 21a, 33a.

Although the government's stay application obscures this background, the court of appeals recognized it to be fatal to the government's request for emergency relief. In both its stay motion in the court of appeals and its application to this Court, the government limited its argument to claims that USDA's partial-funding decision was committed to the agency's unreviewable discretion, *see* 5 U.S.C. § 701(a)(2), and that the partial-funding decision was not arbitrary and capricious. But the Enforcement Order independently imposes the same obligation to make full payments. As the court of appeals explained, even if the government were to obtain relief from the Second TRO, that would make no difference unless the Court also reversed the Enforcement Order. And it does not follow that reversing the Second TRO on the grounds the government has raised in its stay motions would have any effect on the Enforcement Order. That is because, in that order, the district court was not reviewing USDA's actions under the APA—an exercise that may be subject to the barrier to review in § 701(a)(2)—but instead exercised its inherent authority to enforce its own injunction in the First TRO. To obtain relief, therefore, the government must prevail as to both orders. Yet the government's stay motion in the

court of appeals and this Court barely even acknowledged the Enforcement Order, let alone contested it. The court of appeals denied a stay for largely that reason.

In its supplemental brief to this Court, the government now pivots, arguing for the first time that the district court erred in the Enforcement Order in finding that USDA failed to comply with the First TRO and in crafting a remedy for that violation. Those forfeited and conclusory arguments do not warrant this Court's review. And they come nowhere close to establishing that a decision in the government's favor on the Second TRO would require reversal of the Enforcement Order.

Granting the government's stay application would therefore be an exercise in futility—a costly one that would further delay distribution of urgently needed food assistance. The equities in this case could hardly be clearer. People need food now, and the government's speculative fear that Child Nutrition programs could run out of funding sometime next year if the government taps those funds for SNAP cannot overcome the immediate harm that millions of Americans are actually suffering today.

On the other side of the scale, the government cites the prospect of having to expend funds it might later be unable to recoup. But unlike recent cases in which the government preferred never to expend the funds at issue at all, here it expects to continue funding SNAP once the government shutdown concludes. *Cf. Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 145 S. Ct. 2658, 2661 (2025) (Barrett, J., concurring in the partial grant of the application for stay). Indeed, the Senate appropriations bill

the government touts in its supplemental brief would fully fund both SNAP and Child Nutrition for this fiscal year, while also replenishing SNAP contingency funds to account for expenditures during the government shutdown. *See* H.R. 5371, 119th Cong., div. B, tit. IV (2025). The government's remaining claim of irreparable harm, that the district court's orders are interfering with negotiation tactics in the government shutdown, only confirms what has been clear all along—that the government is leveraging SNAP to gain partisan political advantage in the shutdown fight. This Court should not participate in that effort. There is no justification for the Court to step in to stop needed benefits from flowing to the children, seniors, low-wage workers, veterans, and others who rely on them for food. The temporary administrative stay should be lifted immediately, and the stay application should be denied.

BACKGROUND

1. Congress established SNAP to "alleviate . . . hunger and malnutrition" by enabling people in low-income households to "obtain a more nutritious diet through normal channels of trade." 7 U.S.C. § 2011. Congress provided that "[a]ssistance under this program shall be furnished to all eligible households who make application for such participation." *Id.* § 2014(a). In 2024, SNAP provided an average of 41.7 million people per month with an allotment to buy food at approved retailers. USDA, *The Food and Nutrition Assistance Landscape: Fiscal Year 2024 Annual Report,* at 11 (July 2025), https://perma.cc/BV5D-ZM98. The vast majority of SNAP participants are in households with a child, an elderly individual, or a person

with a disability. USDA, *Characteristics of SNAP Households: Fiscal Year 2023* (May 2, 2025), https://perma.cc/X4EY-B8W7. USDA and States jointly administer the program. 7 U.S.C. §§ 2018, 2020.

2. Congress generally funds SNAP through appropriations bills. Recent SNAP appropriations have included a contingency fund that Congress directed USDA to hold in reserve to use if necessary. Pub. L. No. 118-42, 138 Stat. 25, 93 (2024); Pub. L. No. 119-4, 139 Stat. 9, 13 (2025). The SNAP contingency funds totaled $6 billion at the start of this fiscal year. App. 46a.

In 7 U.S.C. § 2257, Congress also authorized USDA to use appropriated funds "interchangeably" within each of its divisions (such as the USDA division covering nutrition programs), subject to a percentage limit that can be waived "in cases of extraordinary emergency." One such fund, the account for Child Nutrition programs—which USDA conceded below could be used for SNAP (*e.g.*, App. 51a)—has more than $23 billion available, derived from (1) funds allocated to USDA nutrition assistance programs under an appropriation item for "Child Nutrition Programs" that carried over into this year, *see* Declaration of Jack Smalligan, *Massachusetts v. USDA*, No. 25-cv-13165 (D. Mass.), ECF No. 9 ¶ 26; and (2) a fund created by Section 32 of the Agricultural Adjustment Act amendments of 1935, 7 U.S.C. § 612c, which is a permanent appropriation of gross customs revenues from the previous calendar year, a portion of which is allocated to USDA for child nutrition programs, *id.* § 612c-6(b)(1). USDA transferred funds from this Child Nutrition

account to fund the Women, Infants & Children (WIC) program during the shutdown just last month. App. 50a.

Congress has not yet passed appropriations for SNAP for the current fiscal year. Previous administrations, including the first Trump administration, have recognized that the SNAP contingency funds previously appropriated by Congress are available to fund SNAP in these circumstances. *See* Letter from Jessica Shahin to FNS Regions, Early Issuance of February 2019 SNAP Benefits—Questions & Answers #2 (Jan. 14, 2019), https://perma.cc/9HCL-5GCU.

On October 10, USDA abruptly reversed course. The agency issued guidance informing state officials that "if the current lapse in appropriations continues, there will be insufficient funds to pay full November SNAP benefits." USDA, Supplemental Nutrition Assistance Program (SNAP) Benefit and Administrative Expense Update for November 2025 (Oct. 10, 2025), https://perma.cc/LDG4-DQMC. On October 24, USDA stated that it was "suspending *all* November 2025 benefit allotments" pending further appropriations. USDA, Supplemental Nutrition Assistance Program (SNAP) Benefit and Administrative Expense Update for November 2025 (Oct. 24, 2025), https://perma.cc/4VPF-4ANN (emphasis added). Meanwhile, a banner on USDA's website claimed "the well has run dry" to fund SNAP, blamed "Senate Democrats" for not voting to "reopen the government so mothers, babies, and the most vulnerable among us can receive critical nutrition assistance," and stated that "there will be no benefits issued November 01." USDA.gov, https://perma.cc/BL88-8QU6.

3. Respondents—a national union with SNAP recipient members, cities that have had to divert critical resources to support their SNAP recipient residents, churches and nonprofits that provide emergency food assistance and other support, and food retailers that rely on SNAP purchases—filed this lawsuit on October 30, alleging that the government's suspension of SNAP benefits was contrary to law and arbitrary and capricious in violation of the APA. Respondents simultaneously moved for a temporary restraining order and submitted 24 uncontroverted declarations establishing that the suspension of SNAP benefits would mean beneficiaries going hungry, small businesses losing unrecoverable revenue, and churches, nonprofits, and cities suffering direct harm to their missions and limited resources.

The district court held a hearing on October 31 and orally granted a TRO. The next day, the court issued a written decision. App. 1a-7a (the "First TRO"). The court concluded Respondents were likely to show that the complete suspension of SNAP benefits was contrary to law and arbitrary and capricious because the relevant statutory provisions mandated use of the $6 billion SNAP contingency funds in the circumstances. App. 3a-4a; *see also* Resp. App. 37a-38a. In crafting a remedy for that violation, however, the court also recognized that depleting the contingency funds would not fully cover all November SNAP payments. App. 4a. By USDA's own account, providing only partial benefits would require significant changes to SNAP payment systems that "would be exceedingly difficult, highly disruptive, and delayed." App. 4a. And any failure to make timely payments, the court found, would impose immediate irreparable harm. App. 4a-5a.

But USDA had also conceded that it had authority to use funds from the Child Nutrition account to supplement the SNAP contingency funds up to full benefit levels. *See* Resp. App. 10a. Doing so would avoid the logistical obstacles USDA had described and enable timely disbursement of the SNAP contingency funds. To alleviate the ongoing irreparable harm, and to fulfill the statutory design of SNAP as an entitlement, the court accordingly ordered that USDA should consider, "within its discretion, find[ing] the additional funds necessary (beyond the contingency funds) to fully fund the November SNAP payments," noting that the Child Nutrition account held more than $23 billion as of October 8 and was available to be used to fund SNAP. App. 5a; *see also* App. 51a (USDA conceding that funds from the Child Nutrition account could be used for full SNAP payments); Resp. App. 10a (USDA making the same concession at the first TRO hearing). The Court further ordered that if USDA chose not to "use its discretion" to fully fund November SNAP benefits and opted instead to make partial payments using only the SNAP contingency funds, it "must expeditiously resolve the administrative and clerical burdens it described in its papers, but under no circumstances shall the partial payments be made later than Wednesday, November 5." App. 5a-6a. The Court cautioned that USDA's decision whether to make full or partial payments could not be arbitrary or capricious. App. 5a n.6.

4. On November 3, USDA informed the court that it would make only partial payments. ECF No. 21. USDA admitted that partial payments would not go out to people needing food by November 5, as the court had ordered, but would be

delayed in some States by "up to several months." App. 52a. In a declaration, a USDA official attested that the available contingency funds—$4.65 billion—would cover 50 percent of eligible households' November SNAP benefits. App. 46a.

The declaration also explained that USDA had decided not to use funds from the Child Nutrition account to fully fund November SNAP benefits. Although USDA acknowledged its authority to use those funds, App. 51a, it declined to do so because it claimed those funds "must remain available to protect full operation of Child Nutrition Programs throughout the fiscal year." App. 47a. USDA asserted that using a small portion of the Child Nutrition funds for SNAP "would leave an unprecedented gap in Child Nutrition funding that Congress has never had to fill with annual appropriations, and USDA cannot predict what Congress will do under these circumstances." *Id.* USDA insisted that it would be disregarding statutory provisions "if it were to repurpose funds Congress explicitly intended be used only for Child Nutrition Programs." App. 50a.

USDA recognized the enormous procedural difficulties many States would face in attempting to administer reduced SNAP benefits for November, which "could lead to payment errors and significant delays." App. 51a-52a. Further, "[f]or at least some states, USDA's understanding is that the system changes States must implement to provide the reduced benefit amounts will take anywhere from a few weeks to up to several months." App. 52a. The declaration did not, however, address what those delays would mean for people needing food assistance or consider whether those consequences warranted a different decision. *See* App. 51a-52a.

5. On November 4, Respondents moved to enforce the First TRO or, in the alternative, for a second TRO, contending both that USDA had not complied with the First TRO and that its decision not to fully fund SNAP was arbitrary and capricious. ECF No. 22. Shortly after Respondents filed that motion, the President posted on social media that "SNAP BENEFITS . . . will be given only when the Radical Left Democrats open up government, which they can easily do, and not before!" Donald J. Trump (@realDonaldTrump), TruthSocial (Nov. 4, 2025, 11:06 AM), https://perma.cc/6QAN-54YU.[1]

The district court held a hearing on November 6 and orally granted both of Respondents' motions, followed shortly by a written opinion memorializing two distinct orders, App. 8a-34a:

The Enforcement Order. The court first found USDA had not complied with the First TRO, which gave USDA two ways it could satisfy its obligation to quickly disburse the SNAP contingency funds: (1) use available funds to provide SNAP benefits promptly at full levels, or (2) use the SNAP contingency funds to provide partial SNAP benefits, in which case the government would have to "expeditiously resolve the administrative and clerical burdens it described in its papers," and "under no circumstances shall the partial payments be made later than Wednesday,

[1] On November 5, Respondents filed a supplemental notice and declaration pointing out that the guidance USDA had issued to States—reducing allotments by 50 percent—would not deplete the full contingency fund, further indicating that USDA's action violated the First TRO and was arbitrary and capricious. ECF Nos. 27, 27-1. The government responded that it had noticed the error and issued updated tables to account for a reduction of 35 percent—rather than 50 percent—and fully deplete the contingency fund. ECF No. 28.

November 5." App. 18a-19a. "The record [was] clear that the [government] did neither." App. 19a.

The court rejected USDA's attempt to shift blame to the States, explaining that USDA "knew that, at the time [it] chose [to provide only partial benefits], [it] would be prolonging implementation and frustrating the very purpose of the TRO, which is to provide timely relief and prevent further irreparable harm." App. 20a. "Compliance [with the First TRO] is achieved when Americans are fed, not when the federal government shifts the administrative burden of disbursing funds onto the States—especially when there is still no clear disbursement date in sight." App. 21a. The court therefore concluded that USDA had "undermined both the intent and the effectiveness of this Court's [First TRO]" and that the court was "not inclined to excuse this noncompliance, particularly where the obstacles [USDA] now invoke[s] are the foreseeable result of [its] own choices." *Id.* The court accordingly granted Respondents' motion to enforce and entered an order enforcing the First TRO by requiring USDA to "make full SNAP payments to the States by Friday, November 7, 2025," using the funds available in the Child Nutrition account in combination with the SNAP contingency funds. *Id.*

The Second TRO. Turning to Respondents' alternative motion for a second TRO, the district court concluded that USDA's decision to provide only partial benefits was arbitrary and capricious under the APA. *Id.* The court rejected the government's argument that USDA's partial-funding decision was committed to the agency's unreviewable discretion, explaining that the "rare circumstances" that

would eliminate judicial review were not present. App. 22a-23a (citation omitted). On the merits, the court held that USDA's decision to provide only partial benefits was likely arbitrary and capricious for four reasons: (1) USDA disregarded the "increased harm" that SNAP beneficiaries would suffer if forced to wait months for benefits; (2) USDA misapprehended its statutory authority by assuming that using funds in the Child Nutrition account, for purposes other than the Child Nutrition program would "stray from Congressional intent"; (3) USDA's contention that using those funds for SNAP would risk leaving Child Nutrition programs unfunded was implausible and contrary to the evidence; and (4) USDA's asserted reasons for the decision were pretextual given "numerous statements made in recent weeks by Trump administration officials who make clear that SNAP benefits are being withheld for political reasons." App. 26a-31a. The district court also concluded that the irreparable harm it had previously found had "only increased due to the [government's] failure to comply with the Court's prior order," and that the balance of equities and public interest weighed "strongly in the [Respondents'] favor." App. 33a.

The district court accordingly granted the Second TRO, which independently imposed the same remedy as the Enforcement Order. The court ordered USDA to make full SNAP payments to the States by November 7, using the available Child Nutrition funds to supplement the contingency funds. *Id.* The court denied the government's request for a stay, explaining: "People have gone without for too long.

Not making payments to them for even another day is simply unacceptable." Resp. App. 61a.

6. On November 7, the government sought emergency relief in the court of appeals. That same day, before the government filed its application in this Court, USDA issued updated guidance to States explaining that it was "working towards implementing November 2025 full benefit issuances in compliance with the November 6, 2025, order." USDA, Updated Supplemental Nutrition Assistance Program (SNAP) November Benefit Issuance (Nov. 7, 2025), https://perma.cc/FZ8C-B4CT. The guidance stated: "Later today, [Food and Nutrition Service] will complete the processes necessary to make funds available to support your subsequent transmittal of full issuance files to your EBT processor." *Id.* In the meantime, after the district court had ordered USDA to make full payments—and, in some cases, spurred by USDA's guidance that it would do so—some States initiated the processes necessary to effectuate the transfer of full benefit amounts so as to minimize any further delay in feeding needy families. *See* Motion for Leave to File Letter Supplement, *Rhode Island State Council of Churches v. Rollins*, No. 25-2089 (1st Cir. Nov. 8, 2025).

Later that evening, the court of appeals denied the government's request for an administrative stay, observing that "the government would need to establish that it is entitled to a stay of both [the Enforcement Order and the Second TRO] in order to receive the relief that it requests from being required to make full SNAP payments by utilizing available [Child Nutrition] funds in combination with the contingency

funds." Order, *Rhode Island State Council of Churches v. Rollins*, No. 25-2089 (1st Cir. Nov. 7, 2025). The court also observed that "the government has not disputed that it may under 7 U.S.C. § 2257 use the [Child Nutrition] fund to cover the provision of SNAP benefits for the month of November." *Id.* The court stated that it would decide the government's motion for a stay pending appeal "as quickly as possible." *Id.*

Justice Jackson subsequently granted an administrative stay to allow the court of appeals to act on the government's stay motion. The stay is set to expire 48 hours after the court of appeals issued its decision.

On November 8, USDA issued revised guidance to States, directing them not to issue full benefits and to instead process partial benefits as instructed in the earlier guidance reflecting a 35 percent reduction. USDA, Updated Supplemental Nutrition Assistance Program (SNAP) November Benefit Issuance (Nov. 8, 2025), https://perma.cc/T8EN-LKGW. USDA further instructed States to "immediately undo any steps" they had taken to issue full SNAP benefits after the district court's Enforcement Order and Second TRO and warned of serious consequences if they did not. *Id.* As of this filing, that November 8 guidance has been temporarily enjoined. Electronic Order, *Massachusetts v. USDA*, No. 25-cv-13165 (D. Mass. Nov. 10, 2025), ECF No. 87.

In the late evening of November 9, the court of appeals denied the government's motion for a stay of the Enforcement Order. *See* Order, *Rhode Island State Council of Churches v. Rollins*, No. 25-2089 (1st Cir. Nov. 9, 2025); Opinion, *Rhode Island State Council of Churches v. Rollins*, No. 25-2089 (1st Cir. Nov. 9, 2025)

("Stay Op."). The court explained that of the two arguments advanced in the government's stay motion—that USDA's partial-funding decision is unreviewable and that USDA's decision was not arbitrary and capricious—"neither . . . address[es] the [Enforcement Order]," to which the government had "devote[d], at most, three sentences." *Id.* at 19. Those three sentences "f[ell] far short of a strong showing that the district court erred" in finding that USDA failed to comply with the First TRO. *Id.* at 20; *see id.* at 22-25. And the government had "not argue[d] in its stay motion" that the Enforcement Order was an "improper remedy for [USDA's] noncompliance with the [First TRO]." *Id.* at 24. The court of appeals accordingly held that the government had not made the necessary "strong showing" that it is likely to succeed. *Id.*

As to the remaining equitable factors, the government's concern that transferring funds from the Child Nutrition account to pay for full November SNAP benefits would disrupt other nutrition programs was too speculative to establish irreparable harm warranting a stay. *Id.* at 26-27. And the court found the harm from a stay to Respondents and the public "would be immense," citing the "overwhelming evidence" of "immediate, predictable, and unchallenged harms facing forty-two million Americans who rely on SNAP benefits—including fourteen million children." *Id.* at 27-28. Particularly where the government had "sat on its hands for nearly a month" without preparing to make partial payments, the government had not established any entitlement to a stay of the Enforcement Order. *Id.* at 28-29. Because the Second TRO granted the same relief as the Enforcement Order and had been

requested in the alternative, the court stayed the Second TRO "so long as the "[E]nforcement [O]rder remains in full force and effect." *Id.* at 29. The government filed a supplemental brief in this Court.

STANDARD OF REVIEW

"A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (quotation marks and citation omitted). This Court, therefore, will stay a decision under review in a court of appeals "only in extraordinary circumstances," *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (Stevens, J., in chambers), and "upon the weightiest considerations," *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers).

To obtain a stay pending appeal, the government must establish (1) "a reasonable probability" that this Court would eventually grant certiorari on the question presented in the stay application, (2) a fair prospect that the Court will reverse the decision below, and (3) a likelihood that irreparable harm will result from the denial of a stay. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301 (2014) (Roberts, C.J., in chambers). The Court also considers whether a stay would substantially injure the other parties interested in the proceedings and whether it would serve the public interest. *Ohio v. EPA*, 603 U.S. 279, 291 (2024).

"The burden of persuasion" on every element "rests on the applicant," and the burden is "particularly heavy" when, as here, both the district court and the court of appeals have declined to stay proceedings. *Beame v. Friends of the Earth*, 434 U.S. 1310, 1312 (1977) (Marshall, J., in chambers); s*ee also Edwards v. Hope Med. Grp. for Women*, 512 U.S. 1301, 1302 (1994) (Scalia, J., in chambers); *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983) (Blackmun, J., in chambers) ("[A] district court's conclusion that a stay is unwarranted is entitled to considerable deference."); *Breswick & Co. v. United States*, 75 S. Ct. 912, 915 (1955) (Harlan, J., in chambers) ("A single Justice may also be expected to give due regard to a lower court's denial of a stay.").

ARGUMENT

I. THIS CASE IS AN EXCEPTIONALLY POOR CANDIDATE FOR CERTIORARI

In seeking a stay, the government presented the court of appeals and this Court with two principal arguments: that USDA's decision not to tap into the Child Nutrition account to provide full November SNAP benefits is immune from judicial review under the APA as "committed to agency discretion by law," 5 U.S.C. § 701(a)(2), and that USDA's decision in any event was not arbitrary and capricious. Regardless of whether those arguments might warrant review in other circumstances, granting a stay on either basis would be futile.

As the court of appeals stressed, USDA's obligation to make full November SNAP payments stems from two independent orders of the district court: (1) the Enforcement Order, which the district court entered to remedy USDA's failure to

comply with the First TRO, and (2) the Second TRO setting USDA's partial-funding decision aside as arbitrary and capricious under the APA. The government's argument that APA review is unavailable under § 701(a)(2) would, if accepted, bear on the validity of the Second TRO. But its relevance to the Enforcement Order is decidedly unclear. And neither the government's stay motion in the court of appeals nor its stay application to this Court addressed this point. As the court of appeals concluded, that omission is fatal to the government's request for a stay, because it means the government would remain under an obligation to make full November SNAP benefits even if the Second TRO were reversed.

The government's supplemental brief (at 3) finally confronts the Enforcement Order, but its efforts do not overcome the fatal flaw. The government dismisses the distinction between it and the Second TRO as a "largely procedural point that presents no barrier to relief." But the district court's order belies that contention. As explained above, in issuing the Enforcement Order, the district court concluded that by failing to disburse the SNAP contingency funds expeditiously as directed by the First TRO, USDA had "undermined both the intent and the effectiveness of th[e] Court's [First TRO]" and that the court was "not inclined to excuse this noncompliance." App. 21a. The court accordingly exercised its inherent authority to enforce the First TRO by entering the Enforcement Order to fulfill the object of the First TRO—effecting USDA's compliance with the obligation to expend the SNAP contingency funds. Arbitrary-and-capricious review formed no part of that analysis. App. 18a-21a. Only in the Second TRO did the district court apply the APA to find

USDA's decision not to fully fund November SNAP payments arbitrary and capricious. *See* App. 21a-33a. It is therefore only the Second TRO that implicates the government's arguments that 5 U.S.C. § 701(a)(2) precludes review and that USDA's decision was reasonable under the APA.

The government vaguely suggests its APA reviewability argument might also apply to the Enforcement Order. Suppl. Br. 6. But the government cites no authority for its supposition that judicial-review principles under the APA could implicitly bar a court from exercising its inherent authority to determine whether a party has failed to comply with an injunction and, if so, to craft appropriate relief. "[I]f the government had arguments along these lines, it did not make them" below, and it has not presented them to this Court. *Ohio*, 603 U.S. at 298. "This Court 'normally decline[s] to entertain' arguments 'forfeited' by the parties," and departing from that rule here would be imprudent because there are good reasons to doubt the government's premise. *Id.*

First, the text of the APA does not support it. The exception to arbitrary-and-capricious review on which the government relies simply delineates when judicial review under "this chapter"—*i.e.*, the APA—is available. 5 U.S.C. § 701(a)(2). The text does not address what courts may do outside that context, including in the exercise of their inherent authority. And as to that inherent authority, this Court has long recognized that district courts have broad discretion to supervise compliance with their injunctive decrees and to modify those decrees as needed to adapt to changed conditions or lack of compliance and ensure the objects of the decree are met.

United States v. Swift & Co., 286 U.S. 106, 114-20 (1932). This includes the power to impose restraints which, absent the underlying decree, the court might not have had authority to impose or the law might not otherwise have required. *See id.* at 119-20; *see also Riggs v. Johnson County*, 73 U.S. (6 Wall.) 166, 187-89 (1868).

Accordingly, even if this Court agreed with the government that the narrow exception in § 701(a)(2) barred the APA claim addressed in the Second TRO, that conclusion would not, on its own, support reversal of the Enforcement Order. To reverse that order, the Court would first have to apply the law of injunctions to decide whether APA reviewability principles even apply where a district court acts not under the APA but instead under its inherent authority to enforce a previously issued order. The government has not asked this Court to decide that question, and it has offered no argument at all on the point. Resolving that novel question, which is unlikely to recur, in this posture would thus be ill-advised at best. And leaving the government bound by the Enforcement Order obviates any reason to consider the validity of the Second TRO.

The government's supplemental brief accordingly pivots away from the question of reviewability under § 701(a)(2) to an argument that the Enforcement Order is invalid to the same extent that the decree it enforced, the First TRO, is invalid. But that gets the government nowhere, because the government does not dispute the validity of the First TRO insofar as it held the SNAP statute required

USDA to expeditiously disburse the SNAP contingency funds.[2] As explained, the remedy the district court entered in the Enforcement Order served to ensure that the obligation to expend the SNAP contingency funds would be satisfied after USDA's failure to comply. That being the case, the question presented by the government is actually extremely narrow: whether the specific manner in which the government complies with an injunction is subject to judicial review. The government offers no reason to suppose that such a question will arise frequently, or indeed ever again. Indeed, the government acknowledges that this case could soon become moot given the progress of negotiations to end the government shutdown. Suppl. Br. 1. And while the government urges the Court to grant a stay to allow those developments to progress, the prospect of imminent mootness is a reason to deny a stay, not to grant it.

The government (at 3-4, 20-21) raises the specter of a "run on the bank," suggesting the decision below would authorize courts to grant relief any time a party claimed an agency had made a discretionary decision that failed to prioritize their chosen program. But that is not what the district court here did. The district court's order to make full SNAP payments followed directly from USDA's failure to comply with the First TRO, which held only that USDA was obligated to disburse the SNAP contingency funds and *accepted* the government's position that the decision whether to tap into the Child Nutrition account was discretionary. When USDA failed to fulfill

[2] That the government appealed the First TRO makes no difference, as the government concedes its appeal challenged the First TRO only "to the extent it mandated full payments drawn from other appropriations" besides the SNAP contingency funds. Suppl. Br. 5.

that obligation to disburse the SNAP contingency funds expeditiously, the district court concluded in its subsequent orders that combining the contingency funds with funds transferred from the Child Nutrition account—which would allow USDA to make full payments that *could* be made expeditiously—was the only way USDA could fulfill its duties under the statute and the First TRO to promptly disburse the contingency funds and alleviate the irreparable harm USDA's actions had caused. Given these unique facts, this case is the very definition of sui generis—and certainly does not set any precedent authorizing district courts to "order the government to pull from one source of funding to cover gaps in another" any time a disappointed beneficiary of an unfunded federal program runs to court, as the government foretells, Stay Appl. 20. The government is certainly correct (at 20) that the present situation has been a "recipe for chaos," but the chaos was sown by USDA's delays and intransigence, not by the district court's efforts to mitigate that chaos and the harm it has inflicted on families who need food.

II. THE GOVERNMENT IS NOT LIKELY TO SUCCEED ON THE MERITS

The government also has not established a fair prospect of success. The government's stay application offers no argument for overturning the Enforcement Order at all, and its eleventh-hour efforts in its supplemental brief are forfeited and unconvincing. The government's arguments as to the Second TRO are likewise unpersuasive.[3]

A. There Is No Basis To Overturn The Enforcement Order

[3] Nor does the government challenge the scope of relief ordered by the district court. Any such argument is therefore forfeited.

The district court did not abuse its discretion in concluding that USDA did not comply with the First TRO. The First TRO made clear that SNAP contingency funds had to be disbursed to beneficiaries expeditiously—either by clearing the bureaucratic obstacles that would hinder partial payments from the contingency funds alone or by supplementing the contingency funds with Child Nutrition funds to enable easy-to-administer full payments. The conditions on the partial-payment option were clear: If USDA chose not to make full payments, it "must expeditiously resolve the administrative and clerical burdens it described in its papers" and "under no circumstances shall the partial payments be made later than Wednesday, November 5, 2025." App. 5a-6a.

USDA then purported to choose the partial-payment option—but with complete disregard for the conditions the district court had attached to that option. It did nothing to resolve the "administrative and clerical burdens it described in its papers" (App. 5a-6a)—namely, the burdens States would face in recoding their systems or implementing manual overrides and computations (App. 40a-41a). The government touts its efforts to send the States guidance and revised tables needed to calculate partial benefits. Suppl. Br. at 6. But creating that guidance was not the hard part—and it did not ensure that partial payments would be made by November 5. By the government's own admission, it could take "up to several months" for payments to reach beneficiaries in some States. App. 51a-52a. That delay would violate not only the First TRO's conditions, but also the statutory requirement that

no more than 40 days pass between each issuance of benefits to a recipient, 7 U.S.C. § 2016(g)(2)(A)(ii).

The government's claim that it did "what [was] in its power" (Supp. Br. at 8) does not withstand scrutiny. For one, the government plays an important role in overseeing States' administration of SNAP. USDA may, for example, require state agencies to automate data processing or take other steps to "rectify identified shortcomings" to ensure that no "program accountability or integrity problems" affect the States' administration of the program. 7 U.S.C. § 2020(o)(4). The agency also is responsible for reviewing and approving States' information systems used to administer SNAP. *See* 7 C.F.R. § 277.18(c). USDA can hardly shift blame to the States whose systems were not up to the partial-payments task when Congress assigned USDA the responsibility for addressing such problems.

Worse, USDA created the urgency that left some States with insufficient time to shift to partial payments. As the court of appeals pointed out, "USDA knew at the very latest by October 10 … that normal appropriations would be unavailable to cover November benefits" and that "making partial payments would be technically difficult." Suppl. App. 22a-23a. Yet USDA "proceeded to do nothing to attempt to solve the problem over the following three weeks." Suppl. App. 23a. Instead—"in an unexplained reversal" of its past position (Suppl. App. 23a)—the agency announced it lacked authority to use the contingency funds and so would make no November SNAP payments at all. By the time USDA reversed course in response to the First TRO, it

may have been too late to realistically get timely partial payments out in all States. But, if so, that was a problem that resulted from USDA's own inexcusable delay.

USDA purported to comply with the First TRO in a manner that was not compliant; having done so, it cannot now be heard to complain that the district court ordered it to take the other path—especially since the government did not argue that the district court's choice of remedies in the First TRO was improper until its supplemental brief in this Court. The government's new arguments in the supplemental brief are forfeited, *Ohio*, 603 U.S. at 298, and in any event they fail. The government again insists that the Enforcement Order was improper to the extent it enforced an unlawful order, but as explained above, the district court fashioned the Enforcement Order as a remedy for USDA's noncompliance with the obligation in the First TRO to quickly disburse the SNAP contingency funds—an obligation the government does not contest. And the government's contention that the Enforcement Order cannot be a proper remedy because the First TRO was "milder" or "narrower" again disregards the district court's inherent authority to modify an injunction or impose additional restraints to ensure that the object of the original decree is met. *Swift*, 286 U.S. at 114-20; *see also, e.g.*, *United States v. Alcoa, Inc.*, 533 F.3d 278, 288 (5th Cir. 2008) (remedies a court provides to enforce a consent decree "need not match those requested by a party or originally provided by the court's earlier judgment").

B. There Is No Fair Prospect The Court Would Reverse The Second TRO

The court of appeals has already stayed the Second TRO. And given that the Enforcement Order supplies an independent basis for USDA's present obligation to

pay full SNAP benefits, there would be little point in this Court reviewing the Second TRO. Even if it did so, however, the government's arguments lack merit.

1. USDA's partial-funding decision is subject to judicial review

The exception to APA review for actions committed to agency discretion by law did not preclude review of USDA's partial-funding decision. Even where an agency is afforded broad discretion, the APA embodies a "strong presumption favoring judicial review of administrative action." *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018). The exception to that presumption for actions "committed to agency discretion by law" is "quite narrow[], restrict[ed] . . . to those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion," *Dep't of Com. v. New York*, 588 U.S. 752, 772 (2019) (quotation marks omitted)—that is, where there is simply "no law to apply." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

This case does not clear that high bar. Congress's instruction that SNAP assistance "shall be furnished to all eligible households who make application for such participation," 7 U.S.C. § 2014(a), provides a "clear and specific directive[]" calling for USDA to fund SNAP in full when certain funds are available. *Overton Park*, 401 U.S. at 411. And Congress specifically anticipated a situation where SNAP and other programs might have a temporary shortfall of funding, authorizing USDA to transfer funds among certain programs it administers and providing that appropriated funds of any division "shall be available interchangeably for expenditures" within that

division up to a specified percentage, or higher "in cases of extraordinary emergency." 7 U.S.C. § 2257. USDA has conceded that it could exercise that authority to transfer funds from the Child Nutrition account to SNAP, App. 51a, as it has done for other programs, App. 43a, 50a.

Collectively, the appropriations and authorities for SNAP provide meaningful "law to apply" in determining whether USDA acted consistent with congressional intent and reasonably considered all relevant factors. *See Overton Park*, 401 U.S. at 411-13; *Weyerhaeuser*, 586 U.S. at 25; *see also Mach Mining LLC v. EEOC*, 575 U.S. 480, 487-88 (2015).

That sets this case in stark contrast to *Lincoln v. Vigil*, 508 U.S. 182 (1993). There, the Indian Health Service's (IHS) termination of the Indian Children's Program could not be reviewed under the APA because the decision about how to allocate funds from the agency's annual lump-sum appropriation was committed to IHS's unreviewable discretion. 508 U.S. at 191-95. Unlike in this case, the relevant appropriations measures in *Lincoln* "d[id] not so much as mention" the terminated program, and IHS's authorizing statutes "sp[oke] about Indian health only in general terms" without obligating the agency to undertake any particular program. *Id.* at 194; *see id.* at 185. Congress had not "statutorily restrict[ed] what c[ould] be done with those funds" at all, *id.* at 192, let alone established a program and directed—as it did with SNAP—that funds should be used to provide assistance through that program to all eligible applicants.

Although the government (at 12) cites language in 7 U.S.C. § 2027(b) providing that USDA "shall limit" SNAP allotments "to an amount not in excess of the appropriation for such fiscal year," it has conceded that this provision does not preclude USDA from using funds from the Child Nutrition account to supplement the SNAP appropriations. App. 51a. And the fact that Congress might not have made such transfers "mandatory," Stay Appl. 13, does not mean that Congress expressed no relevant intent to guide the agency's decision. To the contrary, Congress made clear the priority it placed on maintaining the SNAP program and specifically provided in § 2257 for the possibility that available funds might fall short.

The government's sweeping assertion (at 15) that "so long as [USDA's] authority [to draw on the Child Nutrition funds] is discretionary, it is not subject to judicial review," has repeatedly been rejected. *See Weyerhaeuser*, 586 U.S. at 24; *Mach Mining*, 575 U.S. at 487-88. That is not to say there could not be instances where USDA reasonably declines to transfer funds from the Child Nutrition account to cover a shortfall in SNAP or that the agency has no discretion to balance competing needs; but in doing so, USDA must provide a reasoned explanation that rationally considers the factors Congress identified as relevant to the decision. Here, the statutory framework provides a meaningful standard against which to judge the exercise of the agency's discretion, and the strong presumption of reviewability applies.

2. USDA's partial-funding decision was arbitrary and capricious

The district court also correctly concluded that USDA's decision to provide only partial SNAP benefits was arbitrary and capricious.

First, USDA primarily claimed it was withholding full payments for November SNAP benefits because tapping into the Child Nutrition account would create a "significant shortfall" in the account and thus "shift the problem" to children who rely on school lunches. App. 49a-50a. Ensuring support for child nutrition is of course critically important—indeed, more than one third of the millions of SNAP recipients are children. But USDA's reasoning is facially implausible. There is currently approximately $23.35 billion available in the Child Nutrition account, *see* ECF No. 22-1 at 19 n.5, and in the government's own telling, Child Nutrition programs require just over $3 billion per month. App. 49a. If the government transferred the roughly $4 billion necessary to make full November SNAP payments, $19.35 billion would remain—enough to fully fund Child Nutrition through May and beyond, even if the current lapse in appropriations lasted that long.

The government is wrong, moreover, to contend that the transfer would "be a permanent loss" to Child Nutrition programs for the whole fiscal year. App. 49a. It would be a permanent loss if and only if Congress took no action to fill the gap—contrary to its unbroken past practice of fully funding those programs. Speculation about such unlikely events is not a basis for reasoned decision-making. The government claims (at 17) that "the continuing resolution currently being considered" would do nothing to address the shortfall, but that is wrong. The continuing resolution before Congress contains standard language for appropriated entitlements

like Child Nutrition that would provide whatever funding is necessary to provide full benefits to anyone who is eligible. H.R. 5371, 119th Cong. § 111(a) (2025) (providing that "activities shall be continued at the rate to maintain program levels under current law"). Under that standard language, there could by definition be no shortfall. And as of the evening of November 10, the Senate had passed a full-year appropriations bill for USDA that would fully fund both SNAP and Child Nutrition for this fiscal year, while also replenishing SNAP and WIC contingency funds to account for expenditures during the government shutdown. *See* H.R. 5371, 119th Cong., div. B, tit. IV (2025) .

USDA's heavy reliance on the claimed need to protect Child Nutrition programs thus "runs counter to the evidence before the agency" and "is so implausible that it could not be ascribed to a difference in view." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). As the district court put it, "it defies belief that the [government] would prioritize a hypothetical disruption in child food assistance, projected to occur no sooner than May of 2026 (if at all), over the very real and immediate risk of children being deprived of their food assistance today." App. 30a.

Second, USDA failed entirely to account for the practical consequences of its decision. While USDA acknowledged that partial payments would result in substantial delay in some States, App. 52a, it did not account for the real-world impact for individuals and families going without needed food for weeks or even months. Nor did USDA offer any justification for choosing the option that, by its own

admission, would make it practically impossible for people to receive urgently needed food assistance. It therefore failed to consider an "important aspect of the problem," *State Farm*, 463 U.S. at 43, and failed to consider the "serious reliance interests" of the children, seniors, and others who rely on SNAP for basic nutrition and need those funds now, *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020).

Third, USDA based its decision on a mistaken belief that tapping into Child Nutrition funding would "stray from Congressional intent," reasoning that Congress provided SNAP contingency funds "at a level it has deemed sufficient" and "explicitly intended" funds in the Child Nutrition account to "be used only for Child Nutrition Programs." App. 50a. That completely ignores that in § 2257, Congress also made funds "interchangeab[le]" within the individual USDA bureaus—expressly anticipating that the SNAP contingency funds might at some point *not* be sufficient. *See* 7 U.S.C. § 2257. Exercising authority Congress granted does not transgress congressional intent, particularly where Congress has elsewhere stressed the importance of SNAP to alleviating hunger and malnutrition. *See* 7 U.S.C. § 2011.

Finally, the record strongly suggests that USDA's asserted reasons were "pretextual" and that it in fact withheld full SNAP benefits "for political reasons," App. 31a—which is straightforwardly arbitrary and capricious. *See Level the Playing Field v. FEC*, 961 F.3d 462, 464 (D.C. Cir. 2020). When USDA suspended SNAP benefits, its website prominently displayed a banner blaming "Senate Democrats" for the fact that the SNAP "well has run dry." USDA.gov, https://perma.cc/BL88-8QU6. The President stated that people would not get SNAP benefits unless "the Radical

Left Democrats open up government." Donald J. Trump (@realDonaldTrump), TruthSocial (Nov. 4, 2025, 11:06 AM), https://perma.cc/6QAN-54YU. These statements demonstrate the government's true motives and indicate classic arbitrary and capricious action.

III. Any Injury To The Government Is Far Outweighed By The Irreparable Harm That Respondents And The Public Will Face If A Stay Is Granted

The government's discussion of irreparable harm rests on conjecture and disregards the grave harm that would befall Respondents and millions of other Americans if a stay were granted.

Absent a stay, USDA will be required to draw on a small fraction of the Child Nutrition account to fund SNAP for this month, which USDA has conceded it can do. App. 51a. USDA's concern that Child Nutrition programs will run out of money is far-fetched. And its assertion that any shortfall in the Child Nutrition account will "compound" if the district court commands "the government to tap these funds again in December," Stay Appl. 20, rests on speculation that the shutdown will persist that long and about what the district court would require in that different factual scenario, where USDA will presumably have planned sufficiently in advance to avoid the suspension and delays of payments it caused in November. *See* Stay Op. 26 n.5. Because the government bears the burden to demonstrate that it "*will be* irreparably injured absent a stay," *Nken*, 556 U.S. at 434 (emphasis added), its speculative and conclusory statements cannot suffice.

Further, unlike in *National Institute of Health v. American Public Health Association*, 145 S. Ct. 2658 (2025), where the government preferred not to continue

funding certain research at all, *id.* at 2661 (Barrett, J., concurring in the partial grant of the application for stay), making the expenditure of those funds a waste in its view, here it expects to continue funding SNAP once the shutdown ends. Accordingly, whether the funds can be recouped for the purpose of irreparable injury is entirely beside the point.

On the other hand, Respondents and the public will be severely and irreparably harmed if a stay is granted. Every moment that the district court's orders go unenforced, "SNAP recipients—16 million of whom are children—will go hungry [because] they [will] not receive their SNAP benefits." App. 30a. Denying subsistence benefits to eligible people who need them deprives them "of the very means by which to live." *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

That will injure not only SNAP beneficiaries like Respondent SEIU's members, *see* Resp. App. 112a-149a, but also a range of entities dedicated to addressing hunger in their communities. Nonprofits that offer emergency food assistance are already unable to fulfill their missions—despite diverting significant resources from other programs to meet the influx of need. *See, e.g.*, Resp. App. 84a-91a. Service providers that assist with SNAP benefits are being inundated with requests, which have strained their staff while crippling their ability to serve other needs. *See, e.g.*, Resp. App. 102a-103a. Cities are taking unprecedented steps to feed their communities, redirecting resources from core city services to do so. Resp. App. 67a-68a, 75a-77a. And small businesses are losing significant revenue without SNAP purchases, which puts them at risk of having to cut employee hours or even close their doors. Resp.

App. 111a. The government (at 21) takes credit for mitigating those harms by issuing the partial payments, yet it provided that limited, delayed relief only after being ordered to do so in the First TRO.

As the district court recognized, "[t]here is no doubt and it is beyond argument that irreparable harm will begin to occur, if it hasn't already occurred, in the terror it has caused some people about the availability of funding for food for their family." Resp. App. 38a. The government has failed to justify extending that suffering—and doing so would be particularly fruitless where the government has not explained how any of its arguments would have any bearing on the validity of the Enforcement Order. *Nken*'s equitable factors weigh decidedly against any further stay.

CONCLUSION

The Court should deny the government's application and not allow any further delay in getting vital food assistance to people who need it now.

Respectfully submitted.

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